

January 30, 2009

Via Overnight Delivery

Carl Holm
County of Monterey – Planning Department
RMA-Planning Salinas Permit Center
168 W. Alisal St., 2nd Floor
Salinas, CA 93901

**Re: 2007 Monterey County General Plan DEIR
PLN070525, SCH2007121001**

Dear Mr. Holm:

On behalf of LandWatch Monterey County we offer the following comments on the draft EIR for the 2007 Monterey County General Plan (“2007 General Plan”). We have reviewed the 2007 General Plan and its Draft EIR (“DEIR”), together with various documents and materials relating to the 2007 General Plan and its environmental analysis. TRA Environmental Sciences, Inc., assisted us in our review of biological resource issues. Autumn Wind Associates, Inc., assisted us in review of air quality issues. Comment letters from Autumn Wind Associates, Inc., and TRA Environmental Sciences, Inc., are enclosed as Exhibits 12 and 13. Also assisting us in preparing an analysis of mapping data and preparing various exhibits was The Nature Conservancy. Material prepared by The Nature Conservancy is attached to the comments by TRA Environmental Sciences, Inc.

Introduction & Overview

A General Plan is the constitution and blueprint for all future development in the County. *Leshar Communications Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d 531; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553. An inadequate General Plan may void all subsequent land use approvals. A General Plan is invalid if it is not internally consistent, *e.g.*, if the data, assumptions, and projections used in its various parts are not consistent. Gov. Code § 65300.5; *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App. 3d 698. In particular, the circulation element must correlate with the land use element. Gov. Code § 65302(b); *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App. 3d 90.

The 2006 General Plan does not meet the consistency requirements because the transportation element does not support the permitted or even the projected land uses. For example, there is no feasible plan to provide adequate transportation infrastructure to support permitted development. The provisions for supplying potable water also fail to support land uses because there is no plan to provide adequate water supplies.

The 2006 General Plan is fundamentally incomplete. Literally dozens of its policies are nothing more than the intention to address critical problems through future development of standards, regulations, and programs. These policies are vaguely written and contain no substantive performance standards or any real constraints on the standards, regulations, and programs to be developed at some unspecified time in the future.

A General Plan must undergo environmental review under CEQA. Gov. Code § 65350. “CEQA’s fundamental goal [is] fostering informed decision-making.” *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 402. “An EIR is an ‘environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Id.* at 392. “[T]he requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.” *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 820. It also ensures “the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision.” *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.

In order to fulfill these functions, the EIR must “provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” Pub. Resources Code § 21061. The analysis must be specific and detailed, and must also be supported by empirical or experimental data, scientific authorities or explanatory information, including comparative and quantitative evaluation. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397; *People v. County of Kern* (1974) 39 Cal.App.3d 830.

This EIR falls far short of satisfying these information disclosure requirements. As will be shown in these comments, and in those from our technical experts, the EIR is fatally flawed in its identification, disclosure, evaluation, and mitigation of impacts to traffic, air quality, water resources and potable water supply, biological resources, and agricultural land. The DEIR must therefore be substantially revised to cure these deficiencies, and must then be recirculated for additional public review and comment in accordance with the recirculation requirements of section 15088.5 of the CEQA Guidelines.

LandWatch advised the Planning Commission in its comments in November that it remains concerned about a number of features of the 2007 General Plan and is concerned that the County has not adequately disclosed its environmental consequences in the DEIR

SLOPE DEVELOPMENT POLICY: The new plan proposes to abandon the County's policy that bars development on slopes over 25%. The new slope development policy contains vaguely worded exceptions that allow development even on slopes over 30%. Although the policy promises some form of discretionary permit for development on slopes over 25% or slopes that contain constraints, it postpones the identification of constrained slopes and provides no standards for allowable slope development or conditions to control erosion. Similarly, the policy proposes a system of discretionary and ministerial permits for agricultural development of uncultivated soils, but it does not identify criteria for the discretionary permit or conditions to constrain development for either permit.

This new slope development policy, together with the proposed exemption of routine and ongoing agricultural activities from discretionary permitting, would permit residential and agricultural development on hundreds of thousands of acres of existing open space and habitat. Conversion of habitat to agricultural land has been occurring at over 800 acres per year for the last decade. Agricultural development on slopes will be spurred by the elimination of discretionary permitting and by the proposed Winery Corridor, which will create incentives to substantially expand the County's viticulture industry.

EROSION AND SEDIMENTATION: The DEIR has not provided any meaningful analysis of the environmental effects of altering the existing rules to permit this kind of development. For example, in its evaluation of potential erosion and sedimentation effects, the DEIR provides no description of the baseline conditions for erosion and sedimentation, no description of the likely location and intensity levels of slope development, and no meaningful analysis of the actual erosion and sedimentation that would result. Instead of analysis, the DEIR simply concludes that impacts will be less than significant based on a mechanical recitation of a list of policies that have little or no substantive content and that evince a determination to postpone any actual regulation of activities that may cause erosion and sedimentation. The policies and proposed mitigation measures postpone the formulation of specific regulations without providing performance standards or examples of measures that might be required to address impacts. For example, the DEIR admits that vineyard development will cause cumulative sedimentation impacts, but identifies as mitigation a policy that requires only that a task force look into the problem at some unspecified point in the future. The General Plan policies and the DEIR's proposed mitigation measures do not provide the substantial evidence that impacts will be less than significant that CEQA requires.

BIOLOGICAL RESOURCE IMPACTS: Similarly, the DEIR fails to evaluate the impacts to biological resources from agricultural and residential development

permitted under the 2007 General Plan. Once again, the DEIR's analysis consists of the recital of policies and mitigation measures that have no substantive content and simply postpone meaningful regulation. These policies call for activities, programs, or ordinances to be identified or developed later, but the policies do not contain performance standards or provide examples of these activities, programs, or ordinances. Policies calling for action by the County fail to identify responsible agencies, ensure that adequate resources will be available, specify schedules for implementation, or provide for alternative measures pending full implementation. And many policies are not enforceable because they call for voluntary action or merely call for encouraging and supporting beneficial activities. Again, these policies cannot provide assurance that CEQA requires that impacts will be avoided, minimized, or mitigated.

The DEIR fails to consider and mitigate the effects of uncontrolled agricultural conversions on habitat fragmentation and movement corridors. Movement corridors are inadequately identified without using the best available science. Proposed mitigation for these landscape-level impacts is inadequate, because it relies on future *project-level* CEQA reviews that would be conducted when the County no longer has the flexibility to restrict or condition development at the landscape scale. Furthermore, the County proposes to exempt the agricultural and winery development responsible for much of these impacts from future CEQA review.

WATER IMPACTS: The DEIR fails to comply with CEQA's basic requirement that an EIR evaluate aggregate cumulative water demand and supply for each affected basin. The analysis for the Salinas basin is flawed and no analysis of basin-wide supply and demand is provided for the other affected basins.

The DEIR's conclusion that there will be an adequate water supply in the Salinas Basin ignores the ongoing cultivation of previously uncultivated land and the expansion of the viticulture industry that the DEIR encourages through its slope development policy and Winery Corridor program; and it is not based on an analysis of all competing demands for water resources. For example, the DEIR relies on the out of date EIR for the Salinas Valley Water Project ("SVWP") to conclude that there will be no increase in agricultural water demand. But the SVWP assumed no net increase in farmland whereas the DEIR admits that at least 7,300 acres of new cultivation will occur through 2030. The DEIR postpones the development of criteria for determining the availability of a long term sustainable water supply for *individual* development projects, but mysteriously concludes that there will be a long term sustainable water supply in the Salinas Basin for *all* future projects taken together.

The DEIR's conclusion that salt water intrusion will be halted is not consistent with the most current evidence of salt water intrusion and depends on the assumption that surface diversions from the Salinas River for the Salinas Valley Water Project can be doubled. The effect on endangered steelhead of doubling these diversions has not been evaluated by the County or by any other agency. We present expert evidence that this would significantly impact steelhead recovery efforts.

TRAFFIC: The DEIR's traffic section provides a quantitative analysis of some major roadways and admits that there is no solution to the County's traffic problems on these facilities. Despite this admitted lack of resources, the DEIR concludes on the basis of yet another recitation of vague and unenforceable policies that impacts from future individual development projects will not be significant. There is simply no way to reconcile the DEIR's conclusion that cumulative impacts from future individual development projects will be mitigated with the DEIR's admission that most of the major facilities will suffer unavoidably significant impacts. Because there is no adequate proposal to meet circulation service standards, the 2007 General Plan does not meet the internal consistency requirements of the State Planning and Zoning Law. Numerous circulation policies are incomplete or inconsistent.

AGRICULTURE: The DEIR concludes that the loss of 2,571 acres of agricultural land redesignated by the 2007 General Plan to permit urban uses cannot be mitigated. It then mysteriously concludes that future *ad hoc* general plan amendments that convert agricultural land will be mitigated by an unspecified, to-be-devised mitigation program. If future loss of agricultural land can be mitigated, then the loss of the 2,571 acres should be mitigated too. Again, the deferral of the formulation of any substantive content to the policies that purport to mitigate growth impacts is improper.

AIR QUALITY: The DEIR purports to project demographic data for each Planning and Community Area based on the land use designations and policies in the 2007 General Plan. However, the DEIR does not document the details of the population, employment, and housing assumptions relied upon for the traffic and air quality analysis and the County failed to provide adequate documentation in response to LandWatch's requests. On its face, the 2007 General Plan is inconsistent with the 2008 Air Quality Management Plan because the DEIR projects more population. Because the DEIR simply "adjusted" its demographic assumptions to be consistent with the assumptions uses in the 2004 Air Quality Management Plan, the DEIR's finding of consistency with the 2004 Plan is meaningless.

The DEIR inconsistently states both that the 2007 General Plan will *reduce* mobile source emissions and that it will *increase* mobile source emissions. While mobile source emissions *rates* may decline, that rate decline is not due to the 2007 General Plan. It is clear that new emissions from growth will represent an increase in emissions, but the DEIR does not acknowledge or quantify this. Mobile source emissions projections and significance conclusions in the DEIR are essentially incoherent. Finally, the DEIR fails to present an adequate analysis or mitigation of construction emissions or diesel toxics.

In sum, the County must modify the 2007 General Plan to restrict harmful development and to provide substantive policies that will demonstrably mitigate development impacts. The County must then revise and recirculate the DEIR to provide meaningful analysis of the remaining impacts and to propose all feasible mitigation.

Our detailed comments follow.

I. Unexplained and Inconsistent Demographic Data

A. Critical Data Not Supplied

The DEIR does not contain appendices that provide the assumptions and model outputs used to prepare the air quality and traffic analyses. Accordingly, LandWatch requested the source documents used to prepare the air quality and traffic analyses. See John Farrow, letter to Mike Novo, Sept. 18, 2008; John Farrow, letter to Carl Holm, September 18, 2008; John Farrow, letter to Mike Novo, Sept. 30, 2008.

RESUSAL TO SUPPLY TRAFFIC MODEL: In response to LandWatch's request for data used to prepare the traffic analyses, the County stated that there were no "source documents" for most of the tables in the traffic analysis. Leslie Girard, letter to John Farrow, Sept. 29, 2008. In response to LandWatch's request for the AMBAG traffic model, which was referenced as the source of the traffic analyses, the County simply stated that the model is proprietary with AMBAG. Wendy Strimling, letter to John Farrow, Oct. 3, 2008. In short, the public is asked to accept traffic output from a black box with no opportunity to review and challenge the methodology.

RAW TAZ DATA NOT EXPLAINED: In view of the fact that the AMBAG traffic model and its associated demographic data organized by Traffic Analysis Zone ("TAZ") are based on the land use assumptions in the existing Monterey County General Plan, the County has an obligation to explain how, if at all, those data were altered to reflect changes to land use assumptions in the 2007 General Plan. However, in response to LandWatch's request for the population, employment and household assumptions by Traffic Analysis Zone used to prepare the traffic analyses, the County provided unexplained, unmapped raw data by TAZ. Wendy Strimling, e-mail to John Farrow, Oct. 7, 2008. As set out below, LandWatch has identified numerous instances in which this TAZ data are inconsistent with the AMBAG 2004 forecasts on which it is purportedly based and/or inconsistent with land use constraints in the 2007 General Plan. The County failed to provide the data in a meaningful form, to explain how the TAZ data are consistent with AMBAG 2004 data, or to explain how the TAZ data were modified, if at all, to reflect changes in land use assumptions proposed in the 2007 General Plan. This failure substantially hampers the public's ability to understand and comment on the adequacy of the traffic and air quality analyses.

To address this failure, the DEIR must be revised to set out exactly how the traffic analyses' demographic assumptions were developed with reference to AMBAG forecast data and the land use constraints in the 2007 General Plan. This revision must address all of the inconsistencies noted below and explain how the proposed changes to existing land use designations have been reflected in the TAZ data.

SOURCES FOR TABLE 3-8 NOT PROVIDED: In response to LandWatch's request for the source document containing population, employment and household

assumptions by planning area used in preparing Table 3-8, the County simply referred LandWatch to the 2004 AMBAG Population, Housing Unit & Employment Forecasts at AMBAG's website. Wendy Strimling, letter to John Farrow, Oct. 3, 2008. As noted above and detailed below, LandWatch has identified instances in which the Table 3-8 data are inconsistent with AMBAG's 2004 data. Furthermore, as explained below, the DEIR fails to provide any hint of the methodology by which AMBAG's aggregate forecasted population and housing units were allocated to the various Planning areas, Community Areas, Rural Centers, AHO's, and unincorporated areas outside CA's, RC's and AHOs, either as constrained by the 2007 General Plan land use assumptions or otherwise. In view of the instances of inconsistency between Table 3-8 data and the land use constraints in the 2007 General Plan identified above, the omission was critical.

To address this failure, the DEIR must be revised to set out exactly how the Table 3-8 demographic assumptions were developed with reference to AMBAG forecast data and the land use constraints in the 2007 General Plan. Table 3-8 must be expressly reconciled with the TAZ data used in the traffic and air quality analyses. This revision must address all of the inconsistencies noted below.

B. Inconsistencies Between Table 3-8, New Growth by Planning Area, Community Area and Rural Center, 2006-2030 and 2092 Buildout, and Other Data Sources Purportedly Relied Upon

In its Project description, the DEIR provides projected population, housing, and employment data in various tables. The most detailed projection of demographic data is contained in Table 3-8, New Growth by Planning Area, Community Area and Rural Center, 2006-2030 and 2092 Buildout, which purports to be based on AMBAG's 2004 population forecast, adjusted to correct for traffic analysis zones (TAZ) that will be annexed into cities. DEIR, p. 3-8 to 3-12. The implication is that both the distribution and amount of growth were determined based on TAZ and AMBAG data. However, as discussed below, the Table 3-8 data are inconsistent with AMBAG 2004 data, with the TAZ data supplied by the County in response to LandWatch's request for the assumptions used in the traffic analyses, and with the land use constraints in the 2007 General Plan.

METHODOLOGY UNEXPLAINED: The DEIR states that AMBAG's 2004 population projections are "used as the basis for the 2030 growth assumptions used in this EIR's analysis." DEIR, p. 3-9. However, the DEIR does not explain how projections were made for growth in population, residential units, and employment for each Planning Area, Community Area, Rural Center, and Affordable Housing Overlay as set out in Tables 3-8 and 3-9. As set out below, there are a number of inconsistencies between the Table 3-8 data, on the one hand, and, on the other hand, the AMBAG 2004 projections, the Traffic Analysis Zone data provided by the County in response to LandWatch's request for the assumptions used in the traffic analysis, and the density constraints in the 2007 General Plan. In view of these inconsistencies, and in the interest of understanding how the Project description was prepared, we ask that the County explain how the DEIR preparers made projections for population growth for each Planning Area, Community

Area, Rural Center, and Affordable Housing Overlay as set out in Tables 3-8 and 3-9. This explanation must account for changes in proposed land use designations as they affect growth in each area.

MONTEREY PENNINSULA GROWTH INCONSISTENT WITH AMBAG: AMBAG's 2004 forecasts and the TAZ data used in AMBAG's traffic model show declining growth on the Monterey Peninsula for Carmel, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and most unincorporated areas between 2005 and 2030. Population in the cities alone is shown to decline by 1,784 between 2005 and 2030. However, Table 3-8 identifies growth in the Monterey Peninsula area, including 1,761 dwelling units that would be built in Carmel Valley, Mid-Carmel Valley AHO, the Greater Monterey Peninsula and the Highway 68/Airport AHO. Thus, the Table 3-8 growth on the Monterey Peninsula is inconsistent with the 2004 AMBAG population forecasts and data used for the traffic model. Please explain this discrepancy.

CVMP TRAFFIC ASSUMPTIONS NOT PROVIDED AND INCONSISTENT WITH AMBAG 2004 PROJECTIONS: It appears that the DEIR has evaluated traffic impacts in the CVMP area based on the assumption that substantially more growth will occur in this area than projected by AMBAG. The DEIR states that the CVMP 2030 Cumulative plus Project analysis is based on the July 2007 CVMP Traffic Study. DEIR, p. 4.6-61 to 62. The DEIR states that this assumed development of 1,188 housing units between 2000 and 2030. The source document for the 1,188 housing unit assumption is apparently Appendix F to the DSEIR for the Carmel Valley Traffic Improvement Program. However, Appendix F is not provided in the DSEIR document for which a URL link is provided in the revised Section 11, Additional documents. (See the link in the revised section 11 at [_____. 2007e. Carmel Valley Traffic Improvement Program Draft Subsequent Environmental Impact Report. Available:](#)) Thus, the public has no way to understand the basis of the assumptions for the CVMP traffic analysis. The DEIR does state that the 1,188 housing units are "more units than assumed in the General Plan estimates to 2030." DEIR, p. 4.6-62. Indeed, Table 3-8 shows a total of only 251 units in Carmel Valley by 2030 (149 units for the mid-valley AHO and 101 units outside any CA, RC, AHO). DEIR, p. 3-16, 3-20. Table 3-8 data purport to be based on the AMBAG 2004 forecasts. DEIR, pp. 3-11 to 3-12. Please explain this discrepancy. A revised EIR must clearly provide the basis for the CVMP traffic analysis and reconcile demographic assumptions with the Project description.

COASTAL GROWTH: The DEIR references both AMBAG and DOF forecasts. DEIR, p. 3-9. These forecasts include coastal areas which are excluded from analysis in the DEIR. The Final EIR for GPU4, Tables 3-2, 3-5, 3-8, identified 2,589 Coastal Zone Legal Lots of Record, so some coastal development is likely. AMBAG 2004 forecasts in the TAZ data supplied for the traffic analysis also assume some coastal development – 309 units.¹

¹ AMBAG's forecast is actually low. Based on the County's on-line permitting data, between 2004 and 2008, 18 units were approved annually in the coastal zone. From 2006 to 2030, this rate of approval would result in a total of 432 new units by 2030.

Table 3-5 shows that 2030 buildout of GPU5 would be 10,015 new units based on using an adjusted 2006 number minus AMBAG 2030 dwelling unit number (48,670 minus 38,655). Since AMBAG’s 2030 forecasts include some growth in coastal areas, the 10,015 figure in Table 3-5 presumably also includes some coastal units. However, *Table 3-8 does not allocate any units to the coastal zone, but it also shows a total of 10,015 new units.* Thus, in effect, Table 3-8 projects greater population growth than AMBAG’s 2004 data. Please explain how growth in coastal areas is accounted for in the Table 3-8 2030 buildout number of 10,015 new units and its relationship to AMBAG’s 2030 forecasts.

In this regard, in its traffic analysis, the DEIR indicates that new development is not expected to occur in coastal areas under general plan buildout. DEIR, p. 4.6-27. Please identify how coastal units were accounted for in the traffic model.

AWCP UNITS OMITTED FROM TABLE 3-8: Table 3-8 does not include any units identified as attributable to residential development in the AWCP. The DEIR admits that by 2030 there would be 50 full-time residences and 150 employee residences spread across the AWCP area, but then states that winery workforce housing would be accommodated in cities, community areas, and Rural Communities. DEIR, p. 4.15-16. These statements are inconsistent and call into question the allocation of AWCP residential units in Table 3-8. The 2007 General Plan states in AWCP Section 3.3(G) and (H) that 4 residential units would be permitted by right on each of 50 wineries, of which 3 are for workforce housing, and that additional workforce housing would be permitted through discretionary permitting. Thus, there is no question that the AWCP would permit at least 200 housing units (4 units times 50 wineries) in the AWCP area. These units are not accounted for in Table 3.8.

HIGHWAY 68 AREA INCONSISTENCIES FOR 2030: Comparison of the TAZ data used to prepare the DEIR’s traffic analyses to the data in Table 3-8 reveals that Table 3-8 shows substantially more development by 2030 in areas affecting Highway 68 than was assumed in the traffic analysis. The discrepancies are set out in the table below:

	TAZs (New Units)	Table 3-8 (New Units)
GMP Unincorporated	595	1510
Toro Area Plan	360	1046
Fort Ord	12	3295

Thus, it appears that the analysis of traffic impacts substantially understates the impacts to Highway 68 since it assumes many fewer new units by 2030. Please explain the discrepancies.

Furthermore, the DEIR text at page 3-34 identifies 1,470 units for the Fort Ord Community Area. Table 3-8 shows a total of 3,295 units as of 2030. GPU4 identified a buildout number of 3,184 units. As noted, the TAZ data used to prepare the DEIR's traffic analyses show only 12 units of growth. Please explain these inconsistencies.

Finally, Table 3-8 shows for Toro that there are only 251 vacant residential lots, but projects 541 new potential units. However, only one unit is allowed per legal lot of record in the Highway 68 portion of the Toro Area, i.e., that portion of the Toro area outside the River Road RC and the Highway 68/Reservation Road AHO. Toro Area Plan, Policy T 1.7. Please explain the basis of projecting more units in 2030 than legal lots of record.

BUILDOUT ESTIMATES INCONSISTENT WITH PLAN: Table 3-8 also identifies full buildout estimated to occur by 2092. Buildout should be based on land use designations identified in GPU5. Please explain the following inconsistencies between Table 3-8 buildout data and the controlling constraints in the various land use plans:

- Buildout for North County is identified as 3,260 new units, exclusive of Community Areas; however, only one unit is allowed per legal lot of record outside the Community Areas. NCAP, Policy NC 1.5. Table 3-8 shows there are only 577 residential lots outside the Community Areas.
- Buildout for Toro is identified as 4,046 new units; however, only one unit is allowed per legal lot of record in the Highway 68 portion of the Toro Area, i.e., that portion of the Toro area outside the River Road RC and the Highway 68/Reservation Road AHO. Toro Area Plan, Policy T 1.7. Table 3-8 shows there are only 251 residential lots.
- Buildout for Carmel Valley is identified as 758 new units outside of the AHO; however, the Carmel Valley Master Plan limits buildout to 266 new units. CVMP, Policy CV 1.6.

BUILDOUT ESTIMATES INCONSISTENT WITH GPU4 ASSUMPTIONS: Table 3-8 identifies buildout estimates for a number of areas that are inconsistent with the buildout assumptions used in GPU4, despite the fact that there appear to have been no changes in assumptions or constraints. Please explain the following inconsistencies in buildout assumptions between GPU4 and the 2007 General Plan. If assumptions or constraints have changed since GPU4, please identify the changes.

- Buildout for Fort Ord is identified as 8,610 new units; however GPU4 identified buildout as 3,184 new units within the same boundary.
- Buildout for Pine Canyon is identified as 1,704 new units; however GPU4 identified buildout as 550 new units within the same boundary.

- Buildout for Pajaro is identified as 676 new units; however GPU4 identified buildout as 100 new units within the same boundary.
- Buildout for Bradley is identified as 800 new units; however GPU4 identified buildout as 295 new units within the same boundary.
- Buildout for Lockwood is identified as 221 new units; however GPU4 identified buildout as 160 new units within the same boundary.
- Buildout for Pleyto is identified as 221 new units; however GPU4 identified buildout as 75 new units within the same boundary.
- Buildout for San Ardo is identified as 480 new units; however GPU4 identified buildout as 70 new units within the same boundary.

BASIS FOR PROJECTING UNITS IN UNINCORPORATED AREA: Table 3-8 and Table 3-9 show 2,003 units as of 2030 in the unincorporated County outside Community Areas, Rural Centers, and the AHOs. Please explain for each area how many of the projected units are single residences on legal lots of record and how many are attributable to subdivision activity. How was this determined? Please explain how proposed Policy LU 1.19 (permitting rural subdivisions in accordance with a Development Evaluation System that has yet to be devised) was interpreted and applied in projecting units in the unincorporated area. In particular, please explain how each of the various proposed “evaluation criteria” in Policy LU 1.19 were applied in each of the planning areas to constrain or permit rural subdivision activity.

Note in this regard that the GPU4 DEIR assumed that 1,200 units would be built through subdivisions in areas outside Community Areas and Rural Centers. Since the 2007 General Plan projects a different level of subdivision activity outside Community Areas and Rural Centers, please explain any change in assumptions that would justify a different projection.

TREATMENT OF UNITS IN DEVELOPMENT PIPELINE: Please explain how subdivisions that have been approved but not built have been accounted for, e.g., Morisoli (319 units) and Spreckels (77 units). Please explain how projects with completed applications before October 7, 2007 would affect buildout numbers.

C. Unexplained Aggregate Population Data In Traffic and Air Quality Analyses

In Table 4.7-3, the air quality analysis presents aggregate population data for various scenarios in its evaluation of consistency with the Air Quality Management Plan. The same data are presented in Table 4.6-11, purporting to summarize the population, housing, and employment data used to prepare the traffic analyses.

Table 4.6-11 states that “Existing plus Project 2030 and Cumulative 2030 land uses were adjusted to match the published AMBAG 2004 Population, Employment and Housing Unit forecasts.” DEIR, p. 4.6-22. It is unclear what this statement means. Please explain what land use and population data were “adjusted.” Please explain with what other land use data the adjusted data are not consistent as a result of the “adjustment.”

Please also explain whether this “adjustment” to match the published AMBAG 2004 data was also made to Table 4.7-3, which was used to determine consistency with the MBUAPCD Clean Air Plan. Since consistency with the MBUAPCD Clean Air Plan was found based on the fact that population in Table 4.7-3 was no larger than in the Clean Air Plan, and the Clean Air Plan itself used AMBAG data, it appears that the finding of consistency does not actually reflect any actual consideration of the ways in which the land use designations in the 2007 General Plan may affect population growth. In short, it appears that the consistency finding is nothing more than a reflection of the County’s use of the same AMBAG growth assumptions.

Please explain whether the TAZ data supplied in response to LandWatch’s request for the assumptions used in the traffic analysis are or are not consistent with Table 4.6-11. The DEIR must be revised to demonstrate how the TAZ data used in the traffic analysis correlate with the aggregate data in Table 4.6-11. If the data are not consistent, then the discrepancies must be corrected.

Please reconcile Table 3-8 with Table 4.7-3. For example, Table 3-8 shows that 10,015 residential units will be added in the unincorporated area between 2006 and 2030, whereas Table 4.7-3 shows that 13,483 units will be added between 2000 and 2030. Please explain whether the 3,468 unit difference in growth is attributable to development between 2000 and 2006. Please explain whether Table 4.7-3 includes or excludes coastal units, units in the development pipeline, and AWCP units.

II. THE DEIR IMPROPERLY RELIES ON POLICIES AND MITIGATION MEASURES WITH NO SUBSTANTIVE CONTENT OR THAT ARE UNENFORCEABLE; AND THE DEIR DOES NOT JUSTIFY DEFERRAL OF MITIGATION PROGRAMS AND ORDINANCES

The 2007 General Plan DEIR bases its significance conclusions in many areas on its recitation of policies and mitigation measures intended to mitigate the impacts of future development. However, as discussed in sections below, these policies and mitigation measures frequently defer the formulation of any substantive programs, activities, or regulations. This deferral is only acceptable if the policy or mitigation measure specifies performance standards, lists exemplary measures, and avoids delegation away from the legislative body. The County must provide a justification for the deferral in the first instance. CEQA also requires that policies and mitigation measures be enforceable and feasible.

As discussed in the sections below, many of the DEIR's significance conclusions are unsupported because the substantive content to policies and mitigation measures has been improperly deferred or because these policies and mitigation measures are not enforceable or feasible. In the sections below, we provide detailed comments and questions regarding the policies and mitigation measures of particular concern to LandWatch, including those offered in support of significance conclusions regarding water supply, erosion and sedimentation, and traffic. TRA Environmental has also provided detailed comments and questions regarding the policies and mitigation measures intended to address impacts to biological resources. However, the DEIR's failures to identify meaningful substantive policies or mitigation measures is pervasive and affects its analysis and conclusions in other areas as well.

We ask that in addressing the comments and questions on the policies and mitigation measures the County revise the policies and mitigation measures to provide the required substantive content.

We briefly set forth some relevant law.

A. Requirements For Policies And Mitigation Measures Identified As The Basis Of A Significance Conclusion

Mitigation measures may be incorporated into plans, including general plans and specific plans. Pub. Resources Code, § 21081.6(b); CEQA Guidelines, § 15126.4(a)(2); *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 358. Where this is done, however, the policies are subject to CEQA's rules regarding deferral of the formulation of mitigation. In particular, where policies defer the formulation of specific mitigation measures, they must include performance criteria. For example, in *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5

Cal.App.4th 351, 377 the Court upheld a hazardous waste facility siting plan because the plan provided “specific performance criteria” for future siting decisions.

The County cannot evade CEQA’s requirements for deferred mitigation formulation simply by calling the measures “policies” instead of “mitigation.” An agency may not use a first tier document to avoid coming to terms with the key environmental issues associated with a project. *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 197. When an agency adopts a plan that will permit growth and development, it must actually evaluate the impacts that can be anticipated at that time, regardless of future tiers of review. *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 39-40.

CEQA is clear that an agency may only defer the formulation of mitigation measures when it “recognizes the significance of the potential environmental effect, commits itself to mitigating its impact, and articulates specific performance criteria for the future mitigation.” *Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1411, citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029; CEQA Guidelines § 15126.4(a)(1)(B). In *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 the Court set out the standard for deferred formulation of mitigation measures:

“Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. [Citation.] On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report. [Citation.]’ (*Defend the Bay v. City of Irvine, supra*, 119 Cal.App.4th at p. 1275, 15 Cal.Rptr.3d 176.) If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them. (*Id.* at pp. 1275-1276, 15 Cal.Rptr.3d 176.)” *Id.* at 794.

The Court then rejected proposed mitigation because “[n]o criteria or alternatives to be considered are set out. Rather, this mitigation measure does no more than require a report be prepared and followed, or allow approval by a county department without setting any standards.” In addition to identifying performance criteria, an agency should identify alternatives or exemplary measures. *Id.* As set out in the sections below, many policies purporting to mitigate impacts entirely fail to provide any performance criteria or to identify alternatives and examples of mitigation strategies.

An agency must have, and must articulate, a good reason for deferring the formulation of mitigation. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670, 684. Absent such a reason, deferral is simply not acceptable. And the fact that the County is engaged in first-tier review CEQA review is not, in itself, sufficient reason to evade CEQA's demand for meaningful information. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007)

40 Cal.4th 412, 431. The California Supreme Court made it clear that an agency may not evade its responsibility to provide meaningful information and analysis simply because it is undertaking first tier review:

“While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, *CEQA's demand for meaningful information* “is not satisfied by simply stating information will be provided in the future.” (*Santa Clarita, supra*, 106 Cal.App.4th at p. 723, 131 Cal.Rptr.2d 186.)_As the CEQA Guidelines explain: “Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” (Cal.Code Regs., tit. 14, § 15152, subd. (b).) Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases. For example, to evaluate or formulate mitigation for “site specific effects such as aesthetics or parking” (*id.*, § 15152 [Discussion]) may be impractical when an entire large project is first approved; under some circumstances analysis of such impacts might be deferred to a later tier EIR.[footnote] But the future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis.” *Id.*

Yet the DEIR here entirely evades the requirement to provide any meaningful information about the content of the future programs and ordinances that are supposed mitigate environmental impacts – and the DEIR does not explain why these policies have not been fleshed out. Even a cursory examination of many of the policies recited as the basis of the DEIR’s conclusions demonstrates that they simply have no content: no performance criteria, no exemplary measures, and no enforceable mandates.

The County may not delegate the formulation and approval of programs to address environmental impacts because an agency’s legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 306-308. Thus, the DEIR may not rely on programs to be developed and implemented later without approval by the Board of Supervisors. Yet many of the policies cited by the DEIR call for programs without specifying what agency will develop, approve, and implement the program and what role the Board of Supervisors will play. The passive voice is pervasive, *e.g.*, OS 3.1 (BMPs shall be established and enforced), OS 3.3 (criteria shall be established), and PS 2.5 (regulations shall be considered).

CEQA also requires that policies and mitigation measures be enforceable and feasible. CEQA Guidelines, § 15126.4(a)(1), (2). Policies that have no standards cannot be enforced against development projects. Policies calling for future “programs” that do not identify a responsible agency, a deadline, or any substantive content are not enforceable by the public. Policies that call for future ordinances without identifying

performance standards are also not enforceable, in the sense that the public will not be able to hold the County to any standards in enacting these ordinances. And policies that call for future projects and programs that the County is apparently unable to fund are not feasible.

A mitigation measure or policy is insufficient when it embodies nothing more than a hope that a solution will be found and fails to establish a method that will actually mitigate impacts. *King County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728 (fatal flaw to rely on “mitigation agreement” where EIR presented no evidence that it was feasible). CEQA requires an agency to take steps to be sure that mitigation measures are actually implemented as a condition of development, not merely adopted and then neglected or disregarded. *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. Here, however, many policies call for development of future programs or activities with no deadline or provision for interim measures. And many policies have so little content and contain so many exceptions that there can be no certainty that implementation of a conforming program or activity will actually have any real effect on the impacts at issue.

Finally, the empty policies violate the Planning and Zoning law requirements for completeness and consistency. Where the policies and programs that are supposed to achieve general plan goals are deferred without content or are vague and unenforceable, then they do not constitute a complete or consistent general plan. *Murietta Valley Unified School District v. County of Riverside* (1991) 228 Cal.App.3d 1212 (general plan must actually contain appropriate financing mechanisms or other arrangements that implement policies mandating the provision of school facilities).

B. Future CEQA Review Will Be Required To Adopt Ordinances and Programs Implementing Empty Policies Or to Approve Individual Projects

The County may not defer the formulation of substantive mitigation to address environmental impacts, that is, policies, programs, and ordinances that are enforceable and feasible and that contain clear performance standards. And even if it provides clear performance standards, the County must give a reason for deferring the formulation of mitigation measures. But even if it could legally defer mitigation formulation, it makes no sense to do so because the County will eventually have to come to terms with environmental consequences through CEQA review of the programs and ordinances that are yet to be adopted. Where the DEIR provides no real analysis of the inadequately specified programs and ordinances that are supposed to address environmental impacts, the County will have to conduct CEQA review before it adopts any such specific programs and ordinances.

Many of these ordinances will be permissive as well as restrictive, *e.g.*, the slope development ordinance under OS 3.5 and the Routine and Ongoing Agricultural Activities ordinance under AG 3.3 will permit some activities while restricting others. Because these ordinances will permit activities that may degrade the environment, they

will not be eligible for the Class 7 or 8 categorical exemptions for activities to maintain, protect, or restore natural resources. CEQA Guidelines, § 15307 and 15308; *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 124-126; *International Longshoremen's and Warehousemen's Union v. Board of Supervisors of San Bernadino County* (1981) 116 Cal.App.3d 265.

Where there is no substantive content to these future programs and policies, the County will not be able to assert that the environmental consequences have already been addressed in a first tier review. Where potentially significant impacts of later projects were not “examined at a sufficient level of detail” in a first-tier document, a subsequent CEQA document may not dispense with analysis. Pub. Resources Code, § 21094(a). Where a later project may cause significant effects that were not adequately addressed in the prior EIR, including cumulative effects, an EIR will be required. CEQA Guidelines, § 15152(f). Thus, if the County does not adequately evaluate impacts in this first-tier document, it will inefficiently have to address these impacts in program EIRs for every implementing ordinance and program and/or in project EIR's for every future project level review for specific development projects. For example, the County defers both the analysis and mitigation of cumulative erosion and sedimentation impacts caused by conversion of hillside land for agricultural cultivation through Policy OS 3.9, which simply calls for a committee to develop a “Program” – with no performance standards to guide it. Until such a program has been evaluated under CEQA and adopted by the County, each individual project will have to undertake a cumulative impact analysis.

In sum, by adopting a series of empty policies and mitigation measures, the County is not actually obtaining the benefits of tiered environmental review. Instead, the County is just postponing environmental review and making it more complex.

III. EROSION AND SEDIMENTATION ISSUES

A. Background and Overview

Adoption of the 2007 General Plan will permit development that causes erosion and sedimentation. A number of programs and policies in the 2007 General Plan are implicated.

- **NEW SLOPE DEVELOPMENT POLICY - Policy OS 3.5:** 2007 General Plan, p. C/OS-7. . Policy OS 3.5 is a complex new policy modifying the current County policy reflected in Zoning Ordinance 21.66.030, which bans conversion of uncultivated land over 25% and requires a use permit for conversions between 15-25% in the North County Area Plan, Central Salinas Valley Area Plan and Cachagua Area Plan areas. Policy OS 3.5 is supposed to lead to a new permitting process applicable to both agricultural and other development on slopes. As discussed below, it has a number of defects: 1) it contains vaguely worded exceptions that would allow development on slopes over 30%; 2) it provides for a discretionary permit for residential/commercial development on slopes over 25% or slopes that contain constraints, but defers the identification of constrained slopes and provides no criteria for allowable slope development or conditions to control erosion; 3) it proposes a system of both discretionary and ministerial permits for agricultural development of uncultivated soils, but does not identify criteria for the discretionary permit or conditions to constrain development for either permit. See discussion below in connection with unfounded significance conclusions and inadequate mitigation.
- **ROUTINE AND ON-GOING AGRICULTURE (“ROAA”):** DEIR, pp. 3-46 ff. Various policies are proposed in order to permit ROAA without a discretionary permit, including conversion of previously uncultivated land, pursuant to Policy AG-3.3. Policy AG 3-3 exempts ROAA from a list of policies to the extent specified by those policies. One critical exemption is the partial exemption of conversion of uncultivated land on slopes under Policy OS 3.5. While there is an exception to the exemption in Policy AG 3.3 for projects “that create significant soil erosion impacts or violate adopted water quality standards,” there are no criteria for determining what those projects are. Policy AG 3.3 calls for an ordinance to identify county permit requirements for specific ROAAs consistent with these exemptions.
- **AGRICULTURAL WINERY CORRIDOR PLAN (“AWCP”):** DEIR, pp. 3-39 ff. The AWCP establishes incentives for up to 50 wineries and visitor serving uses in a long corridor by exempting most activity from discretionary permits.

Table 3-16. As discussed below, the wineries will encourage the recent trend toward conversion of uncultivated land to vineyards.

- **CONVERSION OF UNCULTIVATED LAND:** The 2007 General Plan will permit and encourage conversion of previously uncultivated land in order to make up for agricultural land lost to urban uses and to foster the trend toward viticulture on sensitive sloped land. While the DEIR contains cursory and fragmented references to the likely conversion of uncultivated land, a set forth below, these references fail to establish relevant baseline conditions and fail to provide a realistic projection of the extent and location of future conversions that will cause erosion and sedimentation.

The DEIR contains a brief discussion of erosion from agriculture and hillside development in the geology section. DEIR, 4.4-15. The DEIR addresses erosion and sedimentation impacts in a number of its impact analyses and significance findings. As discussed below, the DEIR does not provide any modeling or quantitative analysis and does not even qualitatively review different regions, activities, and conditions to support its conclusions that impacts will be less than significant. The relevant impact analyses in the DEIR include:

- **WR1 – Non-point Pollution.** DEIR, pp. 4.3-90 ff . This impact is found less than significant based on a list of policies and one new mitigation measure, which the DEIR states is not actually necessary. However, several of the rivers and streams in Monterey County are substantially impaired by sediment, and excessive erosion has the potential to continue to effect channel destabilization, habitat degradation and declines in water quality. Erosion from land development and road drainage activities have been shown to have substantial impacts on these resources, and as shown on Exhibit 4-4-5, most of the County is prone to high erosion hazards. As the letter from TRA Environmental demonstrates, continued sedimentation significantly impacts steelhead in the Salinas River and its tributaries. As discussed below, to demonstrate that the policies and mitigation measure would result in less than significant impacts, the County should provide an analysis of the expected areas of impacts, and their location relative to sensitive aquatic environments. The County should also demonstrate that the aquatic communities with the Monterey County are not sensitive to increased non-point source pollution or provide substantive policies to address the problem.
- **WR2 – Construction-related Erosion and Sedimentation.** DEIR, pp.4.3-99 ff. This impact is found less than significant based on a list of policies.
- **WR3 – Agricultural and Resource Extraction Caused Sedimentation and Nutrient Loading.** DEIR, pp. 4.3-107 ff. This impact is found less than significant based on a list of policies.
- **WR10 - Increased Runoff Leading To Streambed Erosion.** DEIR, pp. 4.3-173 ff. This impact is found less than significant based on a list of policies.

- GEO5 – Soil Erosion Hazards. DEIR, p. 4.4-37. Impact found insignificant based on extensive list of policies and one additional mitigation measure (requirement that a stream setback ordinance be developed).
- Cumulative Impacts Related To Soils. DEIR, p. 6-6. The DEIR concludes with essentially no analysis that project-specific mitigation will avoid any cumulative impacts.
- CUM-2 – Surface Water Quality. DEIR, p. 6-10. The DEIR concludes that RWQCB regulations and proposed policies, including the entirely undefined future program to evaluate and address cumulative impacts through Policy OS 3.9, will ensure that contributions to significant cumulative impacts are not considerable.

As discussed below in detail, the neither the DEIR nor the 2007 General Plan provides meaningful description and discussion of activities that may cause erosion and sedimentation. Neither provides any meaningful baseline information. And the DEIR's conclusions that impacts will be less than significant are based on a mechanical recitation of a list of policies that have little or no substantive content and that evince a determination simply to postpone any actual regulation of activities that may cause erosion and sedimentation. For the most part, the cited policies and proposed mitigation measures defer the formulation of specific regulations without providing performance standards or examples of measures that might be required to address impacts.

B. DEIR Fails to Provide An Adequate Description Of Erosion And Sedimentation Activity Permitted By the 2007 General Plan

CEQA requires an adequate project description, including a general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service services. CEQA Guidelines, § 15124. As noted above, the 2007 General Plan proposes to permit a number of activities that will cause erosion and sedimentation. Unfortunately, the DEIR fails to describe these activities with sufficient specificity to support the DEIR's conclusion that they will not cause significant impacts.

1. The DEIR does not describe the extent or location or, or the applicable constraints on, slope development for non-agricultural purposes

The proposed new slope development policy, Policy OS 3.5, would permit development on slopes of various steepness in accordance with a new permitting structure, which is to be devised later. The DEIR fails to describe the extent and location of likely slope development. The DEIR does not provide a map identifying sloped areas of the County, with or without an overlay of land use designations.

Nor does the DEIR describe in meaningful detail the constraints to be imposed on future slope development through the permit processes to be devised later. (See discussion of inadequate mitigation policies below.)

Without this information, the project description is insufficient to support an analysis of likely impacts. The DEIR must be revised and recirculated to provide this information.

2. The DEIR fails to provide realistic projection of future conversions of uncultivated land for agricultural purposes

The AWCP is described as a program to establish a winery corridor including 50 wineries (40 artisan wineries and 10 full scale wineries), 10 off-site tasting rooms, 3 restaurants, 5 delis, and 8 inns. DEIR, pp. 3-39 to 40; see also 2007 General Plan, Chapter 9-J. However, neither the DEIR nor the 2007 General Plan provides any estimate of the amount of new vineyard capacity that would be induced. For example, although the DEIR's water supply analysis estimates wine production from the 50 wineries and estimates the water required to grow the grapes, it does not estimate how much land would be newly cultivated to support vineyards. DEIR 4.3-121. Instead, it states that the land required for the wineries themselves would be only 142 acres. DEIR 4.3-121.

The discussion of impacts associated with agricultural land conversion states that most of the area within the AWCP boundaries contains cultivated fields or grazing land. DEIR, 4.2-8. However, the discussion does not disclose how much previously uncultivated land (e.g., grazing land) would be converted to new vineyards. Some estimate of this must be provided.

Although the General Plan states that 65-70% of the County's grape production is shipped out of the County to wineries elsewhere, implying that there is an imbalance between vineyards and wineries (2007 General Plan, p. AWCP-1), there is no effort made to forecast how much additional vineyard development will occur – either in response to newly developed local winery production capabilities or in order to continue and expand what is apparently a profitable grape export business. No evidence is provided that grape harvests from existing vineyards would be diverted away from external wineries to local wineries, foregoing existing external markets. There is simply no reason to suppose that the existing external markets will be abandoned. A much more likely scenario is that additional vineyards will be created to support new winery capacity. The DEIR must be revised to project the extent and location of new vineyard development induced by the expansion of winery facilities, as the DEIR acknowledges will occur. DEIR, 4.4-41 (“Implementation of the AWCP could induce property owners to change crop cover to vineyards or to plant vineyards on uncultivated slopes, thereby increasing the potential for soil erosion.”)

It is evident that the AWCP is likely to result in substantial conversion of uncultivated land located on slopes and on the Valley edge. As discussed below, data in the DEIR and common sense suggest that significant and concentrated new vineyard development will occur in the AWCP corridor, proximate to the new wineries, as a direct result of the incentives for winery development in the AWCP. Data in the DEIR also indicate that additional conversions of uncultivated land to agriculture will occur throughout the County.

The DEIR states that adoption of the 2007 General Plan will remove 2,571 acres of important farm land from agricultural land use designation. DEIR, p. 4.2-12, Table 4.2-9; p. 4.2-18. The DEIR then observes that that new vineyards are likely to be established on lands currently devoted to grazing, thereby partially mitigating the loss of farmland to other land uses. DEIR, 4.2-19. However, the DEIR fails to quantify this. Please provide an estimate.

The discussion of potential impacts to biological resource movement corridors states that conversion of previously uncultivated land to new farmland is not expected to result in significant impacts because it is projected to be only 450 acres per year and is expected to occur in a “sporadic and discontinuous pattern,” based on the pattern of historic conversion. DEIR, p. 4.9-95. This conclusion is based on historic habitat conversion data from 1982 to 2006. DEIR, p. 4.9-46, Table 4.9-6 (habitat conversion 1982-2006); p. 4.9-57, Table 4.9-7 (impacts on natural vegetation communities due to development); p. 4.9-64, Table 4.9-8 (agricultural habitat conversions to 2030 and to buildout). However, as set out below, this conclusion is not supported by data in the DEIR itself, which establishes that conversions are accelerating and concentrated in sloped locations.

Data in the DEIR demonstrate that the trend in conversion of habitat to agriculture of all kinds is accelerating, with conversions in the most recent 10 years proceeding at a rate 4 times higher than in the 14 years prior to that – from 212 acres per year in 1982-1996 to 820 acres per year in 1996-2006. DEIR, Table 4.9-6. Furthermore, the DEIR states that conversions for vineyards in particular are also accelerating: 700 acres of vineyard conversions occurred in 1982-1996 representing only 24% of the 2,976 total acres converted in that period, whereas 3,300 acres of vineyard conversions occurred between 1996-2006 representing 40% of the 8,209 total acres converted in that period. DEIR, p. 4.9-63; p. 4.9-46, Table 4.9-6. *Thus, the data in the DEIR support a projection that conversion of habitat to agriculture will continue at the rate of 820 acres per year based on the recent trend, not just the 450 acres per year that the DEIR projects by diluting the recent data with older data.* The data also support the conclusion that a growing percentage of that land conversion will be for new vineyards.

The only basis the DEIR provides for its conclusion that there will be no net expansion in agricultural acreage is the observation that AMBAG does not forecast an increase in agricultural employment. DEIR, p. 4.9-63. However, the DEIR offers no evidence that AMBAG forecasts took into consideration the County’s as yet unadopted

plan to create substantial incentives for new vineyard production through the AWCP, and there is no reason to suppose that AMBAG has done so.

Furthermore, the DEIR acknowledges that one driver of agricultural conversion is the need to replace the land lost to development due to urban use; thus, even if there were no net change in agricultural acreage, the increase in urban uses proximate to Monterey County cities and Community Areas will result in conversion of existing natural habitat distant from urban development to replace lost agricultural land. DEIR, p. 4.9-63. The DEIR states 2,571 acres of “important farm land” will be removed from the agricultural land use designation to accommodate urban development through enactment of the 2007 General Plan. DEIR, p. 4.2-12, Table 4.2-9; p. 4.2-18. The DEIR does not disclose how much *other* farmland (e.g., grazing land) will be redesignated, but data in the DEIR show that historically the conversion of grazing land has occurred at a rate at least half that of the conversion of important farm land. DEIR, p. 4.2-7, Table 4.2-7. Furthermore, the DEIR acknowledges that additional, but not quantified, agricultural land will be converted to urban use through subsequent development pressure. DEIR, pp. 4.2-25 to 4.2-28. Thus, it is reasonable to conclude that conversion of previously uncultivated land will occur to replace agricultural land lost to urban land use, and that this conversion will occur in fringe areas such as the Valley edge and slopes.

And, in fact, the DEIR states that “spatial analysis of the vineyard development indicated that most of the recent vineyard expansion is at the valley edges and upslope.” DEIR, p. 4.9-63. It goes on to state that “the dominant locales of recent conversions are along the eastern and western slope of the Salinas Valley. It is expected that these slopes of the Salinas Valley along with the slopes of tributary valleys to the Salinas Valley will be the likely focus of future conversions of habitat to agriculture.” DEIR, p. 4.9-63. Exhibits 4.9-6 through 4.9-9 show that land conversions are in fact concentrated on sloped areas.

In short, it is reasonable to conclude based on data in the DEIR itself that at least 820 acres of uncultivated land will be converted to agriculture annually, that at least 40% of that will be for vineyard development located primarily on sloped land and on the valley edges proximate to the winery corridor. Comments and mapping data provided by TRA Environmental demonstrate that there are thousands of available acres of land designated to permit agriculture on the sloped edges of the Salinas Valley. The removal of the ban on slope development over 25% would open up thousands of additional acres. Substantial increases in erosion and sedimentation may result from new cultivation of this land.

The DEIR must be revised to provide a reasonable estimate of the location and extent of conversion of previously uncultivated agricultural land that is consistent with recent data. This estimate should be used to project erosion and sedimentation impacts, particularly cumulative impacts, analysis of which the DEIR simply postpones. DEIR, p. 6-10 (Policy OS 3.9 postpones development of a program to address cumulative hydrologic impacts of the conversion of hillside rangeland areas to cultivated croplands.) The estimate should then be used to develop effective, substantive policies and mitigation

measures to prevent erosion and sedimentation and to demonstrate in the EIR how those policies and mitigation measures would in fact be effective.

C. DEIR Fails To Provide Baseline Information On Erosion And Sedimentation

CEQA requires that an EIR provide a description of a project's environmental setting that is sufficient to support an analysis of the significance of the project's effects. CEQA Guidelines, § 15125(a). The cursory discussion of erosion and sedimentation in the DEIR identifies common causes of erosion and sedimentation, but does not provide any systematic baseline information about conditions that would lead to erosion and sedimentation, including soil types, slopes, and vegetative cover of the areas in the County that are likely to be subject to development or newly cultivated for agriculture; rainfall; surface water flows; dams and weirs; roads; gullies and landslides; and channel incision. For example, the 2007 General Plan proposes to permit development on slopes over 25%, but the document fails to present a map showing the areas in the County that will be permitted to be developed under this policy. Policies calling for the preparation of databases related to soil conditions at some unspecified time in the future are not an adequate substitute for presentation of baseline data in this first tier CEQA document. Baseline data must be presented now to support the DEIR's impact analyses.

The only information provided about existing sedimentation effects is a list of 303d impaired streams. DEIR, pp. 4.3-54. The DEIR does not characterize the sedimentation conditions in other streams. The DEIR provides no information about existing erosion or identifying erosive soils or other conditions that may contribute to erosion. Thus, the DEIR provides no basis for evaluating the likelihood or extent of soil erosion from development activity permitted by the 2007 General Plan, including future cumulative effects.

A reasonable approach to addressing baseline conditions affecting erosion and sedimentation would require preparation of a baseline data report, such as the report prepared by Jones and Stokes for Napa County, which is intended to be used for future planning efforts, including the Napa County General Plan update. Jones and Stokes/EDAW, Napa County Baseline Data Report, Nov. 2005, chapters 15-17.² Absent this kind of information, the DEIR fails CEQA's information disclosure requirements.

D. The Impact Analysis Is Predicated On Avoidance, Minimization, And Mitigation Through Policies And Mitigation Measures That Cannot Support The Conclusions That Impacts Will Be Less Than Significant

The DEIR evaluates erosion and sedimentation impacts and finds them to be less than significant in the context of General Plan policies that for the most part call for programs and ordinances to control erosion that are not specified in any meaningful detail, that contain no performance criteria, that identify no exemplary measures, that

² Available at <http://www.co.napa.ca.us/gov/departments/29000/bdr/index.html>.

propose no deadline for implementation or interim mitigation, or lack any enforceable mandates for action. The DEIR's impact analyses do not provide any information about the likely extent of erosion-causing activities or explain with any specificity how the recited General Plan policies or proposed additional mitigation measures would prevent significant impacts. For both of these reasons, the DEIR's discussion of significant impacts cannot support its conclusions that impacts will be less than significant.

For a discussion of the requirements for policies identified as the basis of a significance conclusion, please see Section II above. Generally, such policies are subject to CEQA's rules on deferral of the formulation of mitigation, including the requirement to specify performance standards, to list exemplary measures, to avoid delegation away from the legislative body, and to provide a justification for the deferral in the first instance. CEQA also requires that policies identified as mitigation be enforceable and feasible. In addition, the Planning and Zoning Law requires that policies completely and consistently implement general plan goals.

1. Slope Development Policy OS 3.5 Is Inadequate

Policy OS 3.5, the proposed new slope development policy, embodies most of the possible defects in general plan policies that are offered as the basis of a significance conclusion under CEQA or that purport to implement a general plan goal under the State planning and Zoning law. The following defects must be addressed and resolved.

UNJUSTIFIED RELAXATION OF BAN ON DEVELOPMENT OVER 25%: Zoning Ordinance 21.66.030(C) bans conversion of uncultivated land over 25% and requires a use permit for conversions between 15-25% in the North County Area Plan, Central Salinas Valley Area Plan and Cachagua Area Plan areas. This ordinance was adopted consistent with Policy 21.1.3 in the 1982 General Plan, which requires the County to *maintain* the erosion control ordinance and update it as new information becomes available. Policy 21.1.3 was specifically identified as mitigation for impacts to soils, hydrological, and water quality resources. 1982 GP. P. 196. Policy OS 3.5 proposes to relax the existing slope development ordinance to permit development on slopes up to 30% (and even to permit development of steeper slopes under vague and unenforceable exception provisions).

CEQA requires that an agency explain and provide substantial evidence to justify its decision to abandon previously adopted mitigation measures. *Napa Citizens v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 364. No new information is offered in the DEIR to justify relaxation of the existing ordinance, and by extension, relaxation of the existing mitigation measure embodied in Policy 21.1.3. The DEIR does not offer any information suggesting that development on slopes over 25% will not contribute to erosion and sedimentation problems. Nor does the DEIR offer any information suggesting that the slope development policy should be relaxed for any other reasons despite the erosion and sedimentation consequences. For example, the DEIR contains no analysis that demonstrates any need to accommodate demand for

development on steep slopes. Indeed, the DEIR claims that the demand for cultivation of previously uncultivated land will be relatively modest based on weighting recent data showing accelerating agricultural conversions with historic data. The DEIR cannot logically claim that there is modest demand for cultivation of steep slopes and that the slope development policy must be relaxed.

Policy OS 3.5 must be revised to continue the current ban on development of slopes over 25%, or the DEIR must provide substantial evidence to justify relaxing this ban. Such evidence would have to consist of precisely the fact-based analysis of erosion and sedimentation impacts that the DEIR fails to provide, including identification baseline conditions and likely development, and an analysis of erosion and sedimentation from that development.

VAGUE AND UNENFORCEABLE EXCEPTION TO THE BAR ON DEVELOPMENT OVER 30%: Although Policy OS 3.5 bars development on slopes over 30%, it contains vaguely worded exceptions that make this bar unpredictable and unenforceable. The policy would permit development on slopes over 30% when, after a hearing, there is finding that there is no “alternative” or that the development is “better:”

“The exception may be granted if one or both of the following findings are made, based upon substantial evidence:

A) there is no alternative which would allow development to occur on slopes of less than 30%; or,

B) the proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan, accompanying Area Plans and Land Use Plans, and all applicable master plans.” Policy OS 3.5.

The wording of the first exception (“A”) does not present any genuine constraint. The lack of any “alternative” must be determined with reference to some objectives, but the policy does not explain how those objectives would be determined, by whom, or in what context. Since the *developer’s* objective is usually to develop a particular piece of property with a particular use, the developer would simply point out that there is no alternative. As worded, the first exception provides no meaningful constraint on exceptions, which could be granted on an *ad hoc* basis to any project proponent.

The second exception (“B”) is equally wide open. This exception would permit development over 30% when the proposed development “better achieves resource protection objectives and policies in applicable plans.” Determining whether a proposal “better achieves” some goal requires that it be compared to some alternative. The second exception does not explain how the alternative for comparison is to be formulated, by whom, in what context, and with reference to what goals. Again, a developer would apparently be free to identify a straw man alternative that causes much more adverse effects, and then argue his proposed development project on the steep slope is “better.”

Both exceptions must be eliminated from the policy. If exceptions are to be permitted, they must be justified and meaningfully constrained.

UNSPECIFIED AND UNENFORCEABLE DISCRETIONARY PERMIT FOR NON-AGRICULTURAL DEVELOPMENT ON SLOPES OVER 25%: OS 3.5 proposes that a discretionary permit be required for non-agricultural development on slopes over 25% or slopes that contain geologic hazards as shown on the databases of geologic and hydrologic hazards, which are to be prepared under Policies S1.2 and PS 2.7 [sic, PS 2.6].

“A discretionary permit process for development on slopes greater than 25-percent (25%) or that contain geologic hazards and constraints shown on the County’s GIS Geologic (*Policy S-1.2*) or Hydrologic (*Policy PS-2.7*) Hazard Databases shall be established. The process shall be designed to:

- a. evaluate possible building site alternatives that better meet the goals and policies of the general plan.
- b. identify development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques.
- c. minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health or safety.” Policy OS 3.5.

The County has not even identified the areas where a discretionary permit would be required. As noted below, although Policies S 1.2 and PS 2.6 provide for doing so at some point, neither policy contains a deadline or any interim measures pending completion of the databases. This must be addressed. Also as noted below, neither Policy S 1.2 nor PS 2.6 provide any criteria by which areas to be subject to discretionary permits will be identified. Until the County has identified areas where development of slopes greater than 25% should be allowed, and has provided a defensible technical justification for allowing such development, no development on such slopes should be permitted.

There is no excuse for the County’s failure to identify areas containing geologic hazards. The information could have been developed in the general plan update process, which has now gone on for years, and which has consistently identified the need to develop this information. This information should be part of the DEIR’s baseline information, and it should have been used to identify and limit land use designations.

Neither S1.2 nor PS 2.6 contains performance criteria for key terms such as “highly erodible soils” or “moderate and high erosion hazards,” so the public has no idea what terrain would require a discretionary permit. These terms must be defined and justified with reference to a technical analysis that considers the actual effects of allowing development.

Although Policy S1.2 requires mapping impaired water bodies on the State Water Resources Control Board 303d list, there is no indication how that information would be used to constrain development. Nor is it clear why only 303(d) listed streams are the primary focus of the County’s policies, since sedimentation to any stream has the potential to impact aquatic communities, water quality, and sensitive species. As noted

below, the County has not developed or meaningfully specified criteria for the proposed Stream Setback Ordinance under BIO-2.1, DEIR p. 4.9-86 either.

OS 3.5 states that the discretionary permit process is to be designed to “evaluate possible building site alternatives that better meet general plan goals and policies.” However, again, this language will be in practice unpredictable and unenforceable because it would require formulation of “alternatives” for comparison with reference to unspecified objectives (*e.g.*, there would be no alternative to a project meeting the proponent’s narrowly defined objective to develop a particular use on a particular site). This language must be clarified to explain under what conditions development would not be permitted because of the existence of better “alternatives.”

The discretionary permit process calls for identifying techniques for erosion control, but it fails to provide any performance specifications or to identify any exemplary measures. The vague and generic language in OS3.5 that requires that “permit processes shall be designed to require that an erosion control plan be developed and implemented that addresses slope stabilization, and drainage and flood hazards” does not contain performance criteria or exemplary measures. The policy must provide a performance specification and exemplary measures that are based on meeting the water quality and soil retention goal OS 3.5.

In sum, this portion of Policy OS 3.5 purporting to set up a discretionary permit process is simply a hollow shell that would permit essentially any kind of non-agricultural development on steep and erosive slopes. As written, the discretionary permit process for non-agricultural development does not provide any substantial evidence to support a finding that erosion and sedimentation effects of the 2007 General Plan would be less than significant. And it does not actually implement Goal OS-3, to prevent soil erosion and enhance water quality.

UNSPECIFIED AND UNENFORCEABLE DISCRETIONARY PERMIT FOR AGRICULTURAL DEVELOPMENT ON SLOPES OVER 25%: OS 3.5 calls for both a discretionary and a ministerial permit for agricultural slope conversions over 25%:

“The County shall develop and implement an Agricultural Permit process for the conversion, for agricultural purposes, of previously uncultivated lands on slopes in excess of 25-percent (25%). An Agricultural Permit shall recognize unique grading criteria for agricultural purposes and the process shall include criteria when a discretionary permit is required. Projects that are subject to a State Agricultural Waiver Program, Agricultural Registration Program, or other similar program that regulates irrigation of agricultural land on steep slopes or projects where only a small portion of the affected area has slopes in conflict with this policy shall be allowed with a ministerial permit that requires compliance with the criteria developed for the following resource areas:

- a. Water Quality/Water Supply
- b. Biological Resources
- c. Cultural Resources

- d. Erosion Control
- e. Drainage
- f. Flood Hazards.” Policy OS 3.5.

The policy refers to, but does not specify, “criteria when a discretionary permit is required.” As written, projects subject to the “State Agricultural Waiver Program, Agricultural Registration Program, or other similar program that regulates irrigation of agricultural land on steep slopes” would require only a ministerial permit. The policy also requires only a ministerial permit for “projects where only a small portion of the affected area has slopes in conflict with this policy.” It is not clear whether *all* other projects would require a discretionary permit, and, if not, *what* other projects would require a discretionary permit. This must be clarified.

Please identify the “State Agricultural Waiver Program, Agricultural Registration Program, and other similar program that regulates irrigation of agricultural land on steep slopes.” Please explain how these programs would address erosion and sedimentation effects from cultivation of steep slopes. We note that the current RWQCB Basin Plan identifies only two waivers of Waste Discharge Requirements and reporting requirements applicable to agriculture: #20, for irrigation return water where sediment meets turbidity objectives and discharge is not toxic; and #16, for agricultural commodity wastes. RWQCB, Central Coast Region, Water Quality Control Plan, Appendix A-23. Neither of these waivers appears to be focused on regulating irrigation on steep slopes in particular. Sedimentation from storm water-caused erosion would not be controlled by the irrigation return water waiver.

The criteria for permitting conversion with a ministerial permit is not clear because the term “small portion” is undefined. Is this term to be defined in a to-be-developed program, or will it be left for *ad hoc* determination as permits are requested? Is “small portion” to be evaluated in absolute (e.g., ¼ acre) or percentage (e.g., 2% of proposed conversion) terms or with reference to the actual erosion and sedimentation potential (e.g., contributing a specified sediment load)? This must be clarified.

Furthermore, assuming it can be determined what projects are not eligible for a ministerial permit and therefore must be evaluated through a discretionary permit process, Policy OS 3.5 contains no criteria whatsoever for deciding *whether* a discretionary permit should be issued, and if so, *what conditions* should attach to such a permit. An adequate policy must provide both. The vague and generic language in OS3.5 that requires that “permit processes shall be designed to require that an erosion control plan be developed and implemented that addresses slope stabilization, and drainage and flood hazards” does not contain performance criteria or exemplary measures. Conditions on development must be justified with reference to attaining the water quality and soil retention goal OS 3.5, and must include performance specifications and exemplary measures.

In sum, this portion of Policy OS 3.5 purporting to set up a discretionary permit process for agricultural conversions is also a hollow shell that would permit essentially

any kind of agricultural development on steep and erosive slopes. As written, the discretionary permit process for agricultural development does not provide any substantial evidence to support a finding that erosion and sedimentation effects of the 2007 General Plan would be less than significant. And it does not actually implement Goal OS-3, to prevent soil erosion and enhance water quality

MINISTERIAL PERMIT CONDITIONS UNSPECIFIED FOR CONVERSION OF UNCULTIVATED LAND TO AGRICULTURE ON SLOPES OVER 25%: Policy OS 3.5 permits agricultural conversions on land sloped over 25% subject only to an unspecified ministerial permit:

“Projects that are subject to a State Agricultural Waiver Program, Agricultural Registration Program, or other similar program that regulates irrigation of agricultural land on steep slopes or projects where only a small portion of the affected area has slopes in conflict with this policy shall be allowed with a ministerial permit that requires compliance with the criteria developed for the following resource areas:

- a. Water Quality/Water Supply
- b. Biological Resources
- c. Cultural Resources
- d. Erosion Control
- e. Drainage
- f. Flood Hazards.” Policy OS 3.5.

No conditions are specified for permits to cultivate previously uncultivated land other than language stating that the permit shall require “compliance with *the criteria* developed for the flowing resource areas,” followed by a list of “resource areas” including “Water Quality/Water Supply,” “Erosion Control,” and “Drainage.” These references are not meaningful since they do not identify “the criteria” or any applicable constraints with any specificity. What are these criteria? The vague and generic language in OS3.5 that requires that “permit processes shall be designed to require that an erosion control plan be developed and implemented that addresses slope stabilization, and drainage and flood hazards” does not contain performance criteria or exemplary measures.

Again, this portion of Policy OS 3.5 purporting to set up a ministerial permit process for agricultural conversions would permit essentially any kind of agricultural development on steep and erosive slopes. As written, this unspecified ministerial permit process for agricultural development does not provide any substantial evidence to support a finding that erosion and sedimentation effects of the 2007 General Plan would be less than significant. And it does not actually implement Goal OS-3, to prevent soil erosion and enhance water quality.

MINISTERIAL PERMIT CONDITIONS UNSPECIFIED FOR DEVELOPMENT, INCLUDING AGRICULTURAL CONVERSION, ON SLOPES UNDER 25%: The policy requires a ministerial permit for agricultural and non-

agricultural development on slopes between 15-24% or between 10 and 15% on highly erodible soils:

“ A ministerial permit process shall be developed and implemented for proposed development, including for purposes of this policy conversion of previously uncultivated lands, on slopes between 15- and 24-percent (15-24%), and 10- to 15-percent (10-15%) on highly erodible soils.” Policy OS 3.5.

Again, no performance criteria or exemplary measures are provided for the conditions on such a ministerial permit other than that it must require an unspecified erosion control plan to address slope stabilization, and drainage and flood hazards. Again, this unspecified ministerial permit process for agricultural development does not provide any substantial evidence to support a finding that erosion and sedimentation effects of the 2007 General Plan would be less than significant. And it does not actually implement Goal OS-3, to prevent soil erosion and enhance water quality

ROUTINE AND ONGOING AGRICULTURAL ACTIVITIES EXEMPTED:
All Routine And Ongoing Agricultural Activities (“ROAA”) other than slope conversions are exempt from the permit process and conditions to be developed under Policy OS 3.5. ROAA includes many activities that may contribute to erosion and sedimentation, including grazing; conversion to other agricultural uses; planting, harvesting, cultivation, tillage, irrigation, and soil preparation activities; maintenance of sediment, drainage, and erosion control systems; and maintenance of roads, trails, and parking. See Policy AG 3.3. For example, the DEIR admits that agricultural practices related to growing strawberries and grapes cause erosion and sedimentation, independent of the conversion of previously uncultivated land for these purposes. DEIR, pp. 4.3-20 to 21, 4.3-107. And the table of 303d water bodies identifies range grazing, both upland and riparian, as a source of sedimentation. DEIR, 4.3-56.

Because the DEIR presents no justification for exempting ROAA from the permit process, the DEIR does not provide any substantial evidence to support a finding that erosion and sedimentation effects of the 2007 General Plan would be less than significant. And Policy OS 3.5 does not actually implement Goal OS-3, to prevent soil erosion and enhance water quality with respect to ROAA.

2. Cumulative Impacts Not Adequately Addressed

The DEIR concludes that sedimentation and erosion impacts will be less than cumulatively considerable, based on RWQCB regulations and proposed policies, including the entirely undefined future program to evaluate and address cumulative impacts from agricultural land conversions through Policy OS 3.9. DEIR, p. 6-10.

Cumulative impact analysis must answer two questions: 1) is the impact of past, current and foreseeable future projects cumulatively significant, and 2) does the project under review make a considerable contribution to the cumulative impact. CEQA

Guidelines, §§ 15130(a), 15065(a)(3). The DEIR's answers to these questions are not clear or adequate.

Since the DEIR lists a number of water bodies that the RWQCB has identified as suffering from sedimentation, there should be no doubt about the answer to the first question: sedimentation impacts are already cumulatively significant. DEIR, pp. 4.3-54. The EIR must clarify whether its conclusion rests on the assumption that *only* the water bodies listed as impaired for sediment suffer cumulatively significant impacts, or will suffer sediment impacts in the future. If not, please identify each water body that was considered that *may* suffer cumulatively significant sedimentation impacts as a result of past, present, or probable future development.

The EIR must also identify which areas will suffer cumulatively significant erosion impacts.

Despite identification of 303d impaired water bodies, the DEIR claims that “[t]he RWQCB’s conditional agricultural waiver program is preventing sediment-laced runoff from agricultural land.” The claim that RWQCB’s conditional agricultural waiver program is preventing sediment-laced runoff from agricultural land appears to suggest that the County does not acknowledge that cumulative impacts are already significant. Please clarify this. Please identify the referenced RWQCB’s conditional agricultural waiver program. Please reconcile the admission that there are numerous stream segments on the 303d list that are impaired by agriculturally-caused sediment with the claim that the RWQCB’s conditional agricultural waiver program is preventing sediment-laced runoff from agricultural land. Again, we note that the current RWQCB Basin Plan identifies only two waivers of Waste Discharge Requirements and reporting requirements applicable to agriculture: #20, for irrigation return water where sediment meets turbidity objectives and discharge is not toxic; and #16, for agricultural commodity wastes. RWQCB, Central Coast Region, Water Quality Control Plan, Appendix A-23. Neither of these waivers appears to be focused on regulating irrigation on steep slopes in particular.

The DEIR also appears to be relying on the RWQCB TMDL program. The DEIR identifies only one water body for which a sedimentation TMDL has been adopted. TMDLs for other sediment impaired water bodies are not expected for years, *e.g.*, for Elkhorn Slough the estimated completion of a TMDL is 2015 and for Moro Cojo Slough and Moss Landing Harbor a TMDL will not be completed until 2019. The DEIR cannot reasonably base a finding that cumulative impacts will not be significant on TMDL programs that has not yet been formulated, and which will take years to work even when they are implemented.

The other bases for the DEIR’s conclusion that the future development under the 2007 General Plan will not make a considerable contribution to significant cumulative erosion and sedimentation impacts are Policies OS 3.5 and 3.6 regulating slope development; Policy 3.8 requiring the county to cooperate with appropriate regional, state and federal agencies to provide public education/outreach and technical assistance programs on erosion and sediment control; Policy OS 3.9 to establish a program to

address cumulative impacts of agricultural conversion; and Policy OS 5.7 requiring that forestry projects prepare a Timber Harvest Plan. As set out below, these policies are not a sufficient basis for this conclusion.

Policies OS 3.5 and 3.6 regulate individual development projects and do not even purport to consider cumulative impacts. Mitigation of a particular project's individually significant impacts does not ensure that cumulative impacts will be avoided because a project may make a considerable contribution to a significant cumulative impact even if its own impacts are not individually significant. CEQA Guidelines, §§ 15355(b) (cumulative impacts can result from individually minor but collectively significant projects), 15065(a)(3) (impacts may be individually limited but cumulatively considerable). Furthermore, as discussed above, there is essentially no content to Policy 3.5, which calls for future development of a complex permitting system but which does not contain any performance specifications or proposed conditions on development. And there is no basis identified in Policy 3.6 to conclude that cumulative impacts would be avoided.

Policy 3.8 does not mandate any specific program, and does not require the County to do anything other than "cooperate" with technical assistance programs. Policy OS 5.7 does not mandate anything that is not already mandated by other regulations and only addresses timber harvesting.

Please explain how each of the cited policies can be expected to address cumulative impacts in light of the defects identified in the discussion of OS 3.5 above and the discussion of the other policies in the Table of Erosion and Sedimentation Policies below. Please address all sources of erosion and sedimentation, including slope development and conversion of previously uncultivated agricultural land.

Policy OS 3.9 is the only policy explicitly addressing cumulative erosion and sedimentation impacts. However, this policy cannot constitute a meaningful basis for the DEIR's conclusion that the contributions from future development will not be cumulatively considerable because the policy has no actual substantive content:

"The County will develop a Program that will address the potential cumulative hydrologic impacts of the conversion of hillside rangeland areas to cultivated croplands. The Program will be designed to address off-site soil erosion, increased runoff-related stream stability impacts and/or potential violation of adopted water quality standards. The County should convene a committee comprised of county staff, technical experts, and stakeholders to develop the Program, including implementation recommendations." Policy OS-3.9, 2007 General Plan, p. C/OS-9.

The policy calls for an entirely unspecified "program" to be developed at some unspecified point in the future. There is no *hint* of the measures that might be considered and implemented, or the performance standards that might be imposed, through the to-be-developed program. The policy as written calls for conducting a study and then

following its recommendations – exactly the kind of mitigation measure that CEQA does not permit. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794. No provision is made for interim measures pending completion of this program. Thus, the policy as written cannot form the basis of a conclusion that future impacts will not be cumulatively considerable.

Policy OS 3.9 implicitly acknowledges that unless the County takes some action, the conversion of hillside rangeland areas to cultivated croplands *will* result in considerable contributions to cumulatively significant erosion and sedimentation. Accordingly, the County is obliged to provide some substantive program or policies to address this impact or to admit that it remains significant and unavoidable.

3. Other Policies And Additional Mitigation Measures Purporting to Address Erosion And Sedimentation Are Inadequate

The remaining policies and additional mitigation measures cited by the DEIR do not provide substantial evidence that erosion and sedimentation impacts will be less than significant. Essentially all of the policies and additional mitigation measures identified as the basis for the conclusion that impacts will be less than significant suffer from one of more to the following defects:

- deferred without any performance criteria or examples of potential measures, thus failing to meet CEQA's requirements for deferred formulation of mitigation measures (e.g., OS3.1 calling for future establishment and enforcement of unspecified BMPs, making no reference to any performance standards and providing no examples)
- deferred without deadline for completion or interim measures (e.g., OS 3.3 – development of criteria for studies to evaluate and address hydrologic constraints and hazards conditions shall be established for new development)
- non-mandatory and unenforceable measures (e.g., OS 3.2 – support soil conservation and restoration programs and encourage voluntary efforts)
- exceptions that make policies unpredictable or unenforceable (e.g., OS 3.5, as discussed above or see comments on exceptions to AG 3.3's exemptions below)
- exemptions that render the policy inapplicable to development that will cause impacts (e.g., AG 3.3 exempts Routine and Ongoing Agriculture from a list of GP Policies to the extent specified by those policies, including the partial exemption of conversion of uncultivated land on slopes under OS 3.5).

The table set forth below lists each policy or mitigation measure cited as the basis of the conclusion in WR-1, WR-2, WR-3, WR-10, GEO-5, and CUM-2 that erosion and

sedimentation impacts would be less than significant. The table identifies and discusses the specific inadequacies of each policy.

We ask that the comment responses address each identified policy deficiency.

We ask that the responses explain with reference to each listed policy how, in light of the deficiencies identified, the policy can support the DEIR’s conclusions that future development projects will not result in significant erosion and sedimentation impacts and that future development will not make a considerable contribution to cumulatively significant erosion and sedimentation impacts.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
POLICIES AND MITIGATION CITED IN WR-2, WR-3, WR-10, GEO-5, AND CUM-2 PURPORTING TO AVOID, MINIMIZE, OR MITIGATE EROSION AND SEDIMENTATION	COMMENTS
POLICIES APPLICABLE COUNTY-WIDE	GENERAL COMMENT: For each policy, please address the identified concerns by revising the policy and/or explaining how, in light of these concerns, the policy can provide a foundation for the DEIR’s conclusion that erosion and sedimentation impacts will be less than significant.
Goal AG-3 Assure that the County’s land use policies do not inappropriately limit or constrain “routine and ongoing agricultural activities”	<ul style="list-style-type: none"> At page 4.3-108, the DEIR states that “Goal AG-3 and its policies exempt routine and ongoing activities from many County permit requirements that would otherwise be interpreted as applicable, except for activities that create significant soil erosion impacts or violate adopted water quality standards.” The individual policies that purport to implement Goal AG-3 are listed below.
AG-3.1 “Routine and Ongoing Agricultural Activities” shall be allowed pursuant to the policies in this plan. Activities that may have significant impacts are subject to a greater level of review.	<ul style="list-style-type: none"> This policy is not coordinated with Policy AG 3.3 creating exemptions from General Plan policies so it is not clear how “activities that may have significant impacts” will be subject to a “greater level of review.” If this policy actually adds any meaningful additional constraint to Policy AG 3.3, the DEIR should explain what that constraint is. For example, does this policy purport to provide for individual, farm-by-farm review and permitting of activities that would otherwise be exempted under Policy 3.3? If so, how will this be implemented and monitored, e.g., how will individual farms with ‘significant impacts’ be made subject to a greater level of review? If the policy does not add any additional review of individual farms or activities, then what does this policy actually add to Policy 3.3?

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

<p>AG-3.2 In order to encourage the continuation and economic viability of the agricultural industry, the County shall work with the agricultural industry and state and federal agencies to streamline permit procedures for “Routine and Ongoing Agricultural Activities” as enumerated in policy.</p>	<ul style="list-style-type: none"> • This policy does not contain any substantive content related to erosion and sedimentation – it merely evinces an intent to streamline permitting, which can only have the effect of increasing the chance that erosive practices would not be regulated.
<p>AG-3.3 In lands with a Farmlands, Permanent Grazing, or Rural Grazing land use designation, farming and ranching activities that are “Routine and Ongoing Agricultural Activities” should be exempted from the General Plan policies listed below to the extent specified in those policies except for activities that create significant soil erosion impacts or violate adopted water quality standards. The County shall, after consultation with the Agricultural Commissioner and with appropriate review by the Agricultural Advisory Committee, establish by ordinance a list of “Routine and Ongoing Agricultural Activities” that can, in harmony with General Plan goals and in accordance with State and Federal law, be exempted from the listed General Plan policies as described. Activities to be considered for inclusion in the list of “Routine and Ongoing Agricultural Activities” may include, but are not limited to:</p> <ul style="list-style-type: none"> a. pasture and rangeland management; b. conversion of agricultural land to other agricultural uses; c. preparation of product for market, and delivery of product to market; d. planting, harvesting, cultivation, tillage, selection, rotation, irrigation, fallowing, and all soil preparation activities; e. raising of livestock, poultry, fur bearing animals, dairying, or fish; f. maintenance of sediment basins, stock ponds, irrigation and tail water return systems, stream bank and grade stabilization, water retention and pumping facilities, erosion control and surface drainage activities; g. maintenance of farm access roads, trails, and parking facilities; h. fencing, corrals, animal handling facilities; i. greenhouses, sheds, storage and outbuildings; j. Emergency activity that protects the health and safety of the general public. <p>“Routine and Ongoing Agricultural Activities” are exempt from the following General Plan policies to the extent specified by those policies: <i>C-5.3 (Scenic Highway Corridors)</i>, <i>C-5.4 (Scenic Highway Corridors)</i>, <i>OS-1.9 (views)</i>, <i>OS-1.12 (scenic routes)</i>, <i>OS-3.5 (slope)</i>, <i>OS-3.6 (erosive soils)</i>, <i>OS-5.4 (native vegetation)</i>, <i>OS-6.3 (archaeological)</i>, <i>OS-7.3 (paleontological)</i>, <i>OS-8.3 (burial sites)</i>, <i>OS-10.8 (air quality)</i>, <i>S-2.3 (floodplain)</i>. Further</p>	<ul style="list-style-type: none"> • The policy calls for a general exemption, but also states that certain activities will be excepted from that exemption. Does the County plan to identify the to-be-excepted “activities that create significant soil erosion impacts or violate adopted water quality standards” on an individual basis (farm-by-farm) or on a categorical basis (e.g., new cultivation on land sloped over 15%)? • If exceptions are to be identified individually (farm-by-farm), in what context will these exceptional impacts be identified? If ROAA are not required to obtain any permits, it would be necessary to monitor individual farming activity to determine whether it should or should not be treated as exempt. What monitoring and enforcement program will be implemented to identify “exceptional” activities on a farm-by-farm basis? • The listing of activities potentially to be exempted suggests that the exceptions for activities that create significant soil erosion impacts or violate water quality standards will also be categorical rather than individual. If so, how will the policy take into account the geographic differences in erosion potential? For example, cultivation on slopes may be highly erosive in some areas but acceptable in others. • No performance standards are provided to determine which activities would “create significant soil erosion impacts or violate adopted water quality standards.” What <i>are</i> “significant soil erosion impacts?” Will this be determined with reference to a soil loss metric or with reference to particular categories of activities? • The policy states that the to-be-developed ordinance will also specify “County permit requirements for specific ‘Routine and Ongoing Agricultural Activities’ consistent with these exemptions, General Plan goals, and State and Federal Law.” This implies that some (but perhaps not all) ROAA will be subject to some form of permitting, despite their exemption from the enumerated General Plan policies. This would appear to create a more complex permitting structure. What will be the basis of the permitting requirements for ROAA under this

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

<p>modifications may be made in Area Plans as part of this process. The ordinance to be enacted by the County will also identify County permit requirements for specific "Routine and Ongoing Agricultural Activities" consistent with these exemptions, General Plan goals, and State and Federal Law.</p>	<p>policy? What resource areas will be protected by these permitting requirements? What performance standards will have to be met?</p> <ul style="list-style-type: none"> • Are these permit requirements intended to be in lieu of permit requirements that would be applicable to activities that are not included in the to-be developed list of ROAA? How do these permit requirements relate to the to-be-developed discretionary and ministerial permit requirements mentioned in Policy OS 3.5? That is, are the permit requirements that are to be developed under this policy distinct and applicable only to farming activity that is not subject to any permitting under Policy OS 3.5, or would the permitting requirements overlap somehow? How can the DEIR conclude that this complex and to-be-developed permitting structure will streamline and simplify permitting? • Will there be a class of farming activities that are not subject to <i>any</i> permitting requirements under this policy? How will they be identified? • In sum, the policy entirely defers the identification of ROAA that will be exempted from general plan policies, the basis for that exemption, and the "permit requirements" that would be imposed. Because these activities have not been identified, because no standard has been identified for "significant soil erosion impacts," because no basis whatsoever is specified for future "permit requirements," and because no consideration is given to cumulative impacts, the DEIR cannot reasonably rely on this policy to conclude that there will in fact be no significant soil erosion impacts from ROAA or that ROAA will not result in a considerable contribution to cumulatively significant soil impacts.
<p>AG-5.1 Programs that reduce soil erosion and increase soil productivity shall be supported</p>	<ul style="list-style-type: none"> • Does not identify or mandate any program. • Policies that "support," "promote," or "encourage" activities and programs do not create any enforceable constraints on development projects. • No performance criteria for "programs" are specified. • No exemplary measures for "programs" are identified.
<p>AG-5.2 Policies and programs to protect and enhance surface water and groundwater resources shall be promoted, but shall not be inconsistent with State and federal regulations.</p>	<ul style="list-style-type: none"> • Does not identify or mandate any policies or programs. • Policies that "support," "promote," or "encourage" activities and programs do not create any enforceable constraints on development projects.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
	<ul style="list-style-type: none"> • No performance criteria for “policies and programs” are specified. • No exemplary measures for “policies and programs” are identified.
<p>OS-3.1 Best Management Practices (BMPs) to prevent and repair erosion damage shall be established and enforced.</p>	<ul style="list-style-type: none"> • Formulation of BMP is deferred. • No exemplary BMPs are identified. • No performance criteria for BMPs are specified. • No interim measures are required prior to formulation of the BMPs. • No deadline for formulation of BMPs is specified.
<p>OS-3.2 Existing special district, state, and federal soil conservation and restoration programs shall be supported. Voluntary restoration projects initiated by landholders, or stakeholder groups including all affected landowners, shall be encouraged.</p>	<ul style="list-style-type: none"> • Does not identify or mandate any programs. • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects.
<p>OS-3.3 Criteria for studies to evaluate and address through appropriate designs and BMPs geological and hydrologic constraints and hazards conditions such as slope and soil instability, moderate and high erosion hazards, and drainage, water quality and stream stability problems created by increased stormwater runoff shall be established for new development and changes in land use designations.</p>	<ul style="list-style-type: none"> • Formulation of criteria is deferred. • No performance criteria for the content of this policy are provided, which is unsurprising since the very object of this policy is to defer the formulation of criteria to the future. • The apparent object of the policy is to formulate criteria for future <i>studies</i> to evaluate hydrologic constraints and hazard conditions for new development. Thus, the policy does not require formulation of any criteria for the actual designs and BMPs that would be required actually to <i>address</i> these constraints and hazard conditions. • It is not clear who would be required to <i>use</i> the criteria that are to be developed in conducting studies “to evaluate and address through appropriate designs and BMPs geological and hydrologic constraints and hazards conditions.” Is the point of this policy to establish criteria to be used in future studies for site-specific designs and BMPs in connection with individual development projects? Or is the point to establish criteria for studies that will lead to “designs and BMPs” of wider applicability? Who must conduct these studies and in what context? • No deadline for formulation of the criteria is specified. • No interim measures are required prior to formulation of the criteria.
<p>OS-3.4 Those areas where slopes pose sever constraints for development shall be mapped in the County’s GIS. The information shall be updated at least every five (5) years.</p>	<ul style="list-style-type: none"> • No criteria are specified to identify what slopes would pose “severe constraints for development.” • No use is identified for the information to be developed. For example, this policy is not

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

	<p>referenced by Policy S-1.2 calling for eventual development and maintenance of a “Geologic Constraints and Hazards Database,” Policy OS-3.5 regulating slope development, or Policy PS-2.6 calling for development and maintenance of a “Hydrologic Resources Constraints and Hazards Database.” Merely collecting the information without specifying how the information would constrain development permitting is of no value.</p> <ul style="list-style-type: none"> • No deadline for mapping this data is specified. • No interim measures are specified pending completion of the mapping.
<p>OS-3.5 The County shall prohibit development on slopes greater than 30%. It is the general policy of the County to require dedication of scenic easement on a slope of 30% or greater. Upon application, an exception to allow development on slopes of 30% or greater may be granted at a noticed public hearing by the approving authority for discretionary permits or by the Planning Commission for building and grading permits. The exception may be granted if one or both of the following findings are made, based upon substantial evidence:</p> <p>A) there is no alternative which would allow development to occur on slopes of less than 30%; or,</p> <p>B) the proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan, accompanying Area Plans and Land Use Plans, and all applicable master plans.</p> <p>A permit process will be established as follows:</p> <p>1. A discretionary permit process for development on slopes greater than 25-percent (25%) or that contain geologic hazards and constraints shown on the County’s GIS Geologic (<i>Policy S-1.2</i>) or Hydrologic (<i>Policy PS-2.7</i>) Hazard Databases shall be established. The process shall be designed to:</p> <p>a. evaluate possible building site alternatives that better meet the goals and policies of the general plan.</p> <p>b. identify development and design techniques for erosion control, slope stabilization, visual mitigation, drainage, and construction techniques.</p> <p>c. minimize development in areas where potentially unstable slopes, soil and geologic conditions, or sewage disposal pose substantial risk to public health or safety.</p> <p>2. The County shall develop and implement an Agricultural Permit process for the conversion, for agricultural purposes, of previously uncultivated lands on slopes in excess of 25-percent (25%). An Agricultural Permit shall recognize unique grading criteria for agricultural purposes and the process shall include criteria when a discretionary permit is required. Projects</p>	<ul style="list-style-type: none"> • See comments in text above. • Reference to Policy PS-2.7 makes no sense, since that Policy refers to incentive programs to encouraging voluntary retirement of cultivated land on highly erodible soils. The reference is probably intended to be to Policy PS-2.6 calling for development of a Hydrologic Resources Constraints and Hazards Database.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

<p>that are subject to a State Agricultural Waiver Program, Agricultural Registration Program, or other similar program that regulates irrigation of agricultural land on steep slopes or projects where only a small portion of the affected area has slopes in conflict with this policy shall be allowed with a ministerial permit that requires compliance with the criteria developed for the following resource areas:</p> <ol style="list-style-type: none"> a. Water Quality/Water Supply b. Biological Resources c. Cultural Resources d. Erosion Control e. Drainage f. Flood Hazards <p>3. A ministerial permit process shall be developed and implemented for proposed development, including for purposes of this policy conversion of previously uncultivated lands, on slopes between 15- and 24-percent (15-24%), and 10- to 15-percent (10-15%) on highly erodible soils.</p> <p>4. The permit processes shall be designed to require that an erosion control plan be developed and implemented that addresses slope stabilization, and drainage and flood hazards.</p> <p>5. All Routine and Ongoing Agricultural Activities, except for conversion of previously uncultivated lands as described in this policy above, are exempt from the above permit requirements.</p>	
<p>OS-3.6 Except in Community Areas where Community Plans or Specific Plans are adopted (<i>Policy LU-10.4</i>), areas designated as Medium Density Residential or High Density Residential, or in areas designated as commercial or industrial where residential use may be allowed, a formula based on slope shall be established to calculate the maximum possible residential density for individual parcels.</p> <ol style="list-style-type: none"> a. Those portions of parcels with cross-slope of between zero and 19.9-percent shall be assigned one (1) building site per each one (1) acre. b. Those portions of parcels with a cross-slope of between 20 and 29.9-percent shall be assigned one (1) building site per each two (2) acres. c. Those portions of parcels with a cross-slope of 30-percent or greater shall be assigned zero building sites. d. The density for a particular parcel shall be computed by determining the cross-slope of the various portions of the parcel applying the assigned densities listed above according to the percent of cross-slope and by adding the densities derived from this process. The maximum density derived by the procedure shall be used as one of the factors in final 	<ul style="list-style-type: none"> • Nothing in the DEIR explains how this policy relates to erosion and sedimentation impacts. Nothing in the policy takes into account the site-specific constraints other than slope, including vegetative cover and soil types. The EIR must explain how specifically the policy was developed to address erosion and sedimentation impacts and how it supports a finding that erosion and sedimentation impacts will be less than significant, if it does support such a finding. • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects. The EIR should explain why clustering is merely “encouraged” rather than mandated to control development on slopes over 25%. • The policy would allow extremely low density development or a single family home despite non-compliance with unspecified “plan policies.” The EIR must explain how permitting development on parcels on which it would otherwise be barred by other policies purporting to control erosion and sedimentation is consistent

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>determination of the actual density that shall be allowed on a parcel.</p> <p>Clustering is encouraged as a technique to avoid development on slopes over 25-percent (25%). Where an entire parcel would not be developable because of plan policies, an extremely low density of development or single family home will be allowed, as appropriate.</p>	<p>with a finding that erosion and sedimentation impacts will in fact be controlled.</p> <ul style="list-style-type: none"> • This policy would allow some development to occur on any parcel, regardless of slope, soil conditions, and other hazards. • No criteria are specified to determine whether an extremely low density of development or a single family home will be allowed, as “appropriate.” • This policy appears to relate only to residential uses, but the language in Policy AG 3.3 indicates that it is at least potentially applicable to agricultural activities. How will this policy be applied to constrain agricultural activities that are not included in the to-be-developed list of routine and ongoing agricultural activities that are specifically exempted from this policy under Policy AG 3.3? That is, what agricultural activities are subject to this policy?
<p>OS-3.7 Voluntary preparation and implementation of a coordinated resources management plan shall be encouraged in watersheds of State designated impaired waterways.</p>	<ul style="list-style-type: none"> • Does not identify or mandate any program • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects
<p>OS-3.8 The County shall cooperate with appropriate regional, state and federal agencies to provide public education/outreach and technical assistance programs on erosion and sediment control, efficient water use, water conservation and re-use, and groundwater management. This cooperative effort shall be centered through the Monterey County Water Resources Agency.</p>	<ul style="list-style-type: none"> • Does not identify or mandate any program • “Cooperation” does not commit County to any specific efforts
<p>OS-3.9 The County will develop a Program that will address the potential cumulative hydrologic impacts of the conversion of hillside rangeland areas to cultivated croplands. The Program will be designed to address off-site soil erosion, increased runoff-related stream stability impacts and/or potential violation of adopted water quality standards. The County should convene a committee comprised of county staff, technical experts, and stakeholders to develop the Program, including implementation recommendations.</p>	<ul style="list-style-type: none"> • See discussion of cumulative sediment impacts, above. • The policy has no substantive content and formulation of the program it calls for is entirely deferred with no performance standards or examples. • The policy provides no substantive basis to support a conclusion that cumulative impacts will be less than significant or that development allowed by the 2007 General Plan will not make considerable contributions to that impact.
<p>OS-5.7 Proposals for harvesting commercially valuable timber or as a part of a Timberland Conversion Project (as defined by the California Department of Forestry) shall:</p> <ol style="list-style-type: none"> a. include filing of a Timber Harvest Plan that provides for selective, sustained yield harvesting and reforestation, and erosion control; b. consider opportunities for concurrent and subsequent use of publicly owned timber land for public recreation; c. require approval by the California Department of 	<ul style="list-style-type: none"> • Policy does not mandate any controls on erosion and sedimentation that are not already in effect through the CDF regulations. • Policy only applies to timber operations, which are not identified by the DEIR as a substantial potential source of erosion and sedimentation.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>Forestry; e. complete environmental review by the County and other appropriate agencies; and f. comply with the resource protection goals and policies of this General Plan</p>	
<p>PS-2.5 Regulations shall be considered for water quality testing for new individual wells on a single lot of record to identify:</p> <p>a. Water quality testing parameters for a one-time required water quality test for individual wells at the time of well construction. b. A process that allows the required one-time water quality test results to be available to future owners of the well. c. Regulations pursuant to this policy shall not establish criteria that will prevent the use of the well in the development of the property. d. Agricultural wells shall be exempt from the regulation.</p>	<ul style="list-style-type: none"> • Policy does nothing to prevent or control erosion and sedimentation. • Policy does not actually require that regulations be adopted, only “considered.” • Policy does nothing to prevent other water quality problems; it simply calls for some unspecified testing program to see if the aquifer has been polluted.
<p>PS-2.6 A Hydrologic Resources Constraints and Hazards Database shall be developed and maintained in the County Geographic Information System (GIS). The GIS shall be used to identify areas containing hazards and constraints (see <i>Policy S-1.2</i>) that could potentially impact the type or level of development allowed in these areas (<i>Policy OS-3.5</i>). Maps maintained as part of the GIS include:</p> <p>a. Impaired water bodies on the State Water Resources Control Board 303d list. b. Important Groundwater Recharge Areas c. 100-year Flood Hazards d. Hard rock areas with constrained groundwater e. Areas of septic tank leachfield unsuitability</p>	<ul style="list-style-type: none"> • This policy is apparently to be used to identify areas that would require discretionary permits under Policy OS 3.5, although this is not stated here. Please clarify. • Policy S 1.2 calls for developing a “Geologic Constraints and Hazards Database.” It is not clear how the “Hydrologic Resources Constraints and Hazards Database” called for under Policy 2.6 differs, particularly since Policy 2.6 references Policy S 1.2 in connection with identifying areas containing hazards and constraints. • No criteria are provided to identify areas containing hazards and constraints, including Hydrologic Resources Constraints and Hazards. • Although Policy S 1.2 requires mapping impaired water bodies on the State Water Resources Control Board 303d list, there is no indication how that information would be used to constrain development. Nor is there any indication how identification of other Hydrologic Resources Constraints and Hazards would constrain development. The EIR must explain how this policy would be implemented to regulate development. • No deadline for completing the database is provided and no interim measures are specified.
<p>PS-2.7 As part of an overall conservation strategy and to improve water quality, Area Plans may include incentive programs that encourage owners to voluntarily take cultivated lands on slopes with highly erosive soils out of production</p>	<ul style="list-style-type: none"> • Does not identify or mandate any program. Area Plans may or may not include incentive programs. • Policies that “support,” “promote,” or “encourage” activities and programs do not

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
	<p>create any enforceable constraints on development projects</p> <ul style="list-style-type: none"> No explanation of the nature of allowable incentives is provided. If incentives require expenditure of County resources, they will not be demonstrably feasible unless the EIR identifies the source of those resources. If incentives are to include development or land use concessions, the concessions should be identified and the secondary environmental effects should be evaluated.
<p>S-1.1 Land uses shall be sited and measures applied to reduce the potential for loss of life, injury, property damage, and economic and social dislocations resulting from ground shaking, liquefaction, landslides, and other geologic hazards in the high and moderate hazard susceptibility areas.</p>	<ul style="list-style-type: none"> No criteria are provided to identify high and moderate hazard susceptibility areas. It is unclear that this policy relates at all to erosion and sedimentation hazards. No explanation is provided as to how land uses should be “sited” or what “measures applied” to control risk. The policy does not create any enforceable mandate.
<p>S-1.2 A Geologic Constraints and Hazards Database shall be developed and maintained in the County Geographic Information System (GIS). The GIS shall be used to identify areas containing hazards and constraints (see <i>Policy PS-2.6</i>) that could potentially impact the type or level of development allowed in these areas (<i>Policy OS-3.5</i>). Maps maintained as part of the GIS include:</p> <ol style="list-style-type: none"> Active Regional Faults Relative Seismic Shaking Hazards Relative Landslide Susceptibility Relative Earthquake Induced Liquefaction Susceptibility Steep Slope Constraints (see <i>Policy OS-3.5</i>) Coastal Erosion Moderate and High Erosion Hazards Highly Erodible Soils 	<ul style="list-style-type: none"> This policy is apparently to be used to identify areas that would require discretionary permits under Policy OS 3.5, although this is not stated here. S 1.2 does not contain criteria for key terms such as “highly erodible soils,” “moderate and high erosion hazards,” “steep slope constraints,” or “relative landslide susceptibility,” so the public has no idea what terrain would require a discretionary or ministerial permit. These terms must be defined and justified with reference to a technical analysis that considers the actual effects of allowing development. No criteria are provided to identify areas containing hazards and constraints, including A Geologic Resources Constraints and Hazards. There is no indication how information in the database would be used to constrain development. The EIR must explain how this policy would be implemented to regulate development. No deadline for completing the database is provided and no interim measures are specified.
<p>S-1.3 Site-specific geologic studies may be used to verify the presence or absence and extent of the hazard on the property proposed for new development and to identify mitigations for any development proposed. An ordinance including permit requirements relative to the siting and design of structures and grading relative to seismic hazards shall be established.</p>	<ul style="list-style-type: none"> The policy does not mandate uses of site-specific geologic studies; it merely provides that they “may” be used. The policy adds nothing more than should already be done under CEQA review. the development of the ordinance is deferred and no performance standards or exemplary measures

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
	<p>are provided. The public has no idea what permit requirements might be developed under this policy.</p>
<p>S-1.6 New development shall not be permitted in areas of known geologic or seismic hazards unless measures recommended by a California certified engineering geologist or geotechnical engineer can be implemented to reduce the hazard to an acceptable level. Areas of known geologic or seismic hazards include:</p> <ul style="list-style-type: none"> a. Moderate or high relative landslide susceptibility. b. High relative erosion susceptibility. c. Moderate or high relative liquefaction susceptibility. d. Coastal erosion and seacliff retreat. e. Tsunami run-up hazards. 	<ul style="list-style-type: none"> • No criteria are provided for key terms including “High relative erosion susceptibility,” “Moderate or high relative landslide susceptibility,” and “. Coastal erosion and seacliff retreat.” • No criteria are provided for an “acceptable level” of hazards. • The areas of “known geologic or seismic hazards” are not identified and no procedure for identifying them is provided. If they are to be identified via Policies S 1.2 and PS 2.6, then note that these policies in turn lack any criteria for hazard areas.
<p>S-1.7 Site-specific reports addressing geologic hazard and geotechnical conditions shall be required as part of the planning phase and review of discretionary development entitlements and as part of review of ministerial permits in accordance with the California Building Standards Code as follows:</p> <ul style="list-style-type: none"> a. Geotechnical reports prepared by State of California licensed Registered Geotechnical Engineers are required during building plan review for all habitable structures and habitable additions over 500 square feet in footprint area. Additions less than 500 square feet and non-habitable buildings may require geotechnical reports as determined by the pre-site inspection. b. A Registered Geotechnical Engineer shall be required to review and approve the foundation conditions prior to plan check approval, and if recommended by the report, shall perform a site inspection to verify the foundation prior to approval to pour the footings. Setbacks shall be identified and verified in the field prior to construction. c. All new development and subdivision applications in State- or County-designated Earthquake Fault Zones shall provide a geologic report addressing the potential for surface fault rupture and secondary fracturing adjacent to the fault zone before the application is considered complete. The report shall be prepared by a Registered Geologist or a Certified Engineering Geologist and conform to the State of California’s most current Guidelines for evaluating the hazard of surface fault rupture. d. Geologic reports and supplemental geotechnical reports for foundation design shall be required in areas with moderate or high landslide or liquefaction susceptibility to evaluate the potential on- and off-site impacts on subdivision layouts, grading, or building structures. 	<ul style="list-style-type: none"> • The only portion of this policy that may relate to erosion is the provision requiring a report for areas of “high landslide . . . susceptibility,” but no criteria are provided for the term “high landslide . . . susceptibility.” • The requirement for “appropriate site-specific mitigation” lacks any performance standards and no exemplary measures are provided.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>e. Where geologic reports with supplemental geotechnical reports determine that potential hazards effecting new development do not lead to an unacceptable level of risk to life and property, development in all Land Use Designations may be permissible, so long as all other applicable General Plan policies are complied with.</p> <p>f. Appropriate site-specific mitigation measures and mitigation monitoring to protect public health and safety, including deed restrictions, shall be required.</p>	
<p>S-1.8 As part of the planning phase and review of discretionary development entitlements and as part of review of ministerial permits in accordance with the California Building Standards Code, new development may be approved only if it can be demonstrated that the site is physically suitable and the development will neither create nor significantly contribute to geologic instability or geologic hazards.</p>	<ul style="list-style-type: none"> • The critical terms are not defined with reference to any performance criteria. The EIR must explain what “physically suitable” and “significantly contribute to . . . geologic hazards” mean in the context of erosion and sedimentation.
<p>S-1.9 A California licensed civil engineer or a California licensed landscape architect can recommend measures to reduce moderate and high erosion hazards in the form of an Erosion Control Plan.</p>	<ul style="list-style-type: none"> • The measure is permissive (“can recommend”) not mandatory (“shall recommend”) so it creates no enforceable mandate. • The term “moderate and high erosion hazards” is not defined. • No criteria are identified for an acceptable Erosion Control Plan and no exemplary measures are identified. • Civil Engineers are appropriate for structural mitigations, but there are several other approaches to address erosion hazards that include process-based solutions, or the use of specific best management practices. Experts familiar with these other approaches include hydrologists, geomorphologists, and erosion control specialists.
<p>S-3.1 Post-development, off-site peak flow drainage from the area being developed shall not be greater than pre-development peak flow drainage. On-site improvements or other methods for storm water detention shall be required to maintain post-development, off-site, peak flows at pre-development levels, where appropriate, as determined by the Monterey County Water Resources Agency.</p>	<ul style="list-style-type: none"> • The policy <i>sounds</i> like it creates a binding standard in the first sentence, but that standard is undercut by the phrase “where appropriate” in the second sentence. Will the standard identified in the first actually have to be met by all development? If not, why not? What criteria would be used to make exceptions where “appropriate?” • Furthermore, it is unclear how the policy will relate to the “runoff performance standards” that are to be developed under Policy S 3.5. Will the runoff performance standards to be developed under Policy S 3.5 be permitted to relax the requirement that post-development, off-site peak flow drainage from the area being developed shall not be greater than pre-development peak flow drainage? • No procedure is specified to implement this policy. Will a hydrological study be required for

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

	<p>every project? How will the policy be implemented for ministerially permitted projects? How will it be implemented for agricultural projects, including conversion of previously uncultivated land and routine and ongoing agricultural activities?</p>
<p>S-3.2 Best Management Practices to protect groundwater and surface water quality shall be incorporated into all development.</p>	<ul style="list-style-type: none"> • Formulation of BMP is deferred. • No exemplary BMPs are identified. • No performance criteria for BMPs are specified. • No interim measures are required prior to formulation of the BMPs. • No deadline for formulation of BMPs is specified
<p>S-3.3 Drainage facilities to mitigate the post-development peak flow impact of new development shall be installed concurrent with new development.</p>	<ul style="list-style-type: none"> • It is unclear what the runoff standards would be. See comments on S 3.1 and S 3.5. • It is unclear to which projects this policy applies. Will it apply to agricultural projects, including conversion of previously uncultivated land and routine and ongoing agricultural activities? If not, why not? Will it apply to any and all residential development on any slope? Will it apply where no discretionary permit is required? How will it be implemented?
<p>S-3.5 Runoff Performance Standards that result in an array of site planning and design techniques to reduce storm flows plus capture and recharge runoff shall be developed and implemented, where appropriate, as determined by the Monterey County Water Resources Agency.</p>	<ul style="list-style-type: none"> • This policy explicitly defers formulation of a performance standard to be used for future mitigation of development impacts, so it necessarily fails to include a performance standard. • If this policy would permit a runoff performance standard weaker than requiring that “post-development, off-site peak flow drainage from the area being developed shall not be greater than pre-development peak flow drainage,” then it conflicts with Policy S 3.1. If it would permit more stringent runoff standards, then that should be clarified. • If the intent of this policy is to require not just the development of runoff performance standards but also the development of “an array of site planning and design techniques to reduce storm flows plus capture and recharge runoff,” then the policy lacks any performance standards for those or exemplary measures for those “site planning and design techniques.”
<p>S-3.6 An inventory of areas where there is a high probability of accelerated erosion, sedimentation, and/or chemical pollution shall be maintained as part of the County’s GIS mapping database.</p>	<ul style="list-style-type: none"> • No criteria are provided to identify “areas where there is a high probability of accelerated erosion, sedimentation, and/or chemical pollution.” • The policy is not referenced by OS 3.5, PS 2.6, or S 1.2 so it is unclear how it would be coordinated with those policies, if at all. • No explanation as to how this policy would constrain future development policies is

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>S-3.7 The Monterey County Water Resources Agency shall prepare a Flood Criteria or Drainage Design Manual that established flood plain management policies, drainage standards and criteria, stormwater detention, and erosion control and stormwater quality protection measures in order to prevent significant impacts from flooding and ensure that development does not increase flooding risk over present conditions. The manual will include, as appropriate, hydrologic and hydraulic analysis procedures, procedures to assess stream geomorphology and stability, potential development impacts on streams and design guidelines for channel design, including biotechnical bank stabilization. Until the Drainage Design Manual is prepared, the County shall continue to apply existing policies and ordinances to manage floodplains and minimize flood risk, erosion control and water quality impacts.</p>	<p>provided.</p> <ul style="list-style-type: none"> • This policy explicitly defers formulation of a performance standard to be used for future mitigation of development impacts, so it necessarily fails to include a performance standard or to identify any exemplary measures. No examples or constraints are provided for the to-be-developed “appropriate, hydrologic and hydraulic analysis procedures, procedures to assess stream geomorphology and stability, potential development impacts on streams and design guidelines for channel design, including biotechnical bank stabilization.” • Application of “existing policies and ordinances to manage floodplains and minimize flood risk, erosion control and water quality impacts” in the interim is demonstrably insufficient to address erosion and sedimentation problems, in light of the 303d listings for sediment impaired water bodies. • No authority under which “existing policies” could continue to be applied since the 2007 General Plan would supercede all existing policies. If this policy does purport to rely on continuation of a set of policies from the 1982 General Plan, it must specifically identify and re-enact those policies as interim measures, and must ensure that these interim measures are consistent with all other policies in the 2007 General Plan.
<p>S-3.8 To assist planners in determining potential inundation hazards for existing and future development, the County shall coordinate the periodic review, completion, and filing (with appropriate State and County Offices of Emergency Services) of inundation maps for all dams and levees whose failure could cause loss of life or personal injury within Monterey County. Where inundation maps indicate dam or levee failure could cause loss of life or property or personal injury, the corresponding responsible party shall investigate levee or dam stability and management, identifying emergency alert, evacuation, rehabilitation, and maintenance needs as appropriate.</p>	<ul style="list-style-type: none"> • The policy does not pertain to erosion or sedimentation.
<p>Mitigation Measure BIO-2.1: Stream Setback Ordinance, DEIR p. 4.9-86</p> <p>The county shall develop and adopt a county-wide Stream Setback Ordinance to establish minimum standards for the avoidance and setbacks for new development relative to streams. The ordinance shall identify standardized inventory methodologies and mapping requirements. A</p>	<ul style="list-style-type: none"> • The DEIR asserts that proposed policies are sufficient and that no additional mitigation is necessary to address erosion and sedimentation caused by urban development or by agriculture and resource development in its discussion of water resources. DEIR, pp. 4.3-97 (WR-1), 4.3-113 (WR-3). Apparently contradicting this conclusion, the DEIR then concludes that

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

stream classification system shall be identified to distinguish between different stream types (based on hydrology, vegetation, and slope, etc.) and thus allow application of standard setbacks to different stream types. The ordinance shall identify specific setbacks relative to the following rivers and creeks so they can be implemented in the Area Plans: Salinas, Carmel River, Arroyo Seco, Pajaro River, Nacimiento, San Antonio, Gabilan Creek, and Toro Creek. The ordinance may identify specific setbacks for other creeks or may apply generic setbacks based on the stream classification developed for the ordinance. The purpose of the ordinance will be to preserve riparian habitat and reduce sediment and other water quality impacts of new development.

The Stream Setback Ordinance shall apply to all discretionary development within the County and to conversion of previously uncultivated agricultural land (as defined in the General Policy Glossary) on normal soil slopes over 15% or on highly erodible soils on slopes over 10%.

additional mitigation in the form of a stream setback ordinance is needed to prevent erosion in its discussion of geological hazards: “However, the development and implementation of erosion control measures on steep slopes and areas of highly erodible soils can be challenging and often are only partially successful, and high erosion hazards are widespread throughout the County. Therefore, the potential remains for significant erosion hazards to occur from development on individual lots of record and new hillside agricultural cultivation projects. The 2007 General Plan policies and the existing federal, state, and local erosion control requirements do not adequately mitigate this potentially significant impact to a less-than-significant level. Mitigation Measure BIO-2.1 (see Section 4.9, Biological Resources) would reduce the significance of this impact.” DEIR, p. 4.4-43. Please explain why DEIR deems the stream setback ordinance necessary to address erosion from hillside agricultural development but not to address sedimentation impacts from the same activity. These conclusions are inconsistent given that the primary focus of a stream setback ordinance is to prevent transport of sediment to streams as opposed to preventing the erosion itself.

- Setback ordinances only act to reduce surface erosion immediately adjacent to streams. However, sediment delivery to streams can occur whenever concentrated runoff associated with rills, gullies and ditches occurs, and such sources deliver sediment from sources far beyond setbacks. Extensive surface erosion processes associated with rills and gullies have been documented within the County.³
- This mitigation measure is deferred. Since the whole point of the measures is simply to postpone development of “minimum standards” for stream setbacks it violates CEQA’s rules barring deferral without any performance standards.
- No reason is provided for deferring the formulation of this mitigation measure.
- The term “highly erodible soils” is not defined so there is no basis for determining to which development projects this ordinance would apply.

³ See e.g., Phillip Williams and Associates, Supplemental Carmel River Watershed Action Plan, prepared for The Planning and Conservation League Foundation in partnership with the Carmel River Watershed Conservancy.

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
	<ul style="list-style-type: none"> • No deadline for adoption of the ordinance is provided and no interim measures are required. • As written the policy is not coherent because words appear to be missing. The policy refers to “minimum standards for the avoidance and setbacks for new development relative to streams.” It is not stated what is to be “avoided.” • Because the policy does not identify what streams would be subject to the ordinance, other than 8 named streams, it is unclear to which streams it will apply. For example, will it apply to ephemeral streams? If not, why not? • On what basis was it determined to which kinds of agricultural land conversions the mitigation measure would be applied? Absent a specific study, how did the DEIR conclude that streams setbacks need not be required for other agricultural conversions to prevent impacts? Furthermore, the terms “normal soils” and “highly erodible soils” are not defined, so there is no objective standard for applying or enforcing the policy..
<p>POLICIES LIMITED TO SPECIFIC AREA PLANS</p>	<ul style="list-style-type: none"> • GENERAL COMMENT: For each policy, please address the identified concerns by revising the policy and/or explain how, in light of these concerns, the policy can provide a foundation for the DEIR’s conclusion that erosion and sedimentation impacts will be less than significant. • For each policy, please explain why it is limited in application to a specific area plan and is not applied throughout the County.
<p>CACH-3.3 Alteration of hillsides and natural landforms caused by cutting, filling, grading or vegetation removal shall be minimized through sensitive siting and design of all improvements and maximum feasible restoration. Where cut and fill is unavoidable on steep slopes, disturbed areas shall be re-vegetated.</p>	<ul style="list-style-type: none"> • No criteria are provided for “sensitive siting and design of all improvements and maximum feasible restoration” • The policy does not create an enforceable mandate because there are no criteria for “unavoidable” cut and fill (relative to what objectives?) and “maximum feasible restoration” (feasible within what constraints?)
<p>CACH-3.5 Mining or commercial timber, or other resource production operations that include methods to screen areas, vehicle access, impacts on roadways, noise impacts, measures to control on site and off site drainage and reclamation plans for mined or quarried areas may be considered in the Planning Area. Impacts on watersheds, local roads, flora and fauna shall be mitigated.</p>	<ul style="list-style-type: none"> • The policy is incoherent. What are “methods to screen areas, vehicle access, impacts on roadways, noise impacts, measures to control on site and off site drainage and reclamation plans for mined or quarried areas?” • Citing a policy that requires that “impacts . . . shall be mitigated” as the basis of a conclusion that impacts will be mitigated does not inform the public. • The policy lacks any substantive content.
<p>CACH-3.7 New development shall be sited to protect</p>	<ul style="list-style-type: none"> • The term “minimize erosion” is not defined.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>riparian vegetation and threatened fish species, minimize erosion, and preserve the visual aspects of the Carmel and Arroyo Seco Rivers. Private property owners are encouraged to preserve the Carmel River in its natural state, to prevent erosion and protect fishery habitat. Fishery habitats located above the Los Padres and San Clemente Dams shall be maintained in a productive state accessible to fish populations, especially steelhead.</p>	<p>Unless the policy is to be implemented by banning development on the watershed, some criteria for acceptable levels of erosion must be specified.</p> <ul style="list-style-type: none"> • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects • No responsibility is assigned for ensuring that fishery habitats are maintained in a productive state accessible to fish populations, especially steelhead. Is this the responsibility of the County or of development proponents? Thus, there is no enforceable mandate.
<p>CACH-4.1 Commercial mining, timber, and other resource production operations shall be so designed that additional run-off, additional erosion or additional sedimentation will not occur off the project site.</p>	<ul style="list-style-type: none"> • This policy should be implemented County-wide, but it should not be limited to commercial mining, timber, and other resource production operations. The DEIR should explain why this policy should not be applied globally, and specifically justify a recommendation not to apply it to any specific area with reference to information about the watershed’s ability to absorb additional erosion and sedimentation.
<p>CSV-1.1 <u>Special Treatment Area: Paraiso Hot Springs</u> - The Paraiso Hot Springs properties shall be designated a Special Treatment Area. Recreation and visitor serving land uses for the Paraiso Hot Springs Special Treatment Area may be permitted in accordance with a general development plan and other discretionary approvals such as subdivision maps, use permits and design approvals. The Special Treatment Area may include such uses as a lodge, individual cottages, a visitor center, recreational vehicle accommodations, restaurant, shops, stables, tennis courts, aquaculture, mineral water bottling, hiking trails, vineyards, and orchards. The plan shall address fire safety, access, sewage treatment, water quality, water quantity, drainage, and soil stability issues. (APN: 418-361-004, 418-361-009, 418-361-021, 418-361-022)</p>	<ul style="list-style-type: none"> • This policy has no actual substantive content related to standards for erosion and sedimentation control. There are no performance standards or exemplary measures specified.
<p>CSV-1.2 All recreation and visitor-serving commercial land uses shall require a use permit. Said uses on sites greater than 10 acres shall require a comprehensive development plan that addresses hydrology, water quantity and quality, sewage disposal, fire safety, access, drainage, soils, and geology.</p>	<ul style="list-style-type: none"> • This policy has no actual substantive content related to standards for erosion and sedimentation control. There are no performance standards or exemplary measures specified.
<p>CSV-1.3 <u>Special Treatment Area: Spence/Potter/Encinal Roads</u> - The area generally along Potter, Spence and Encinal Roads, excluding large properties under cultivation located between Spence and Potter Roads, shall be designated as a Special Treatment Area to permit agricultural operations. The minimum parcel size in this area shall be 10 acres and subdivision of land may be approved only if the following</p>	<ul style="list-style-type: none"> • This policy has no actual substantive content related to standards for erosion and sedimentation control because the drainage management plan is not defined and because there are no standards for acceptable run-off to adjoining farmland. For example, how does this policy relate to policies S 3.1 and S 3.5 that apparently govern runoff standards County-wide?

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
<p>conditions are met:</p> <ul style="list-style-type: none"> a. Residential uses are allowed only on parcels of 40 acres or more; b. A drainage management plan to mitigate run-off to adjoining farmlands must be prepared for the entire Special Treatment Area; c. One caretaker unit per 10 acres may be allowed; and d. That no uses other than agriculture, agricultural support services, labor contracting businesses, and agricultural equipment rental and maintenance businesses will be allowed on subdivided parcels. <p>(see also <i>Policies GS-1.2 and CSV-1.4</i>)</p>	
<p>CSV-5.1 Development shall be designed to maintain groundwater recharge capabilities on the property. To protect and maintain areas for groundwater recharge, preservation of riparian habitats, and flood flow capacity, the main channels of the Arroyo Seco River and the Salinas River shall not be encroached on by development.</p>	<ul style="list-style-type: none"> • It is not clear how this policy relates to erosion and sedimentation. Please explain.
<p>CSV-5.2 Recreation and visitor-serving commercial uses shall only be allowed if it can be proven that:</p> <ul style="list-style-type: none"> a. areas identified by the Water Resources Agency as prime-groundwater recharge areas can be preserved and protected from sources of pollution as determined by the Director of Environmental Health and the Water Resources Agency; b. proposed development can be phased to ensure that existing groundwater supplies are not committed beyond their safe, long-term yields where such yields can be determined. c. floodways associated with the main channels of either the Arroyo Seco River or the Salinas River will not be encroached on by development because of the necessity to protect and maintain these areas for groundwater recharge, preservation of riparian habitats, and flood flow capacity as determined by the Water Resources Agency. d. the proposed development meets both water quality and quantity standards expressed in Title 22 of the California Code of Regulations and <i>Title 15.04</i> of the Monterey County Code as determined by the Director of Environmental Health; e. the proposed development meets the minimum standards of the Regional Water Quality Control Basin Plan when septic systems are proposed and also will not adversely affect groundwater quality, as determined by the Director of Environmental Health; and f. the proposed development will not generate levels of runoff which will either cause erosion or adversely affect 	<ul style="list-style-type: none"> • No criteria are provided for “levels of runoff which will either cause erosion or adversely affect surface water resources”

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>surface water resources as determined by the Water Resources Agency.</p>	
<p>CSV-5.3 The Spence/Potter Road area, including the Special Treatment Area described in <i>Policy CSV-1.3</i> is designated a study area for alternative land uses to support the agricultural industry. Prior to new development, other than those consistent with the underlying land use designation, in the Spence/Potter Road study area, the following must be completed:</p> <ul style="list-style-type: none"> a. A cumulative impact analysis of industrial build-out of the study area, including road capacity, highway access, drainage, and viewshed impacts from Highway 101; b. Recommended changes to the Special Treatment Area boundaries or allowable uses within the Special Treatment Area, as necessary, to address the impacts identified; c. A drainage management plan to mitigate runoff to adjoining farmlands for the entire study area; d. Amendments to the General Plan, as necessary, and ordinance amendments to address revised landscaping and screening standards; and e. An implementation plan to fund and construct the identified infrastructure improvements. <p>The studies and plans identified in this policy may be paid for by the County or interested property owners.</p>	<ul style="list-style-type: none"> • No performance standards or exemplary measures are provided for “a drainage management plan to mitigate runoff to adjoining farmlands for the entire study area”
<p>CV-1.20 Design (“D”) and site control (“S”) overlay district designations shall be applied to the Carmel Valley area. Design review for all new development throughout the Valley, including proposals for existing lots of record, utilities, heavy commercial and visitor accommodations but excluding minor additions to existing development where those changes are not conspicuous from outside of the property shall consider the following guidelines:</p> <ul style="list-style-type: none"> a. Proposed development encourages and furthers the letter and spirit of the Master Plan. b. Development either shall be visually compatible with the character of the valley and immediate surrounding areas or shall enhance the quality of areas that have been degraded by existing development. c. Materials and colors used in construction shall be selected for compatibility with the structural system of the building and with the appearance of the building’s natural and man-made surroundings. d. Structures should be controlled in height and bulk in order to retain an appropriate scale. e. Development, including road cuts as well as structures, should be located in a manner that minimizes disruption of views from existing homes. f. Minimize erosion and/or modification of landforms. g. Minimize grading through the use of step and pole 	<ul style="list-style-type: none"> • No standards are identified to evaluate whether a proposal will “minimize erosion and/or modification of landforms” • No enforceable mandate is created because minimization of erosion is merely one of many “guidelines” and there is no indication how the guidelines will be weighed

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
foundations.	
CV-2.9 No roads should cross slopes steeper than 30-percent (30%) unless factors of erosion and visible scarring can be mitigated.	<ul style="list-style-type: none"> No standards are provided to evaluate whether “factors of erosion and visible scarring can be mitigated.”
CV-3.4 Alteration of hillsides and natural landforms caused by cutting, filling, grading or vegetation removal shall be minimized through sensitive siting and design of all improvements and maximum feasible restoration including botanically appropriate landscaping. Where cut and fill is unavoidable on steep slopes, disturbed areas shall be revegetated.	<ul style="list-style-type: none"> No criteria are provided for “sensitive siting and design of all improvements and maximum feasible restoration.” The policy does not create an enforceable mandate because there are no criteria for “unavoidable” cut and fill (unavoidable relative to what objectives?) and “maximum feasible restoration” (feasible within what constraints?)
CV-3.8 Development shall be sited to protect riparian vegetation, minimize erosion, and preserve the visual aspects of the Carmel River. In places where the riparian vegetation no longer exists, it should be planted to a width of 150 feet from the river bank, or the face of adjacent bluffs, whichever is less. Density may be transferred from this area to other areas within a lot.	<ul style="list-style-type: none"> No standard is provided to determine whether a project will “minimize erosion.”
CV-3.9 Willow cover along the banks and bed of the Carmel River shall be maintained in a natural state for erosion control. Constructing levees, altering the course of the river, or dredging the river shall only be allowed by permit from the Monterey Peninsula Water Management District or Monterey County.	<ul style="list-style-type: none"> This policy should be implemented County-wide, but it should not be limited to the Carmel River. The DEIR should explain why this policy should not be applied globally, and specifically justify a recommendation not to apply it to any specific area with reference to information about the watershed’s ability to absorb additional erosion and sedimentation. The criteria for “natural state” is difficult to define, and possibly undesired. Willows often occur in response to excessive sedimentation and may indicate problems that require mitigation.
<p>CV-4.1 In order to reduce potential erosion or rapid runoff:</p> <p style="padding-left: 20px;">a. The amount of land cleared at any one time shall be limited to the area that can be developed during one construction season.</p> <p style="padding-left: 20px;">b. Motorized vehicles shall be prohibited on the banks or in the bed of the Carmel River, except by permit from the Water Management District or Monterey County.</p> <p style="padding-left: 20px;">c. Native vegetative cover must be maintained on areas that have the following combination of soils and slope:</p> <ol style="list-style-type: none"> 1. Santa Lucia shaly clay loam, 30-50% slope (SfF) 2. Santa Lucia-Reliz Association, 30-75% slope (Sg) 3. Cieneba fine gravelly sandy loam, 30-70% slope (CcG) 4. San Andreas fine sandy loam, 30-75% slope (ScG) 5. Sheridan coarse sandy loam, 30-75% slope 	<ul style="list-style-type: none"> Sections “a” and “b” of this policy should be implemented County-wide, and should not be limited to the Carmel River. The DEIR should explain why sections “a” and “b” this policy should not be applied globally, and specifically justify a recommendation not to apply it to any specific area with reference to information about the watershed’s ability to absorb additional erosion and sedimentation. The DEIR should explain why native vegetative cover should not be maintained on slopes over 25%. Requirements for maintenance of native vegetative cover should be developed for all other areas of the County.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
(SoG)	
6. Junipero-Sur complex, 50-85% slope (Jc)	
CV-4.2 A comprehensive drainage maintenance program should be established by either sub-basins or valley-wide watershed zones.	<ul style="list-style-type: none"> • The policy calls for future action that is not constrained by any performance standard – what would constitute an adequate and comprehensive program? • No responsibility for implementing the policy is identified, so there is no enforceable mandate. • No deadline for developing the program is identified and no interim measures are proposed.
CV-6.2 Gardens, orchards, row crops, grazing animals, farm equipment, and farm buildings are part of the heritage and the character of Carmel Valley. This rural agricultural nature should be encouraged, except on slopes of 25-percent (25%) or greater or where it would require the conversion or extensive removal of existing native vegetation.	<ul style="list-style-type: none"> • The DEIR must explain why slope development for agriculture will not cause erosion and sedimentation impacts on slopes <i>less than 25%</i>. • The DEIR must explain why the 25% slope limitation is encouraged in Carmel Valley but not County-wide. • The policy does not create an enforceable mandate because it merely states that conversion and extensive vegetation removal on slopes over 25% should not be encouraged. Nothing in the policy actually bars such slope development.
Fort Ord Master Plan Soils and Geology Policy A-1 In the absence of more detailed site-specific information, the County shall use the Natural Resources Conservation Service’s Soil Survey of Monterey County in determining the suitability of soil for particular land uses.	<ul style="list-style-type: none"> • The DEIR should explain why this policy is not proposed for application throughout the County.
Fort Ord Master Plan Soils and Geology Policy A-2 The County shall require developers to prepare and implement erosion control and landscape plans for development projects. Each plan shall be prepared by a registered civil engineer or certified professional in the field of erosion and sediment control and shall be subject to the approval of the Public Works Director for the County of Monterey. The erosion component of the plan must at least meet the requirements of Storm Water Pollution Prevention Plans (SWPPPs) required by the California State Water Resources Control Board.	<ul style="list-style-type: none"> • The DEIR should explain why this policy is not proposed for application throughout the County.
Fort Ord Master Plan Soils and Geology Policy A-3 Through site monitoring, the County shall ensure that all measures included in the developer’s erosion control and landscape plans are properly implemented.	<ul style="list-style-type: none"> • The DEIR should explain why this policy is not proposed for application throughout the County.
Fort Ord Master Plan Soils and Geology Policy A-4 The County shall continue to enforce the Uniform Building Code to minimize erosion and slope instability problems.	<ul style="list-style-type: none"> • The DEIR should explain why this policy is not proposed for application throughout the County.
Fort Ord Master Plan Soils and Geology Policy A-5 Before issuing a grading permit, the County shall require that geotechnical reports be prepared for developments proposed on soils that have limitations concerning slope and soils that have piping, low-strength, and shrink-swell potential. The County shall require that engineering and	<ul style="list-style-type: none"> • No criteria are provided to define “limitations concerning slope and soils that have piping, low-strength, and shrink-swell potential.” These terms must be defined so that the policy can be objectively enforced. • The DEIR should explain why this policy,

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

<p>design techniques be recommended and implemented to address these limitations.</p>	<p>revised to define critical terms, is not proposed for application throughout the County.</p>
<p>Fort Ord Master Plan Soils and Geology Policy A-6 The County shall require that development of lands having a prevailing slope above 25% include implementation of adequate erosion control measures.</p>	<ul style="list-style-type: none"> • No performance standards or exemplary measures are identified for “adequate erosion control measures.” • The DEIR must explain why development of slopes <i>under</i> 25% do not also require adequate erosion control plans.
<p>Fort Ord Soils and Geology Program A-6.2 The County shall designate areas with extreme slope limitations for open space or similar use if adequate erosion control measures and engineering and design techniques cannot be implemented.</p>	<ul style="list-style-type: none"> • The DEIR must explain why the County should not have already designated such areas. • No criteria for “extreme slope limitations” are provided. • No criteria or exemplary measures for “adequate erosion control measures and engineering and design techniques” are provided.
<p>Fort Ord Master Plan Soils and Geology Policy B-1 The County shall identify areas of highly valuable mineral resources within the former Fort Ord, based on the State of California Division of Mines and Geology’s mineral resource “classification-designation” system, and provide for the protection of these areas.</p>	<ul style="list-style-type: none"> • This policy does not relate to erosion and sedimentation.
<p>Fort Ord Master Plan Soils and Geology Policy B-3 Prior to granting permits for operation, the County shall require that mining and reclamation plans be prepared for all proposed mineral extraction operations.</p>	<ul style="list-style-type: none"> • This policy contains no standards or exemplary measures for adequate mining and reclamation plans. • The policy does not add anything to the existing mandate under SMARA.
<p>Fort Ord Master Plan Hydrology and Water Quality Policy A-1 At the project approval stage, the County shall require new development to demonstrate that all measures will be taken to ensure that runoff is minimized and infiltration maximized in groundwater recharge areas.</p>	<ul style="list-style-type: none"> • No standards are provided for determining if “is minimized and infiltration maximized.” • The DEIR must make clear whether this policy supercedes or supplements Policies S 3.5 (runoff performance standards are to be determined) and S 3.1 (related to runoff performance standards, but not containing a clear constraint). Why is a distinct policy specified for this area of the County? How will it differ from the global standards under S 3.1 and 3.5?
<p>Fort Ord Master Plan Hydrology and Water Quality Policies A-2 To avoid adversely affecting groundwater recharge of surface water users in downstream areas, the County shall ensure that land use and drainage facilities on newly developed lands do not decrease the magnitude and duration of flows less than the mean annual flow in creeks downstream of the development sites.</p>	<ul style="list-style-type: none"> • The policy sounds like a performance standard, but it is written backward. It should require that land use and drainage facilities on newly developed lands do not <i>increase</i> the magnitude and duration of flows <i>more</i> than the mean annual flow in creeks downstream of the development sites. • No procedure for implementing this policy is specified. Who is responsible for implementation and in what context? Will each development project be required to provide a hydrological study to demonstrate compliance? If not, why not? If not, when will studies ever be required? Will the policy apply to ministerially permitted activities? Will the policy apply to

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
	<p>conversion of previously uncultivated agricultural land and routine and ongoing agricultural activities?</p> <ul style="list-style-type: none"> The DEIR must explain why this policy, revised to address the above concerns, should not be applied County-wide.
<p>Fort Ord Hydrology and Water Quality Program C-1.1 The County shall comply with the nonpoint pollution control plan developed by the California Coastal Commission and the State Water Resources Control Board (SWRCB), pursuant to Section 6217 of the Federal Coastal Zone Management Act Reauthorization Amendments of 1990, if any stormwater is discharged into the ocean.</p>	<ul style="list-style-type: none"> This policy does not create any constraints on development that were not already mandated.
<p>Fort Ord Hydrology and Water Quality Program C-1.2 The County shall comply with the General Industrial Storm Water Permit adopted by the SWRCB in November 1991 that requires all storm drain outfalls classified as industrial to apply for a permit for discharge.</p>	<ul style="list-style-type: none"> This policy does not create any constraints on development that were not already mandated.
<p>Fort Ord Hydrology and Water Quality Program C-1.5 The County shall adopt and enforce a hazardous substance control ordinance that requires that hazardous substance control plans be prepared and implemented for construction activities involving the handling, storing, transport, or disposal of hazardous waste materials.</p>	<ul style="list-style-type: none"> Development of any substantive controls is deferred but no criteria define the subject matter of this ordinance and no performance standards or exemplary measures are identified. This policy does not appear to relate to erosion and sedimentation.
<p>Fort Ord Hydrology and Water Quality Policy C-4 The County shall prevent siltation of waterways, to the extent feasible.</p>	<ul style="list-style-type: none"> No criteria for “siltation” is provided. How much sediment deposition would constitute “siltation?” The critical term, “to the extent feasible,” is not defined. Do the constraints on feasibility include just technological constraints are economic constraints included? How would this policy operate if a developer sought to implement a project that would cause “siltation,” but claimed that control measures would render the project economically infeasible? No plan for implementing this policy is provided. What measures will the County take? What measures would the County require others to take? In what context? How does the policy apply to activities that require only a ministerial permit or no permit at all?
<p>Fort Ord Hydrology and Water Quality Program C-4.1 The County, in consultation with the Natural Resources Conservation Service, shall develop a program that will provide, to owners of property near waterways and other appropriate entities, information concerning vegetation preservation and other best management practices that would prevent siltation of waterways in or downstream of the former Fort Ord.</p>	<ul style="list-style-type: none"> Development of information and BMPs is deferred without performance standards or exemplary measures. Provision of information does not create any enforceable mandate. There is no provision to make any of the to-be-developed BMPs mandatory.
<p>Fort Ord Biological Resources Policy A-4 The County</p>	<ul style="list-style-type: none"> “Degradation” is entirely unspecified.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>shall protect the habitat corridor in the RV park/youth camp parcel from degradation due to the development in, or use of, adjacent parcels.</p>	<ul style="list-style-type: none"> • What authority does the County have to regulate <i>use</i> of adjacent parcels?
<p>Fort Ord Biological Resources Policy A-5 The County shall ensure that the habitat management areas are protected from degradation due to development in, or use of adjacent parcels within its jurisdiction.</p>	<ul style="list-style-type: none"> • “Degradation” is entirely unspecified. • What authority does the County have to regulate <i>use</i> of adjacent parcels?
<p>Fort Ord Biological Resources Program A-5.3 The County shall require stormwater drainage plans for all developments adjacent to the habitat management areas to incorporate measures for minimizing the potential for erosion in the habitat management areas due to stormwater runoff.</p>	<ul style="list-style-type: none"> • No performance standards or exemplary measures are identified. • No definition of “minimizing the potential for erosion” is provided. Minimize within what constraints – economic or technological?
<p>GMP-4.1 Redwood, pine, and oak forest and chaparral habitat on land exceeding 25 percent slope should remain undisturbed due to potential erosion impacts and loss of visual amenities.</p>	<ul style="list-style-type: none"> • How does this policy related to the County-wide Policies OS 3.5 and 3.6, which would permit development on slopes over 25%? What policy governs in the GMP area? • The DEIR must explain why limitation of slope development to 25% is not warranted County-wide.
<p>GS-1.2 <u>Special Treatment Area: Spence/Potter/Encinal Road</u> – Parcel generally located south of Potter Road and North of Spence Road between Old Stage Road, Highway 101, plus parcels along the Encinal Road extension, excluding large properties under cultivation located between Spence and Potter Roads, shall be designated a "Special Treatment Area" to permit on-site soil dependent agricultural operations such as greenhouses. Subdivision of land in this area shall be approved only under the following conditions:</p> <ol style="list-style-type: none"> a. Minimum parcel size in this area shall be 10 acres. b. Residential uses are allowed only on parcels of 40 acres or more; c. A Drainage Management Plan to mitigate run-off to adjoining farmlands must be prepared for the entire Special Treatment Area; d. One caretaker unit per 10 acres is allowed; e. No uses other than agriculture, agricultural support services, labor contracting businesses, and agricultural equipment rental and maintenance businesses will be allowed on subdivided parcels; f. Residential development rights on parcels formed through subdivision approval shall be dedicated by means of an agricultural conservation easement to the County or a qualified organization such as that specified in Section 501(c)(3) of the Internal Revenue Code; g. Pertinent structures such as processing, packaging, supply, and boiler sheds shall have concrete foundations no thicker than four inches and may be no larger than 4,000 square feet; and 	<ul style="list-style-type: none"> • This policy has no actual substantive content related to standards for erosion and sedimentation control because the drainage management plan is not defined and because there are no standards for acceptable run-off to adjoining farmland. For example, how does this policy relate to policies S 3.1 and S 3.5 that apparently govern runoff standards County-wide?

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT

<p>h. One mobile home only may be allowed for a caretaker or security personnel and not for residential purposes.</p> <p>(see also <i>Policies CSV-1.3 and GS-1.7</i>)</p>	
<p>GS-3.1 All vegetation on land exceeding 25 percent slope, particularly chaparral and broad leaf evergreen, should remain undisturbed to minimize erosion and retain important visual amenities.</p>	<ul style="list-style-type: none"> • How does this policy related to the County-wide Policies OS 3.5 and 3.6, which would permit development on slopes over 25%? What policy governs in the GMP area? Will development, land cultivation, and/or routine and ongoing agricultural activities be permitted on land sloped over 25%? • If this policy does in fact bar development, land cultivation, and routine and ongoing agricultural activities, the DEIR must explain why limitation of slope development to 25% is not warranted County-wide.
<p>NC-1.3 Large acreages in higher elevations and on steeper slopes should be preserved and enhanced for grazing, where grazing is found to be a viable use.</p>	<ul style="list-style-type: none"> • Both upland and riparian grazing may in fact contribute to soil erosion, as is evidence by the identification of grazing activity as a factor responsible for sedimentation to the Pajaro River in the list of 303d impaired water bodies. DEIR, p. 4.3-56. the DEIR must explain how this policy would not in fact aggravate sedimentation. • No criteria are provided to identify “large acreages” or “higher elevations” or to determine whether grazing is a “viable use.” • This policy creates no enforceable mandate since it does not actually constrain future development. As written, the County could not actually bar development under the policy because it lacks any objective standards.
<p>NC-5.3 Cooperative soil conservation, water quality protection, and resource restoration programs within watershed basins shared with neighboring counties shall be pursued.</p>	<ul style="list-style-type: none"> • No responsibility for “pursuing” these programs is assigned. No resources are identified that would make pursuing these programs feasible. No content for these programs is specified.
<p>SC-5.2 Cooperative soil conservation, water quality protection, and resource restoration programs within watershed basins shared with neighboring counties shall be pursued.</p>	<ul style="list-style-type: none"> • No responsibility for “pursuing” these programs is assigned. No resources are identified that would make pursuing these programs feasible. No content for these programs is specified.
<p>SC-5.3 New development may not encroach on the main channels and associated floodways of the Nacimiento, San Antonio, and Salinas Rivers in order to conserve groundwater recharge, preserve riparian habitats, and protect flood flow capacity.</p>	<ul style="list-style-type: none"> • The extent of this bar on encroachment to “associated floodways” is not specified. E.g., does this include the floodways associated with 10 year or 100 year floods? • How will this policy be coordinated if at all with the proposed Mitigation Measures Bio-2 calling for a stream setback ordinance?
<p>SC-5.4 Stormwater facilities in new urban development shall be designed to mitigate impacts on agricultural lands located downstream.</p>	<ul style="list-style-type: none"> • No performance standards or exemplary measures are identified, so there is no basis to conclude what would constitute adequate

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT EROSION AND SEDIMENTATION IMPACTS WILL BE LESS THAN SIGNIFICANT	
	<p>mitigation of downstream impacts.</p> <ul style="list-style-type: none"> • How is this policy related, if at all, to policies purporting to control runoff volumes?
<p>T-3.6 Large acreages in higher elevations and on steeper slopes shall be preserved and enhanced for grazing, where grazing is found to be a viable use.</p>	<ul style="list-style-type: none"> • Both upland and riparian grazing may in fact contribute to soil erosion, as is evidence by the identification of grazing activity as a factor responsible for sedimentation to the Pajaro River in the list of 303d impaired water bodies. DEIR, p. 4.3-56. the DEIR must explain how this policy would not in fact aggravate sedimentation. • No criteria are provided to identify “large acreages” or “higher elevations” or to determine whether grazing is a “viable use.” • This policy creates no enforceable mandate since it does not actually constrain future development. As written, the County could not actually bar development under the policy because it lacks any objective standards.
<p>T-4.1 Land uses and practices that may contribute to significant increases of siltation, erosion, and flooding in the Toro Area shall be prohibited.</p>	<ul style="list-style-type: none"> • No performance standards are identified for “significant increases of siltation, erosion, and flooding.” • No provision is made to address cumulative impacts.

Finally, Policy AG 5.2 states that “policies and programs to protect and enhance surface water and groundwater shall be promoted, but shall not be inconsistent with State and federal regulations.” This Agriculture Element policy is intended to support the goal of ensuring compatibility between agricultural use and environmental resources. As written, the policy appears to impose a limitation on policies and programs to protect and enhance surface water and groundwater. If the purpose of the policy is to limit water protection policies and programs to the provisions of State and federal regulations, it is an apparent abdication of the County’s own police power to protect its resource base. Please explain what constraint is meant to be placed on such policies and programs by the requirement that they not be inconsistent with State and federal regulations. Please also explain how this policy would be implemented and in what context.

IV. WATER ISSUES

A. Water Supplies Not Demonstrated for Development In The Salinas Basin

SVWP EXPANSION INFEASIBLE IN LIGHT OF UNMITIGATED IMPACTS TO STEELHEAD, LIMITATION OF NOAA BIOLOGICAL OPINION, AND COST: The DEIR relies on the assumption that the Salinas Valley Water Project (SVWP) can be expanded from the 9,700 acre-feet per year (AFY) permitted by NOAA. This assumption is used to support findings that impacts on water supply in the Salinas Valley would be less than significant through 2030, that overdraft would be reversed, and that seawater intrusion would be halted. (DEIR, pp. 4.3-127, 130, 153, 162). As discussed below, the assumption that additional water can be diverted from the Salinas River through the SVWP underlies the DEIR's conclusions that sufficient water will be available for several community areas and other development. The environmental consequences of increased diversions to steelhead have not been addressed. As discussed below, the comments by TRA Environmental and the limitation of NOAA's Biological Opinion to a diversion rate of 9,700 AFY provide substantial evidence that these consequences will be significant.

At page 4.3-34, the DEIR claims, "Operation of the SVWP will divert an average of 9,700 AF and up to 12,800 AF of additional Salinas River water (available from re-operation of upstream reservoirs) to the CSIP during the peak irrigation season. This will provide a total yearly average of 12,000 AF and up to 25,000 AF to the CISP for injection into the groundwater aquifer (Monterey County Water Resources Agency 2003). Modeling undertaken by the MCWRA for the SVWP indicates that by 2030 seawater intrusion will be reduced to 2,300 AF with surface water deliveries only to the CISP. However, if an additional 14,300 AF of SVWP water is delivered outside the CSIP, modeling indicates that seawater intrusion would be halted (Monterey County Water Resources Agency 2001a)."

The DEIR's discussion relies on information contained in the 2001 SVWP DEIR.⁴ In particular, the DEIR relies on the preliminary, conceptual discussion of a "Potential Expanded Delivery System." SVWP DEIR, section 3.2.4. That section assumes, with no environmental analysis, that "diversion from the Salinas River would be increased from an average of 9,700 to 18,300 AFY" in order to provide additional water for delivery outside the CSIP delivery area. In addition, that section states that the delivery system expansion would cost \$40.8 million.

It is clear that the "expanded delivery system" is not just an unfunded \$40.8 million pipeline project, but also an increase in diversions from the Salinas River. This increased diversion would clearly affect steelhead and other aquatic resources, yet the

⁴ The reference to Monterey County Water Resources Agency 2003 is puzzling. The referenced document is 2003 floodplain management plan that does not even mention the SVWP or the CISP.

DEIR presents no evidence that the SVWP diversions can be increased to 18,300 AFY with no environmental consequences.

The only discussion of environmental consequences related to the proposed “Expanded Delivery System” is provided in the discussion of potential impacts associated with water system infrastructure in section WR-5. This cursory discussion incorrectly claims that 1) the SVWP EIR has already disclosed all of the impacts of the SVWP, and 2) that the impacts related to the “Expanded Delivery System” would be primarily related to pipeline construction:

“The *impacts of the SVWP have been disclosed and mitigated* with adoption of the EIR/EIS prepared for that project by the MCWRA in 2002. As noted above, there will be certain significant and unavoidable impacts. Extension of distribution lines from SVWP supplies to new residential, commercial, industrial, and agricultural uses will also result in environmental impacts *due primarily to construction.*” DEIR, p. 4.3-143, emphasis added.

It is clear that the SVWP EIR did *not* evaluate the environmental effects of the Expanded Delivery System – either the effects of the additional pipeline project or the effects of additional diversions. The entire discussion of the Expanded Delivery System in the SVWP DEIR is as follows:

“Potential Expanded Delivery System

While the SVIGSM indicates that seawater intrusion will be halted by the project (in conjunction with the CSIP deliveries) based on current (1995) demands, with a projected increase in water demands (primarily associated with urban development) in the north valley area in the future, seawater intrusion may not be fully halted based on year 2030 projections.

For the year 2030, modeling indicates seawater intrusion may be 2,200 AFY with surface water deliveries only to the CSIP area. This is substantially less than the 10,500 AFY of intrusion that would occur without the project. It is important to note that, given the dynamics of the hydrologic system, the uncertainties of whether future demands will occur as projected, and the limitations of any modeling effort, it is not known if this level of seawater intrusion will occur. The project could potentially fully halt intrusion in 2030 with deliveries only within the CSIP system. As discussed in Section 3.2.7, a monitoring program will be implemented to determine the success of the project.

Given that the SVIGSM is used by MCWRA as a planning tool, it is prudent to consider the potential that additional deliveries may be needed in 2030. However, given the uncertainties expressed above, it is **only appropriate to conceptually consider and environmentally evaluate potential future delivery systems. If needed in the future, more precise planning and environmental analysis will be required.** However, SVIGSM modeling does demonstrate that delivery of an

average 18,300 AFY of SVWP water in combination with recycled water to CSIP and agricultural uses outside of the CSIP area would fully halt seawater intrusion.

Diversion from the Salinas River would be increased from an average of 9,700 AFY to 18,300 AFY. Of this total diversion, 14,300 AFY would be delivered outside the CSIP delivery area. CSIP deliveries would shift in their composition. An average of 4,000 AFY would be provided by Salinas River diversions. Recycled water deliveries would increase to 16,000 AFY. [2] Supplemental pumping of groundwater wells up to 2,800 AFY would provide the balance of water needed to meet water use demands (approximately 23,000 AFY) in the CSIP area.

In order to deliver the additional water to areas outside of CSIP, a pipeline parallel to the existing CSIP pipeline would need to be constructed from the diversion dam to a new distribution area adjacent to the CSIP distribution area. For purposes of analysis, it is assumed that deliveries would occur to the southeast of the CSIP service area, as this is the area nearest the diversion dam that is not within the CSIP area. A 42-inch diameter new pipeline would be required, along with a distribution system to deliver diverted water to agricultural users in the expanded service area. A general route of a delivery pipeline is depicted on Figure 3-3. Specific alignment of the expanded distribution system would be developed to deliver agricultural water to turnouts for each affected property.

[] Construction & Cost

Use of the existing CSIP distribution pipeline would not require construction, and no additional expense is anticipated.

If expanded delivery is required in the future, costs would be determined at the time it is needed. For purposes of this analysis, it is assumed that 5 miles of transmission pipeline would be needed, at an estimated cost on the order of \$10.6 million. A distribution system from the transmission line would also be needed, at an estimated cost of \$30.2 million. The total estimated cost of the expanded distribution system is \$40.8 million. Section 3.2.4.” SVWP DEIR, section 3.2.4, emphasis added.

As noted, the SVWP EIR’s discussion is merely “conceptual” and does not in fact consider any environmental effects of either the increased diversions or the additional pipeline construction. The 2007 General Plan DEIR admits that “the pipeline and its impacts are discussed in concept in the SVWP EIR/EIS, but it has not been planned in detail.” DEIR, p. 4.3-38. However, nowhere in the DEIR does the County acknowledge that increased diversions from the Salinas River would be required and that these diversions may cause significant impacts to steelhead.

In 2007, NOAA issued its Final Biological Opinion for the SVWP related to effects on the endangered steelhead. The Biological Opinion is expressly limited to the

assumption that only 9,700 AFY will be diverted, and explicitly provides for reinitiation of consultation if diversion is increased beyond this limit. National Marine Fisheries Service, Southwest Region, Biological Opinion, SWR/2003/2080 (Admin. No.: 151422SWR2003SR8711), June 21, 2007, p. 66, Exhibit 1. The Biological Opinion makes it clear that the flow prescription based on 9,700 AFY was intended to minimize project impacts and benefit steelhead:

“The SRDF will operate seasonally from April 1 through October 31, if enough surface water is available. As currently proposed, maximum rate of diversion will be 85 cubic feet per second (cfs). The diversion facility will be built to support future expansion to a diversion rate of 135 cfs. *Future diversion rates above 85 cfs were not considered by NMFS in this opinion, because the flow prescription to minimize project impacts and benefit steelhead was jointly developed by MCWRA and NMFS based on an assumed maximum diversion rate of 85 cfs. With this assumption, the average diversion of the SRDF will be about 9,700 AF per year (AFY).*” *Id.*, p. 8, emphasis added, Exhibit 1.

Increasing diversions to support the Expanded Distribution System in addition to the 9,700 AF NOAA has permitted would require changes to the river flow regime that is supposed to protect steelhead and would require NOAA to change the project’s permit. The DEIR provides no evidence that protection of steelhead is feasible if diversions from the Salinas River are doubled. As the California Supreme Court explained in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430-431, an EIR cannot ignore environmental problems or simply assume solutions. It must actually evaluate the impacts of providing water supply. Yet the DEIR here has simply failed to discuss the impacts to steelhead from increased diversions from the Salinas River. The DEIR must evaluate this impact since it assumes that these diversions will be available to support continued growth.

The express limitation of the Biological Opinion to diversions of 9,700 AFY evidences the potential for increased diversions to harm steelhead. Please explain on what basis the DEIR has concluded that, despite the NOAA limitation, additional supplies will be available from the SVWP without consequences to steelhead.

Furthermore, comments provided by TRA Environmental demonstrate that additional diversions would in fact have a significant impact on adult fish migration and to smolt out-migration.

Finally, mitigation must be feasible. In light of the difficulty funding the existing \$16 million SVWP, it appears unlikely that an additional \$40.8 million in funding could be provided for the expansion. Please explain on what basis the DEIR has determined it would be feasible to fund the \$40.8 million pipeline expansion that would be required. In particular, how would the cost be allocated to beneficiaries?

In light of the limitation imposed by NOAA on yields from the SVWP, the expert evidence that increased diversions would cause significant impacts to steelhead, and the apparent financial infeasibility of constructing the proposed Expanded Distribution

System for the SVWP, the DEIR's assumption that additional water supplies are available is not justified. For these reasons, the DEIR must be revised to acknowledge that water supply impacts within the Salinas River basin are significant and to propose all feasible mitigation.

NO EVIDENCE THAT RECYCLED WATER WILL BE AVAILABLE TO COMPLETE THE SVWP EXPANDED DELIVERY: In its discussion of the expanded delivery system, the SVWP EIR assumes that the entire capacity of the Monterey County Water Recycling Projects at 2030 (15,900 AFY) will be dedicated to the SVWP. However, the full amount may not be available for this purpose. The DEIR points out on page 4.3-46, "As constraints on local water supply increase, the use of treated wastewater (i.e. recycled water) and other subpotable supplies becomes a more significant component of the total water supply picture." And, as a matter of fact, the Water for Monterey County Coalition (WFMCC), a county-wide stakeholder group attempting to develop regional solutions to water supply problems, has targeted up to 5,000 acre-feet of recycled water per year as part of its plan. WFMCC, Water for Monterey County Program Elements, Exhibit 2.⁵ Please explain on what basis the DEIR assumes that sufficient recycled water will be available to implement the plan to expand SVWP deliveries.

Ironically, the DEIR identifies the WFMCC proposal as a possible alternative solution to the Coastal Water Project for the shortage of water for the Monterey Peninsula. DEIR, p. 4.3-128. In addition to assuming the availability of 5,000 AFY of recycled water, the WFMCC proposal includes an additional 5,000 AFY in diversions from the Salinas River, with no apparent consideration of the impacts to steelhead or of the SVWP plan to divert an additional 8,300 AFY from the Salinas River to address saltwater intrusion in the Salinas Valley basin. The WFMCC proposal also includes pumping 6,000 AFY of Salinas Basin groundwater from "additional wells to tap highest quality and lowest cost resource," with no apparent consideration of the effects on saltwater intrusion and overdrafting, and with no apparent consideration of the prohibition against exporting any groundwater for any purpose from the Salinas River Groundwater Basin. *See* Monterey County Water Resources Agency Act, 1990 Stats. 1159, 1991 Stats. 1130, 1993 Stats. 234, and 1994 Stats. 803, Water Code Appendix, Chapter 51, § 21. The DEIR's conclusion regarding the supply sufficiency of the Salinas Valley basin has already assumed that all of the MCWRA recycled water and an additional 8,300 AFY of Salinas River diversions will be used to solve the groundwater overdraft problem in the Salinas River basin, and apparently does not plan for exporting another 5,000 AFY of Salinas Basin groundwater to the Peninsula – although the absence of any comprehensive water balance analysis makes this difficult for the public to determine. It appears that the DEIR's failure to present a complete water balance analysis, discussed in detail below, results in double counting even the speculative future resources. Accordingly, please identify competing proposals for use of recycled water, Salinas River diversions, and Salinas Valley groundwater pumping beyond the level assumed by the DEIR in its evaluation of the sufficiency of the Salinas Valley basin.

⁵ Available at <http://www.waterformontereycounty.org/solution.php>.

Please explain the effects these competing proposals would have on the DEIR's significance conclusions.

CONTINUED OPERATION OF NACIMIENTO AND SAN ANTONIO DAMS:
The DEIR states that dams owned and operated by MCRA control flows of Nacimiento and San Antonio Rivers, the main tributaries to Salinas River. DEIR, 4.3-5. The flow regime is currently managed to maximize recharge and minimize ocean outflow. *Id.* Because clay underlies the river bed north of Chualar, managed outflows only maintain river flow as far north as SR68 bridge. *Id.* Most of the groundwater is used for agriculture. *Id.* Again, both the dams are operated to maximize percolation into the Salinas Valley aquifer. DEIR, p. 4.3-6.

The DEIR relies on the continued operation of these two dams to assure groundwater recharge. It expressly states that groundwater will continue to be available in the Salinas Valley basin to support planned growth under the General Plan without causing overdrafting and saltwater intrusion only by virtue of the continued operation and expansion of the SVWP. DEIR, pp. 4.3-127, 130, 153, 162.

The DEIR does not disclose the effects on steelhead of the continued operation of the two dams. Because the DEIR expressly assumes that Salinas Valley groundwater will be available to support continued growth, it is incumbent on the DEIR to evaluate these effects.

Expert evidence in comments by TRA Environmental demonstrates that continued operation of these dams will have a significant impact to steelhead. These impacts will be caused by loss of spawning and rearing habitat and lack of water for migration and emigration.

Note that there is no evidence that the effect of the continued operation of the two dams on steelhead has in fact been evaluated in other documents. In this connection, note that the NOAA biological opinion expressly disclaims any analysis of this effect:

"We are not analyzing ongoing dam operations and maintenance as a part of the proposed action because they are neither indirect effects nor interrelated or interdependent actions to the proposed action. Most dam operations and maintenance are a part of the environmental baseline to which the effects of the proposed action will be added. As a result, the Incidental Take Statement for this opinion does not exempt any incidental take resulting from those baseline operations. This includes the bulk of the flow released from the Nacimiento and San Antonio dams. One exception is modified operations of these reservoirs to meet the purposes of the proposed action. Those modified operations are considered interrelated with the Corps' proposed action and are considered in the Effects of the Proposed Action section of this opinion." NOAA Biological Opinion, p. 2.

The SVWP EIR, although referenced in the EIR, also does not purport to evaluate the effects of the continued operation of the dams on steelhead. Indeed, there is no evidence in the General Plan DEIR that the continued operation and maintenance of the dams, which were built in 1957 and 1965, have ever been evaluated under the Endangered Species Act and no evidence that the continued operation of the dams is covered by an Incidental Take Permit under section 10 of the ESA or an Incidental Take Statement under section 7 of the ESA. If operation of these dams has not in fact been permitted under the ESA, the EIR must disclose this fact and provide an analysis of the biological impacts of the use of their water supply to support continued growth under the 2007 General Plan.

Furthermore, the NOAA Biological Opinion states at pp. 5-6 that the Salinas River Channel Maintenance Biological Opinion issued to the Corps on July 23, 2003 is in conflict with the NOAA Biological Opinion. The EIR must explain this conflict and how it has been resolved.

Most fundamentally, the EIR must be revised to disclose and discuss the effect on steelhead of the operation of the MCWRA dams on Nacimiento and San Antonio Rivers to provide water for continued growth under the 2007 General Plan.

CASTROVILLE: At page 4.3-117 the DEIR states, "Castroville is in the 180-foot/400-Foot subarea of the Salinas Valley basin, where any additional pumping from the local groundwater would result in further seawater intrusion." This statement is contradicted on page 4.3-118 where the DEIR concludes, "With operation of the SVWP, CSIP, and/or other measures, anticipated withdrawals from the 180-Foot/400-Foot subarea to meet water demands of the Castroville Community Area would avoid further lowering of water levels in the aquifer and further seawater intrusion."

Please explain this contradiction.

Please also explain what "other measures" besides the SVWP and CSIP will meet water demands of the Castroville Community Area. The SVWP is expected to expand the amount of water delivered to Castroville farmers through the CSIP system by 9700 acre-feet annually. However, CSIP water is not potable and is used exclusively for agricultural irrigation. As the DEIR states, "additional pumping from the local groundwater would result in further seawater intrusion," so what is the new source of potable water that will meet new water demands of the Castroville community?

Monterey County voters approved the SVWP in 2001. At page 4.3-9, the DEIR states that the "SVWP is currently underway; construction on the Nacimiento Dam Spillway Modification Component began in April 2008" with a completion date of fall 2009. The rubber dam "component will begin construction after completion of the Nacimiento Dam work." No completion date for the rubber dam, which will increase water deliveries to Castroville farmers, is given. Please explain what measures will be employed to avoid further seawater intrusion until that time.

BORONDA: The DEIR states at page 4.3-118 that increased water pumping in Boronda “would contribute to further seawater intrusion.” The DEIR concludes that this concern is addressed by Cal-Water, the water purveyor for Boronda, which “has already begun shifting production further south and into the 400-foot aquifer (in response to seawater intrusion into the 180-foot aquifer within 1 mile of Cal-Water’s closest well).”

As the DEIR points out on page 4.3-7, “According to the California Department of Water Resources (DWR), the Salinas Valley groundwater basin consists of one large hydrologic unit composed of four subareas (Exhibit 4.3.3).” The DEIR also acknowledges that “barriers to horizontal flow do not separate them and water can move between them (California Department of Water Resources 2004a-d).” Further, the DEIR states that surface recharge in the 180-Foot/400-Foot subarea does not occur. “Instead, recharge is from underflow originating from the Upper Valley and Forebay Subareas and, more recently, from seawater intrusion (California Department of Water Resources 2004b).”

Since the Salinas Basin is one large hydrologic unit and since recharge of the subarea is from underflow originating upstream, please explain how Cal-Water’s moving its wells upstream within the same, interconnected basin will do anything to address seawater intrusion caused by increased pumping in Boronda.

CHUALAR: The DEIR states that although Chualar is situated in a portion of the Salinas Valley groundwater basin, it is “not subject to seawater intrusion” (page 4.3-118). As noted above, the DEIR acknowledges that recharge of the 180-Foot/400-Foot Aquifer occurs through subsurface flow originating upstream. Although Chualar is not yet “subject to seawater intrusion” the DEIR seems to be claiming that increased pumping there has no impact on seawater intrusion. Please justify this conclusion.

Cal-Am supplies Chualar from “one of the company’s six Highway 68 corridor systems, which are managed independently of the larger basin systems.” Please explain how “independent management” of some water within the Salinas Basin leads the DEIR to conclude that increased water demand at Chualar will incur no significant water supply impacts.

FORT ORD: Development at Fort Ord is also constrained by seawater intrusion. The DEIR, on page 4.3-119 describes a number of projects that, if successful, will produce some new water supply for development there. However, the “Fort Ord Reuse Plan identified a need to augment available potable water supply by 2,400 AFY to accommodate future development. This projection assumed the availability of an additional 6,600 AFY under an agreement with MCWRA that includes Fort Ord as a beneficiary of the SVWP. Sources for both the 6,600 AFY and the additional 2,400 AFY remain uncertain, pending approval of Cal-Am’s Coastal Water Project.”

Please explain why, in the instance of Fort Ord development, the 6,600 acre-feet of water to be supplied by the SVWP is characterized as “uncertain” when there is no expressed “uncertainty” that the SVWP will provide sufficient water elsewhere.

SIGNIFICANCE CONCLUSIONS: As noted above, the DEIR relies on the SVWP to provide water for development in community areas within the Salinas Basin. The DEIR also claims that adequate water to meet new water demand for Rural Centers, Affordable Housing Overlays and existing lots of record within the Salinas Basin will all be provided by the SVWP. DEIR, p. 4.3-120. Again, as the DEIR acknowledges at page 4.3-7, the Salinas Basin is one large basin and water flows from one subarea to another. The DEIR also states that the 180-Foot/400-Foot Subarea depends upon subsurface recharge from water upstream.

The DEIR concludes at page 4.3-130, “Within the Salinas Valley, the SVWP will provide sufficient supply to reverse existing overdraft and seawater intrusion problems and to provide water for new development. No new or expanded water entitlements are contemplated to meet demand to 2030, and thus this is considered a less-than-significant water supply impact (see separate discussion below under Impact WR-5 regarding water supply infrastructure).”

The impetus behind the SVWP was to avoid adjudication of the Salinas Basin. Since the basin has not been adjudicated, water from the basin and from the SVWP has not been allocated among water users in the basin. No caps on water use have been imposed for any of the new water uses within the basin, which includes urban growth, wine grape processing, and, as discussed below, agricultural expansion, including expansion onto slopes 25% or greater. The DEIR simply assumes, without any evidence to support the assumption, that these new, unregulated uses will not use more water than the SVWP can provide. Downstream communities within the Salinas Basin north of Chualar must depend upon subsurface recharge for their water. Those communities have no control over the amount of groundwater consumed by uses and communities upstream, nor, absent basin adjudication, can they make any legal claim to protect the subsurface flow they depend upon. Although rate payers at the north end of the Salinas Basin pay the highest fees for the SVWP, the circumstances identified above make the project’s benefits far from certain. This is of particular concern to residents living within the project’s benefit zone who are currently out of water, for example residents in the Granite Ridge area of North Monterey County. Considering this uncertainty, please justify the DEIR’s conclusion that new water demand in the Salinas Basin is considered a less-than-significant water supply impact.

As noted earlier, NOAA has limited SVWP surface diversion to 9,700 acre-feet per year. The entire surface diversion is committed to expanding water delivery to farmers in the Castroville area through the CSIP pipeline. This pipeline, which will deliver non-potable water for agriculture, is the only infrastructure in place to directly deliver benefits of SVWP. The DEIR acknowledged at page 4.3-35 that seawater intrusion would continue at 2,300 acre-feet per year unless “an additional 14,300 AF of SVWP water is delivered outside the CSIP.” For purposes of analysis throughout the Water Resources element, the DEIR assumed the 14,300 acre-feet would be available.

That additional water supplies from the SVWP are at best uncertain, is evident from the DEIR's proposal of Mitigation Measure WR-2, which calls for the County to "pursue expansion of the SVWP by initiating investigations of the capacity for the Salinas River water storage and distribution system to be further expanded." DEIR, p. 4.3-133. If additional water supplies through the SVWP were reasonably certain, it would not be necessary for the County to *initiate investigations* as to whether there is any additional capacity. It is simply inconsistent for the DEIR to state that this water will be available while at the same time calling for an investigation into its availability as a mitigation measure.

We ask that the County revise and recirculate the DEIR to realistically evaluate the water supply for the Salinas Basin.

B. Water Demand In the Salinas Valley Is Understated

The DEIR projects new water demand associated with the 2007 General Plan in Tables 4.3-11 (AWCP demand) and 4.3-9. However, the information in these tables is incomplete and inaccurate. Water demand for wineries is not justified, water demand from non-winery development permitted by the AWCP is omitted, and, most critically, water demand from new agricultural development is omitted even though the DEIR admits that agricultural conversions will substantially increase irrigated lands.

AWCP WINERY PRODUCTION NOT JUSTIFIED: For example, calculation of new water demand for wineries in the AWCP is arbitrary and therefore questionable. Winery Corridor policies allow 40 new artisan wineries producing between 2,000 to 50,000 cases of wine per year and 10 full-scale wineries producing from 50,000 cases to 2,000,000 cases of wine per year.

At page 4.3-120 the DEIR states, "40 artisan wineries will be built by 2030, each averaging a production rate of 25,000 cases per year by that time." By definition an artisan winery can produce up to 50,000 cases per year. There is no data cited or rationale given for the assumption that they will average only *half* this size. The actual water demand for artisan wineries could be 103 acre-feet per year, not merely the 51.6 acre-feet per year that the DEIR assumes. Please provide the data and explain the rationale for this assumption.

Water use estimates for full-scale wineries are equally lacking in data and rationale. "The full-scale wineries will reflect the following numbers and production rates by 2030: 5 producing 75,000 cases per year; 2 producing 175,000 cases per year; and 1 each producing 375,000, 750,000 and 1.5 million cases yearly." Why, specifically, will they "reflect the following numbers?" Potential water use for each full-scale winery is approximately 103 acre-feet per year – or a total for all ten of 1030 acre-feet per year. This is six times more water use than the DEIR's total water demand – slightly less than 173 acre-feet per year for all 10 full-scale wineries. Please provide the data and the rationale for the calculation of water use at the 10 full-scale wineries.

AWCP WATER DEMAND PER UNIT OF PRODUCTION NOT JUSTIFIED: Furthermore, the DEIR relies on the assertion that “a typical winery uses 7 gallons of water to produce one gallon of wine,” citing an October 19, 2005 technical memorandum from West Yost & Associates. West Yost provides no explanation or justification for the 7 gallon figure, which it does not in fact rely upon. West Yost (2005), p. 10. In fact, West Yost independently determined the winery water demand based on vineyard acreages and found it to be “*larger than* the more typical factor of approximately 7 gallons of water demand per gallon of bottled wine.” *Id.* In view of the lack of any foundation for the 7 gallon figure in the West Yost report and the fact that West Yost does not rely on the figure, please explain how it can be justified.

AWCP WATER DEMAND FAILS TO ACCOUNT FOR PROCESSING EVEN THE EXISTING LEVEL OF GRAPE PRODUCTION: According to the DEIR and the Monterey County Vintners and Growers Association, the Monterey County wine industry lacks processing facilities for 70% to 80% of the county’s wine grape harvest. This, they claim, is the motivation behind the winery corridor policies.

According to the DEIR’s assumptions about the scale of the new wineries, all the new wineries (full-scale and artisan) will process a total of 4,350,000 cases of wine annually. DEIR, p. 3.3-120. The average yield of wine per ton of wine grapes is 62.5 cases. Monterey County, Monterey County 21st Century General Plan Update Draft Environmental Impact Report, March 27, 2002, p. 5.2-56, Exhibit 3. Thus, according to the DEIR, in-County wine grape processing during the life of the General Plan will increase by a mere 69,600 tons (4,350,000 cases divided by 62.5 cases per ton).

However, existing grape production is well in excess of 69,600 tons. The 2007 Monterey County Crop Report indicates that Monterey County growers and vintners produced 224,000 tons of wine grapes during 2007. Monterey County Agricultural Commissioner, Monterey County Crop Report 2007, p. 13, Grape Production, Exhibit 4. With a 70% to 80% shortfall in processing capability, this would translate into an *immediate need* for processing facilities to handle between 157,000 and 179,000 tons of grapes grown in Monterey County (9,812,500 cases to 11,187,500 cases). At 16.8 gallons of water per case (DEIR, p. 4.3-120), local processing or Monterey County’s entire 2007 wine grape harvest would immediately boost water use in the Salinas Basin by between 506 acre-feet per year and 577 acre-feet per year.

Furthermore, the 2007 crop report also shows that 3,068 non-bearing acres of grapes have been planted. At maturity, if processed locally, this acreage will further increase winery water use in the Salinas Basin by 56 acre-feet per year.

Thus, just increasing processing capacity to handle 2007 vineyard acreage will increase water demand in the Salinas Basin by between 562 acre-feet per year and 633 acre-feet per year. In light of the stated purpose of the AWCP to provide local winery capacity sufficient to accommodate local grape production, please explain why the DEIR analysis estimates that by 2030 wine processing will not increase enough to handle even the 2007 wine grape production. In particular, please explain why the DEIR projected

that the 40 artisan wineries would be built at only half their allowable capacity and why the DEIR projected that the full-scale wineries would not fully accommodate the rest of the local grape production, in light of what vintners have characterized as pent-up demand for local processing of 70% to 80% of the County's harvest.

DEIR OMITTS AWCP WATER DEMAND FOR PERMITTED NON-WINERY DEVELOPMENT: The DEIR also admits on page 4.3-121, "This estimate does not include other uses allowable in the AWCP. They would add to the demand, but would have less demand than the wineries." Please explain this conclusion given the fact that no analysis was conducted to determine water demands of those other allowable uses. At page 4.2-19 the DEIR states, "The potential impacts of any future restaurants, inns, or the business cluster cannot be determined at this time because their sizes, intensities, and locations are unknown." How can the DEIR conclude other allowable uses will have less water demand than wineries when there has been no effort to quantify that demand?

DEIR FAILS TO INCLUDE DEMAND FOR IRRIGATION OF NEW AGRICULTURAL LAND: The DEIR concludes that water use for agriculture will "remain relatively stable, with a small decline." DEIR, p. 4.3-115. Thus, the DEIR includes no new water demand from agriculture in Table 4.3-9.

The DEIR's conclusions regarding agricultural water use were based on the fact that AMBAG did not project an increase in agricultural employment and that the SVWP EIR forecast a slight decline for agricultural water use in the Salinas Valley. DEIR, p. 4.3-114.

However, as noted elsewhere in these comments, there is no evidence that the AMBAG agricultural employment forecast was based on assumptions consistent with the 2007 General Plan, including the assumptions that the County would create substantial incentives for wineries and grape production and that conversion of previously uncultivated land to farmland would continue to add farmland.

The SVWP EIR is internally inconsistent in projecting agricultural water use. It states at page 3-22, Section 3.2.4, "Agricultural needs, which make up a far greater share of water use, are projected to decrease by approximately 51,700 AFY." However, this statistic is contradicted at page 7-5, Section 7.2.1. Here, the SVWP DEIR states that agricultural water use "would result in a net reduction of 60,000 acre-feet per year (AFY) by 2030." The SVWP DEIR states that a 60,000 AFY reduction in agricultural water use would be countered by an increase in urban water use of 40,000 AFY. The projected result would be a reduction in overall water demand in the Salinas Basin of 20,000 AFY (4%). However, if that same demand were calculated using the earlier 51,700 AFY figure, overall demand in the Basin would only decline by 11,700 AFY. The 2007 General Plan DEIR cannot rely on the SVWP EIR without reconciling this inconsistency.

Furthermore, it is clear that the SVWP EIR did not make assumptions about the continuing growth of farming that are consistent with the data and conclusions in the

2007 General Plan DEIR or the facts on the ground through 2007. The SVWP draft EIR states that agricultural land use will remain unchanged:

“Agricultural land uses would shift, with a large increase in relative acreage devoted to vineyards (a 25% increase between 1995 and 2030 was assumed), and a decrease to all other uses (truck crops, field crops, pasture, and orchards). Conversion of agricultural acreage to urban uses is also assumed to occur, but would be generally replaced by land not currently in agricultural use. *Net agricultural acreage would remain effectively unchanged.*” SVWP DEIR, § 7.2.1, emphasis added.

However, as the DEIR points out repeatedly on pages 4.2-6 to 4.2-7 of the Agricultural Resources chapter, despite conversion of agricultural land to urban uses, new land is brought into cultivation to replace it.

Indeed, the 2007 General Plan DEIR projects that at least 450 acres of previously uncultivated land will be converted to agriculture annually. DEIR, pp. 4.9-45, 95. Over the next 22 years, this would add 9,900 acres of irrigated farmland. The DEIR states that only 2,571 acres of existing agricultural land will be converted to urban uses by the 2007 General Plan. DEIR, p. 4.2-11. *Thus, the DEIR projects a net increase of 7,329 acres of irrigated farmland through 2030.* The DEIR’s projection of at least 7,329 acres of new irrigated farmland is simply inconsistent with the assumption in the SVWP DEIR that agricultural acreage would remain unchanged.

It is evident that the SVWP EIR substantially under-predicted vineyard conversion activity based on data that has already been reported. As cited above, the SVWP EIR assumed “a large increase in relative acreage devoted to vineyards,” noting parenthetically that “a 25% increase between 1995 and 2030 was assumed.” In 1995, Monterey County vineyard acreage was 30,483. Monterey County Vintners and Growers Association official website, Monterey Wine Country, Table: Monterey County Premium Wine Grape Production, Exhibit 5.⁶ A 25% increase would produce vineyard acreage totaling 38,104 acres. However, as the 2007 crop report reveals, current vineyard acreage has already reached 42,764. Thus, acreage *in 2007* already exceeded the SVWP EIR projected 2030 vineyard acreage by almost 5,000 acres. And as discussed below, the DEIR projects that agricultural conversions will continue at a rate of at least 450 acres annually; and a more reasonable projection would be at least 820 acres annually. These ongoing conversions after 2007 render the SVWP EIR’s forecast even more out of touch.

The SVWP EIR projected a slight decline in net water use based on the assumption that urban land uses would replace agricultural uses and that lost agricultural land would be replaced by vineyards. However, as discussed above, the SVWP EIR grossly underestimated the amount of new agricultural land conversions. Furthermore, other assumptions have changed since the SVWP EIR was completed and certified. In 2001, Monterey County ordinance prohibits new cultivation on slopes of 25% or greater. “Conversion of uncultivated land to cropland shall not be permitted on slopes over 25%”

⁶ Available at http://www.montereywines.org/wineries_acreage.html.

Monterey County code, § 21.66.030 C-1. Under the 2007 General Plan, this prohibition would be eliminated for slopes of any steepness by 2007 General Plan Policy OS-3.5(2). It states, “The County shall develop and implement an Agricultural Permit process for the conversion for agricultural purposes, of previously uncultivated lands on slopes in excess of 25-percent (25%).” There are 496,432 acres of land with intact natural vegetation designated to permit agriculture (farmland, rural grazing, permanent grazing, or resource conservation) on slopes exceeding 25% in the County. See TNC, Analysis of Slope and Vegetation by Planning Area for Land Permitting Agriculture Under the 2007 Monterey County General Plan, Exhibit B to comments by TRA Environmental, Exhibit 13. The SVWP EIR had no way to evaluate this “bonanza” of potentially cultivated acreage that would be made available by the proposed change in slope development policy that would add thousands of acres of potential farmland to the County. And the DEIR fails to analyze the potential increase in water use resulting from this significant change in slope policy.

The SVWP EIR assumed that new acreage will be devoted exclusively to wine grape production. However, other high-profit crops must also be considered for cultivation on slopes that will become available under the new slope policy – strawberries, for example. According to the 2007 Monterey County Crop Report, in the decade from 1997 to 2007 the value of Monterey County’s strawberry crop almost tripled, galloping from \$209,000,000 to \$605,000,000. As the crop report shows, strawberry acreage continues to expand, as does the acreage for many other high-value crops – citrus, raspberries, walnuts, tomatoes, etc. Many of these crops use much more water than wine grapes. There is no reason to assume wine grapes will be the only crop taking advantage of the new acreage available, especially since the 2007 General Plan policies regarding Routine and Ongoing Agricultural Activities apply to all growers. See Policy AG-3.3, 2007 General Plan, pp. AG-6 to AG-7 in the 2007 General Plan.

In sum, the DEIR must be revised and recirculated to provide a reasonable projection of water demand to support new agriculture in light of the facts that 1) the SVWP EIR, on which the DEIR relies, substantially underestimated agricultural conversions, 2) the SVWP EIR’s assumption of no net change in agricultural land is inconsistent with the 2007 General Plan EIR’s own projection that irrigated farmland will increase by at least 7,329 acres, and 3) the DEIR’s policy changes that create incentives for new vineyards and other agricultural cultivation on sloped land.

How much additional water will be required for the new agricultural land? The DEIR’s projection that 450 acres of new farmland will be converted annually is based on a 25 year period in which one third of the land was converted for vineyards.⁷ DEIR, p. 4.9-63. Thus, accepting the DEIR’s 25-year sample (which, as discussed below, substantially understates the accelerating trend in conversions), 2,443 acres (one third of the net increase of 7,329 acres through 2030) would represent vineyards and 4,886 acres

⁷ The more recent data shows that 40% of conversion acreage is vineyards. However, as discussed below, this data also shows that the actual rate of conversion is 820 acres per year, rather than 450. DEIR, p. 4.9-63. To be consistent with the DEIR’s choice to skew the conversion projection by including 25-years of data, we use the vineyard data for the 25 year period.

(two thirds of the net increase of 7,329 acres) would represent other more water intensive row crops. Conservatively assuming that wine grapes are irrigated at a rate of 1 acre-foot per year and that row crops are irrigated at 2 acre-feet per year, the additional water demand would amount to at least 12,215 acre-feet per year.⁸ The DEIR must be revised to include this 12,215 acre-feet of water demand in Table 4.3-9. Obviously, this demand dominates the 6,123 acre-foot total new demand for non-agricultural purposes through 2030 that the DEIR presents in Table 4.3-9.

Because the basin has not been adjudicated, there are no constraints on groundwater pumping to support new agriculture. The 2007 General Plan does not have any policies that would prevent farmers from pumping to support new agriculture, particularly since the 2007 General Plan intends through Policy AG 3.3 to exempt Routine and Ongoing Agriculture from many otherwise applicable policies and since the Policies PS 3.1 to 3.3 requiring proof of long term sustainable water supplies do not apply to agricultural wells. Accordingly, recognition of the water demand for new agricultural uses renders unsupportable the DEIR's conclusions that water supply, overdrafting, and saltwater intrusion impacts will be less than significant through 2030.

In light of the inconsistencies in assumptions, we ask that the County reconcile the land and water use assumptions used to develop Table 1-2 in the SVWP EIR, on which the 2007 General Plan DEIR relies for its conclusions regarding overdrafting, saltwater intrusion, and agricultural water demand, with the land and water use assumptions in Table 4.3-11 in the 2007 General Plan DEIR. Please identify and compare the assumptions for both urban and agricultural use in both sources. Please explain why Table 4.3-11 omits any agricultural water use increases in light of the DEIR's projected increase of 450 acres of agricultural land annually.

AGRICULTURAL CONVERSIONS ARE UNDERSTATED IN THE DEIR: As discussed elsewhere in these comments, the DEIR substantially underestimates future agricultural conversions. Thus, the water demand from new agricultural land use will likely be greater than estimated above based on the DEIR's projection that only 450 acres will be converted annually.

On page 4.9-45, the DEIR uses a 25-year trend to project conversion to vineyard acreage. This severely dilutes recent trends as well as the stated objectives of the wine industry in Monterey County. The DEIR projects an average increase of 450 acres per year. This ignores the most recent trend data for 1996-2006 of conversions of approximately 820 acres per year. DEIR, p. 4.9-63.

⁸ Vineyard and row crop irrigation data is from 1) Kurt Gollnick, Chief Operating Officer of Scheid Vineyards, Inc. and 2001 President of the Monterey County Vintners and Growers Association, oral presentation to Office of Economic Development Commission Forum, October 25, 2001 and 2) West Yost Associates, 2005, Technical Memo No. 3, pages 9-16, Prepared for the Napa County 2050 Napa Valley Water Resources Study as part of the Napa County General Plan Update, October 19, 2005, cited by the DEIR. Row crop irrigation data is also based on Stop the Salt, Save Our Jobs, A "White Paper" on Pajaro Valley Water Issues, Prepared by the Research Office of the United Farm Workers of America, AFL-CIO, September 1999, Exhibit 9, available at http://ufw.org/board.php?mode=view&b_code=res_white&no=83&page=&field=&key=&n=16.

Use of 25-year trend data is unsupported in light of the fact that the most recent 10 years of that data shows an accelerating trend toward vineyard conversions and the fact that vineyard conversion estimates have not been able to keep pace with actual conversions. In 2001, Monterey County Vintners and Growers projected 5000-acre growth in vineyards over 5 years (Monterey County Wine Industry Conceptual Future Plan, April 2001). In 2002, “projections by the industry suggest an increase of about 9,700 acres” within 5 to 10 years (DEIR for GPU3 at page 5.2-56). The 2007 Monterey Crop Report shows total grape acres at 42,764, which is an increase of 1,455 acres over the 2006 total.

Furthermore, the winery capacity in the AWCP will create substantial incentives for additional grape production. If all of the wineries permitted within the corridor operate at full capacity, they would be able to process grapes harvested from 62,411 acres.⁹ Since the 2007 Monterey Crop Report shows total grape acres at 42,764, winery capacity within the winery corridor alone could accommodate an additional 20,000 acres of wine grapes in Monterey County. The AWCP policies do not prohibit winery development outside the corridor, which could add further capacity and provide additional incentive to convert additional acreage to vineyard.

And there is no reason to assume that 100% of the grapes grown in Monterey County will be processed locally. It has been profitable for growers to export 70% to 80% outside the County for processing, and there is no evidence provided by the DEIR to conclude that it will not remain profitable, especially as out-of-County wineries compete for Monterey County wine grapes. The wineries in the winery corridor will have the capacity to process grapes harvested from 62,411 acres. If the wine grape exports remain profitable, and there is no reason to suppose that they will not, the new winery capacity could create demand for 62,411 acres of new vineyards.¹⁰

These data suggest that acreage conversion to vineyards and other agriculture should be evaluated at a rate of at least 820 acres per year – a conversion rate representative of the most recent 10-year trend, rather than the 450 acres per year the DEIR projects, a figure that is artificially weighted by historic data and which does not

⁹ Neither the DEIR nor the AWCP impose any capacity limits for Full-Scale *or* Artisan Wineries. The capacity limits assumed in our determination of the full capacity of AWCP wineries is based on the DEIR statement at 3-39 that full scale wineries would produce 2 million cases annually and the DEIR statement at p. 4.3-120 that an artisan winery could produce up to 50,000 cases annually. We calculated capacity as follows: 40 Artisan Wineries @ 50,000 cases = 2,000,000 cases, 10 Full-Scale Wineries @ 2,000,000 cases = 20,000,000 cases; total capacity = 22,000,000 cases. 22 million cases divided by 62.5 cases/ton = 352,000 tons. (Cases per ton source: Monterey County, Monterey County 21st Century General Plan Update Draft Environmental Impact Report, March 27, 2002, p. 5.2-56, Exhibit 3.) 352,000 tons divided by 5.64 tons per acre = 62,411 acres (Tons per acre source: Monterey County Agricultural Commissioner, Monterey County Crop Report 2007, p. 13, Grape Production, Exhibit 4.

¹⁰ This conclusion is supported by comments made by Monterey County Agricultural Commissioner Eric Laurentzen in a Monterey County Herald article dated August 1, 2001. He said, “There is a potential of opening up 100,000 acres of land for vineyards.” Monterey County Herald, “All signs point to help for wineries,” August 1, 2001, Exhibit 10.

reflect the policy choices in the 2007 General Plan that create incentives for conversions and open up sloped land for expansion. In light of this, please explain why the DEIR chose a conversion rate of 450 acres per year.

With a conversion rate of 820 acres per year, there would be an additional 18,040 acres of new agricultural land by 2030. Assuming that 2,571 acres of existing land is lost to urban uses, the net increase in agricultural land would be 15,469 acres. We can assume that that 40% is for vineyards requiring 1 acre-foot per year and 60% is for row crops requiring 2 acre-feet per year.¹¹ DEIR, p. 4.9-63 (trend in last 10 years is 40% vineyards). Based on these assumptions, water demand for new agriculture will amount to 24,759 acre-feet per year. Table 4.3-9 should be revised to reflect this demand. Again, acknowledgement of this demand would negate the DEIR's significance conclusions with respect to water supply, overdrafting, and saltwater intrusion.

In sum, in view of the economic incentives for new agricultural conversions provided by significant deregulation and incentives for new conversions, including Policies OS 3.5 and AG 3.3 and the policies exempting wineries from discretionary permitting, we ask that the County justify the DEIR's assumption that conversion to cultivation will proceed at the languorous pace of 450 acres per year and explain why the DEIR failed to assume that newly converted land would require irrigation. Please also defend the DEIR's un-amended use of the SVWP EIR, a document prepared in 1998 and certified in 2001 under completely different General Plan assumptions and based on inconsistent assumptions about new agricultural uses.

C. Inconsistency In Analysis Of Monterey Peninsula Supply

At page 4.3-1 the DEIR states, "Supply on the Monterey Peninsula will be adequate to meet current demand, assuming that the Cal Am seawater desalination plant is permitted and operational by 2015 as currently expected, but will not be sufficient to meet additional demand up to the 2030 planning horizon without adversely affecting groundwater; thus additional water supply infrastructure will be needed."

However, at page 4.3-47 the DEIR states, "On January 15, 2008, the State Water Board issued a draft CDO (Order WR-228-00XX-DWR) requiring Cal-AM to stop diverting water from the Carmel River in excess of its legal rights, by reducing its unlawful diversion pursuant to a schedule set forth in the CDO. The draft CDO alleges that since 2000, Cal-AM has illegally diverted at least 7,164 AFY from the Carmel River

¹¹ Vineyard and row crop irrigation data is from 1) Kurt Gollnick, Chief Operating Officer of Scheid Vineyards, Inc. and 2001 President of the Monterey County Vintners and Growers Association, oral presentation to Office of Economic Development Commission Forum, October 25, 2001 and 2) West Yost Associates, 2005, Technical Memo No. 3, pages 9-16, Prepared for the Napa County 2050 Napa Valley Water Resources Study as part of the Napa County General Plan Update, October 19, 2005, cited by the DEIR. Row crop irrigation data is also based on Stop the Salt, Save Our Jobs, A "White Paper" on Pajaro Valley Water Issues, Prepared by the Research Office of the United Farm Workers of America, AFL-CIO, September 1999, Exhibit 9, available at http://ufw.org/board.php?mode=view&b_code=res_white&no=83&page=&field=&key=&n=16.

and that Cal-Am's unauthorized diversions continue to have adverse effects on the public trust resources on the river."

The State Water Board's pending decision will impact the water supply available for current demand. The DEIR acknowledges that the board included a water demand reduction schedule in its cease and desist order. However, the DEIR did not include any of this information in its analysis. Please provide the water demand reduction schedule.

Absent this information and analysis, and given that the CDO will affect current demand, please explain the DEIR's conclusion that "supply on the Monterey Peninsula will be adequate to meet current demand."

D. Incomplete Information Regarding Carmel River Basin Demand

The DEIR fails to evaluate the acknowledged substantial increased new water demand from riparian users in the Carmel Valley. The DEIR acknowledges this problem:

"An additional water supply issue in Carmel Valley is the potential unquantified impacts of increased use and demand by riparian users along the Carmel River. No action by the SWRCB or the courts has evaluated the cumulative impacts on the public trust resources by individual well owners since the time of the MPWMD Water Allocation Program EIR (Monterey Peninsula Water Management District 1990). As the allocated water has been exhausted, an increase in claims of riparian rights has been observed. It is unclear whether these claims represent an increased demand on the water resource system and whether environmental impacts are associated with the potential increased demand."
DEIR, p. 4.3-13.

If increased claims have been observed, and the allocated water has been exhausted, please explain why there's any question that these riparian claims are increasing water demand in the Carmel River Basin. This new water demand must be estimated and included in the analysis of the Carmel River Basin.

Until all of the above information is provided for the Carmel River Basin, it is impossible to conclude that the Carmel River Basin will be adequate to support current water use or future demand.

The same comments can be made about the DEIR's analysis of new water demand in the Seaside Basin, a basin whose use and welfare is inextricably linked to the Carmel River Basin. The DEIR makes this clear in its discussion at section 4.3.2.5 Carmel River Conflicts. DEIR, pp. 4.3-46 to 4.3-48.

It is not sufficient to simply acknowledge, as the DEIR does on page 4.3-120 that the Seaside aquifer is over-drafted and "future development there will exacerbate that significant effect. It is also the County's responsibility to mitigate significant impacts to

the greatest extent possible. Unless potential impacts are quantified and fully analyzed, they cannot be fully mitigated.

E. DEIR Fails To Provide Meaningful Analysis Of Water Balance

OBLIGATION TO PROVIDE WATER BALANCE: In *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 441 [“*Vineyard Area Citizens*”], the California Supreme Court held that an EIR for a large development project must provide some discussion of total supply and demand in order to evaluate the long-term cumulative impact of development of water supply. Through this discussion, the EIR must show a “likelihood” that water will be available – *i.e.*, an “approximate long-term sufficiency in total supply” in light of foreseeable long term demand. *Id.* Where an EIR cannot show that supply will be sufficient, it must acknowledge the degree of uncertainty involved, discuss the reasonably foreseeable alternatives and disclose the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact. *Id.* at 434, 444, 446.

In *Vineyard Area Citizens*, the Supreme Court held that the EIR was invalid because it had failed to demonstrate the sufficiency of long-term water supply. The EIR at issue in *Vineyard Area Citizens* was inadequate because 1) it had provided no discussion of competing cumulative uses except for some inconsistent gross demand figures, 2) it had failed to present data so as to inform the public, providing only scattered data and data buried in appendices or referenced documents, and 3) it had relied on a prior environmental document without clarifying the relationship of the project to that project. *Id.* at 441-443. Ultimately, the Court held that the EIR had failed to provide substantial evidence of an adequate long-term supply:

“On the factual question of how future surface water supplies will serve this project as well as other projected demand in the area, the project FEIR presents a jumble of 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.

The Supreme Court held in *Vineyard Citizens* that there is no substantial evidence of a long term water supply when there are factual inconsistencies or a lack of clarity with respect to long term demand or estimated supplies for the project and other projects competing for the same water supply. *Id.* at 439. It held that an EIR must reconcile differences between its supply and demand projections and the projections in documents it relies on. *Id.* at 439-440.

The Supreme Court also held that vague and unquantified references to a management technique like conjunctive use do not suffice to provide the requisite degree of certainty as to long term supply. *Id.* at 440. Thus the DEIR must actually quantify expected supply and demand, and, where it relies on management strategies like

conservation and conjunctive use, it must quantify the expected yields from these strategies.

The principle question in *Vineyard Area Citizens* was the amount of uncertainty that can be tolerated in an EIR for a land use plan. *Id.* at 428. At issue in *Vineyard Area Citizens* was a master plan for a community that would ultimately contain 22,000 residential units. Thus, the *Vineyard Area Citizens* project was being planned at the same level of generality as the 2007 General Plan and it contained more than twice as many residential units as are contemplated by the 2007 General Plan through its 2030 planning horizon. The holding in *Vineyard Area Citizens* clearly required that water demand and supply be quantified and related to cumulative demand from other projects using the same supplies.

The DEIR fails to provide a comprehensive, quantitative water balance analysis for the Salinas Valley Basin, for which it nonetheless concludes that water supplies will be sufficient. Without a quantitative analysis, the DEIR cannot provide the required level of certainty as to the sufficiency of Salinas Valley Basin supplies.

The DEIR also fails to provide a comprehensive, quantitative water balance analysis for the basins for which it concludes there will be a deficit. Without this analysis, the DEIR fails to provide an adequate disclosure of the severity of the impacts.

DEMAND DATA IN TABLE 4.3-9 INVALID: As noted above, the conclusions with respect to groundwater availability from the Salinas Valley without causing saltwater intrusion impacts is not supported by any consideration of impacts to steelhead or the feasibility of providing a distribution system. The demand projections in Table 4.3-9 rely on the prior environmental review for the SVWP, which makes internally inconsistent assumptions about the growth of agricultural water demand. Furthermore, the SVWP assumptions about agricultural water demand are inconsistent with the DEIR's projection for the increase in cultivated agricultural land by 450 acres per year, and this projection is itself substantially understated. Thus, the demand data in Table 4.3-9 are invalid.

TABLE 4.3-9 AND THE DEIR FAIL TO PRESENT EXISTING DEMAND OR TO COMPARE DEMAND TO AVAILABLE SUPPLY: Even if the demand data were valid, Table 4.3-9 does not provide a useful picture of total demand because it omits existing demand and omits any information on existing and future demand from cities and from the unincorporated coastal areas drawing from the same water supplies. Most critically, Table 4.3-9 provides only demand information, failing to provide any information about long term supplies for each basin. There is simply no presentation of the balance between long-term demand and supply that reflects all competing demands from the water supplies at issue. The DEIR must be revised to provide some estimate of the long-term water balance for each affected basin.

TABLE 4.3-6 DOES NOT SUFFICE AS A WATER BALANCE ANALYSIS FOR THE SALINAS VALLEY BASIN: Although Table 4.3-6 purports to provide

projected 2030 conditions for the Salinas Valley Groundwater Basin in light of projected pumping, this table does not suffice to provide information about long-term sufficiency of supply. Table 4.3-6 is simply a reprint of Table 1-2 in the SVWP EIR, which was based on land use assumptions as of 1997. SVWP EIR, section 1.3, Table 1-2 (identifying source as “MCWRA 1997”). An EIR may only rely on a prior planning document for water supply analysis if the project’s demand was actually included in that analysis. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434-435. As discussed above, the 1997 land use assumptions are inconsistent with the DEIR’s assumptions for cultivated agricultural land, and the DEIR provides no evidence that the 1997 assumptions regarding 2030 urban demand are consistent with the DEIR’s assumptions for the 2007 General Plan.

Furthermore, Table 4.3-6 does not actually show a water supply sufficiency and does not even assume that the SVWP would be built. The DEIR fails to restate the Salinas Valley Basin water balance based on the assumption that the SVWP will be built and/or expanded to include additional diversions.

NO WATER BALANCE PRESENTED FOR OTHER BASINS: As noted, the DEIR does attempt to present a water balance for the Salinas Valley Basin, albeit unsuccessfully. However, no table or other clear presentation is provided showing the total projected demands and supply for the other basins.

For example, the discussion of the Carmel River watershed identifies storage capacity, demand in 2006, and a forecast of demand by 2026. DEIR, 4.3-38 to 4.3-39. However, these figures are not related to the demand growth assumptions in Table 4.3-9 and no quantitative conclusions are presented regarding the long term relationship of supply and demand in the DEIR’s significance discussion. DEIR, p. 4.3-127-128.

And Table 4.3-9 does not even present a complete picture of the Carmel Valley demand from growth in the unincorporated area. According to the Table 4.3-9, at 2030, new, annual water demand from the Carmel River Basin will be 310 acre-feet – 88 acre-feet for the Carmel Mid-Valley Affordable Housing Overlay, 5 acre-feet for Cachagua, 60 acre-feet for Carmel Valley and 157 acre-feet for the Greater Monterey Peninsula. However, development on existing lots of record and other development outside of Community Areas, Rural Centers and Affordable Housing Overlays is not broken down by water basin, even though the DEIR estimates it will result in new water demand of 1,180 acre-feet – 20% of the new water demand. Some of this demand will occur in the Carmel Valley, but it is impossible to tell how much from Table 4.3-9.

Similarly, the discussion of the Pajaro groundwater basin fails to present a coherent or complete picture of future demand and supply. The DEIR does not relate the estimates of overdrafting by 2040 (DEIR, p. 4.3-41) to the demand from new growth in Table 4.3-9. Nor does the DEIR relate new demand to its discussion of significance or provide a water balance in that discussion. DEIR, pp. 4.3-128 to 4.3-129. Even though the DEIR concludes that water supply may not be sufficient in these basins, there is no reason that the projected deficiencies should not be presented.

CUMULATIVE DATA NOT PRESENTED: The DEIR also fails to assess the impacts, by water basin, of increased water demand due to urban growth in the county's incorporated cities. The cursory discussion of water supply impacts in the DEIR's cumulative impact section does not quantify demand or supply for any of the affected basins. DEIR, pp. 6-12 to 6-13. With respect to future water demand from cities, the DEIR simply states, "As discussed elsewhere in this EIR, residents of the unincorporated area will make up about 25% of the county's total population in 2030. Therefore, water demand in the cities would be expected to be roughly three times that shown above for the unincorporated areas." DEIR, p. 4.3-116. The DEIR does not actually quantify demand from cities, although using the DEIR's methodology it would amount to 18,369 acre-feet of water – 3 times the 6,123 AFY shown in Table 4.3-9.

Perhaps because the DEIR does not actually use its own projection of growth in city water demand to draw any conclusions regarding water supply sufficiency, the DEIR does not bother to justify its exclusively population-based forecasting methodology. Basing water demand only on population estimates fails to take into account water demand that is driven by industrial and agricultural needs, and fails to take account of the difference in urban residential demand and rural residential demand.

It is entirely unclear whether and how demand from unincorporated coastal areas has been included in the DEIR's analysis.

Not only does the DEIR fail to quantify the demand from growth of incorporated cities and unincorporated coastal areas, but it provides no information about how much new demand each basin will experience resulting from city growth. A meaningful analysis must project demand and supply for each basin, particularly since the DEIR evaluates the significance of water supply impacts, including overdrafting and saltwater intrusion, on a basin-by-basin basis.

Nor does the DEIR relate its methodology for projecting city water demand to the water plans prepared by the incorporated cities. It is likely that more precise estimates of water demand are available from the cities involved. This is critical information which needs to be provided. To the extent that the DEIR's conclusions with respect to future demand and supply differ from these plans, the DEIR should explain those differences.

In sum, the DEIR must be revised to provide a meaningful projection of future water demand from both the unincorporated and the incorporated areas of the County. Please provide information responsive to the *Vineyard Area Citizens* mandate that an EIR provide data demonstrating the sufficiency of water supplies where the DEIR claims sufficiency, and demonstrating the magnitude of the deficiencies where the DEIR identifies a shortfall. Please ensure that this information reflects the best available information about demand from cities, coastal areas, and agriculture. Please reconcile the land use assumptions used in any source documents with the land use assumptions in the proposed 2007 General Plan. Please provide this information separately for each groundwater basin or watershed.

As discussed below, the County improperly defers the development of criteria for “long term sustainable water supplies” in Policy PS 3.3. However, in drawing the conclusions required by *Vineyard Area Citizens* regarding the long term sufficiency or insufficiency of water supplies, the County is required to make some determination *now* about the magnitude of “long term sustainable water supplies” in the various basins. Please make those assumptions explicit and explain their foundation with reference to the best available information.

F. DEIR Fails To Provide Required Certainty Of Water Supply, Particularly For The Portions Of the Project Exempted From Further Permitting And Environmental Review

The Supreme Court held in *Vineyard Area Citizens* that “water supplies must be identified with more specificity at each step as land use planning and water supply planning move forward from general phases to more specific phases.” *Id.* at 433-434. This EIR will constitute the terminal environmental review for a host of future projects for which the 2007 General Plan expressly provides that there will be no future CEQA review because only ministerial permits will be required, including most of the wineries and related uses in the AWCP; Routine and Ongoing Agricultural Operations that include creation of thousands of acres of new irrigated farmland; and construction of thousands of residences on lots of record without any further discretionary review. For at least these uses, the County has an obligation to provide greater certainty as to water supply than is required in a program level EIR for which subsequent discretionary review will occur.

This requires that the DEIR actually identify the type, intensity, and location of development that will be permitted without any further discretionary review; determine its water demand; and identify adequate water supplies for this development. Please provide this information for the wineries *and* related uses in the AWCP; Routine and Ongoing Agricultural Operations that include creation of thousands of acres of new irrigated farmland; and construction of thousands of residences on lots of record without any further discretionary review.

G. DEIR Fails to Provide Water Supply Assessment For Project Level Approvals

In addition to the requirements of certainty based on case law, portions of this Project are subject to the statutory requirements to identify a water supply with the detail and certainty specified by the Water Supply Assessment requirements of Water Code sections 10210 *et seq.*

Water Code section 10912(a)(7) defines projects that are subject to the requirement to prepare a water supply analysis as including any project that will demand water equal to 500 dwelling units. The DEIR contemplates more than 500 units of residential development on existing lots of record, for which the DEIR assumes that no additional discretionary review will occur. The DEIR also contemplates water demand

for wineries and associated uses, including process water for all of the artisan wineries and water for up to 200 residences. Thus, water demand from AWCP projects expressly exempted from future CEQA review will exceed the amount demanded by 500 residences. The DEIR contemplates permitting new cultivation of thousands of acres of land for irrigated agriculture with no discretionary permitting or CEQA review. The DEIR must be revised to provide a Water Supply Assessment for these categories of uses.

Recognizing that it was the terminal EIR for the AWCP, the DEIR for GPU4 expressly consisted of a program level EIR for the General Plan Update and a project level EIR for the AWCP. Although this DEIR does not acknowledge this, it clearly functions as a project level EIR for AWCP and other activities that are expressly exempted from future CEQA review and discretionary permitting. Thus, a Water Supply Assessment conforming to the requirements of Water Code sections 10910 *et seq.* must be prepared for 1) development on lots of record that are assumed to be exempt from discretionary permitting and CEQA review, 2) development of the AWCP that is expressly excepted from discretionary review and CEQA, and 3) Routine and Ongoing Agricultural Activities that are expressly excepted from discretionary review and CEQA.

H. The DEIR Does Not Adequately Disclose Impacts Of Providing Future Water Supplies

In *Vineyard Area Citizens*, the Supreme Court made it clear that the fundamental requirement is not just that an agency identify water supplies, but that the agency use its best efforts to find out and disclose all that it reasonably can about the *impacts* of providing water supply. *Id.* at 428, 429, 430-431. The Court found that the EIR was inadequate because the agency had failed to disclose impacts to salmonids in the DEIR and had attempted to tier from future environmental reviews. *Id.* at 440-441, 448-449. As discussed above, the DEIR here fails to disclose the effects of increasing Salinas River diversions on steelhead.

Also as discussed above, the DEIR fails to provide a complete and consistent water balance analysis for each basin based on the best available information about all demand sources and about the size of the long term sustainable supply. Without such an analysis, the DEIR's conclusions in sections WR-6 and WR-7 regarding the most critical impacts of water supply projects, overdraft and saltwater intrusion, lack an adequate foundation.

In section WR-5, which purports to evaluate the impacts of providing new water supply projects, the DEIR identifies some environmental reviews of various projects, but without incorporating them by reference, without formally stating that the DEIR is tiering from them, and without adopting their mitigation measures. See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 443-444. The DEIR's actual discussions of the impacts of these previously-reviewed projects does not go beyond a cursory recap of the highlights of prior environmental reviews – thus the DEIR fails as an informational disclosure. DEIR, pp. 4.3-135 to 4.3-142.

With regard to those projects for which no CEQA review has yet been completed, the DEIR attempts to dispense with any new analysis of by referencing *future* environmental reviews. However, the California Supreme Court makes clear that the agency must either disclose the environmental consequences of future supply projects now, or wait until those projects have completed CEQA reviews:

“Instead of itself providing an analytically complete and coherent explanation, the FEIR notes that a full analysis of the planned conjunctive use program must await environmental review of the Water Agency's Zone 40 master plan update, which was pending at the time the FEIR was released. The Board's findings repeat this explanation. To the extent the FEIR attempted, in effect, to tier from a *future* environmental document, we reject its approach as legally improper under CEQA. If the environmental impact analysis the Water Agency expects to perform on its Zone 40 master plan update is important to understanding the long-term water supply for the Sunrise Douglas project, it should be performed in the Sunrise Douglas project FEIR even though that might result in subsequent duplication by the master plan update. If, as Rancho Cordova argues, such duplication would be an impractical waste of resources, the County could instead have deferred analysis and approval of the Sunrise Douglas project until the master plan update analysis was complete, then tiered the project FEIR from the programmatic analysis it performed there. What the County could not do was avoid full discussion of the likely water sources for the Sunrise Douglas project by referring to a not yet complete comprehensive analysis in the Zone 40 master plan update. CEQA's informational purpose ‘is not satisfied by simply stating information will be provided in the future.’ [citation]” *Id.* at 440-441.

Where no environmental review has yet been certified, the DEIR's “analysis” consists of nothing more than a laundry list of possible areas of impact, with no effort to obtain, evaluate, and disclose available information about the actual impacts. Most of the discussions consist of a single sentence listing generic impacts; many state that “impacts cannot be determined with certainty” and make no effort to disclose any site-specific information at all.

SALINAS VALLEY WATER PROJECT: As discussed above, the DEIR entirely fails to evaluate the effect on steelhead of the increased diversions necessary to support the assumed expansion of the SVWP. The DEIR also fails to incorporate the SVWP EIR by reference or to state that it is formally tiered from that document; thus, the DEIR impermissibly fails to provide a roadmap to the information it intended to convey. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 443. This failure is particularly problematic given the apparent differences in land use and water demand assumptions, which the DEIR fails to reconcile, as discussed above. The DEIR also fails to incorporate applicable mitigation measures from the SVWP EIR, as is required. *Id.* at 444.

GRANITE RIDGE DISTRIBUTION FACILITIES: Without providing any specifics, the DEIR states that the County and other agencies are “assessing” new

delivery infrastructure. DEIR, p. 4.3-136. No information is provided about the infrastructure project being assessed, or about the source of water to be supplied. The “impact analysis” consists of a single sentence: “Pipeline construction would result in impacts on traffic, air quality, noise, soils and geology, and biological resources.” This entirely generic conclusion conveys no real information about the impacts from such a construction project. And it is clear that there has been no consideration of the ongoing post-construction impacts associated with the use of whatever water supply will be distributed in the new delivery infrastructure.

COASTAL WATER PROJECT (DESALINATION): The DEIR admits that not even a draft EIR has been prepared and then provides a one-sentence, entirely generic list of possible impacts culled from the proponent’s environmental assessment. DEIR, p. 4.3-136 to 4.3-137. Even if this generic one-sentence analysis were adequate, and it is not, an EIR may not rely unquestioningly on the applicant's unsupported representations. *Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal .App.4th 99, 121 (“the only evidence that the terrace on the September Ranch property was irrigated pasture was the representation of the applicants themselves, who clearly had a vested interest” in the outcome of the application). The EIR must be revised to provide an independent and meaningful assessment of the effects of this water supply project based on available information.

WATER FOR MONTEREY COUNTY’S REGIONAL WATER SUPPLY PROGRAM: Again, the DEIR admits that no environmental analysis has been completed and then provides a generic one-sentence analysis of the potential impacts, which includes the catch-all disclosure of “other impacts.” DEIR, pp. 4.3-136 to 4.3-137. The EIR must be revised to provide an independent and meaningful assessment of the effects of this water supply project based on the best available information.

As discussed above, the WFMCC proposal includes 5,000 AFY in increased diversions from the Salinas River, additional groundwater pumping from the Salinas Valley basin, and use of 5,000 AFY of recycled water. It appears that other commitments for much of this water have already been assumed in the DEIR’s analysis of the sufficiency of the Salinas Valley basin. Thus, the DEIR should conclude that the WFMCC is likely to aggravate saltwater intrusion and overdrafting, or vitiate the DEIR’s conclusions regarding the sufficiency of the Salinas Valley basin and the significance of overdrafting and saltwater intrusion impacts. This possibility can only be disclosed through a regional water balance analysis and an analysis of likely environmental impacts.

Furthermore, as noted above, the Monterey County Water Resources Agency Act (the enabling legislation for the Agency), prohibits water exports from the Salinas River Basin except to serve Fort Ord:

“Legislative findings; Salinas River groundwater basin extraction and recharge.
The Legislature finds and determines that the Agency is developing a project which will establish a substantial balance between extraction and recharge within

the Salinas River Groundwater Basin. For the purpose of preserving that balance, no groundwater from that basin may be exported for any use outside the basin, except that use of water from the basin on any part of Fort Ord shall not be deemed such an export. If any export of water from the basin is attempted, the Agency may obtain from the superior court, and the court shall grant, injunctive relief prohibiting that exportation of groundwater.” Monterey County Water Resources Agency Act, 1990 Stats. 1159, 1991 Stats. 1130, 1993 Stats. 234, and 1994 Stats. 803, Water code Appendix, Chapter 51, § 21.

Mitigation Measure WR-1 commits the County to supporting a regional solution for the Monterey Peninsula in addition to the Coastal Water Project. According to the WFMCC proposal, most of these additional supplies, other than desalination, will originate within the Salinas River Basin – 5,000 acre-feet per year from Salinas River diversions, 5,000 acre-feet per year from recycled water produced at the MRWPCA Salinas Valley plant and 6,000 acre-feet per year from Salinas Basin Groundwater. A fair argument can be made that all three categories are, in fact, groundwater that must not be exported. Recycled water is originally pumped from groundwater supplies; and surface diversions directly impact the amount of water that is recharged through stream percolation. Please reconcile MCWRA’s enabling legislation with a regional solution largely based upon prohibited groundwater transfers. Please discuss the specific and cumulative environmental consequences of amending the transfer prohibition. Please also discuss the administrative, legal, fiscal and environmental consequences of violating the Monterey County Water Resources Agency Act.

PAJARO-SUNNY MESA DESALINIZATION PLANT: Again, the DEIR admits that no environmental analysis has been completed and then provides a generic one-sentence analysis of the potential impacts. DEIR, pp. 4.3-138. The EIR must be revised to provide an independent and meaningful assessment of the effects of this water supply project based on available information.

PVWMA’s BASIN MANAGEMENT PLAN: The DEIR identifies an EIR for the Basin Management Plan, but fails to incorporate it by reference or to state that it is formally tiered from that document. DEIR, pp. 4.3-138 to 4.3-140; *see Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 443. The DEIR also fails to incorporate applicable mitigation measures from the EIR, as is required. *Id.* at 444.

COMMUNITY AREA INFRASTRUCTURE: The DEIR states that additional infrastructure is required for the Pajaro, Castroville, and Boronda Community Areas. DEIR, pp. 4.3-140 to 4.3-141. The DEIR states that site-specific and facility-specific information is not available and that the significance of impacts cannot be determined. DEIR, p. 4.3-140. However, it is apparent that information is in fact available about these new facilities. For example, the DEIR states that new wells and tanks are being planned in all three areas. Information about these plans should be provided and the DEIR should use the best available information to disclose the impacts of these projects.

For example, the DEIR should explain how the plan to replace a well contaminated by saltwater in Castroville can possibly avoid adding to saltwater intrusion.

I. DEIR Improperly Relies On Water-Based Development Ban

Vineyard Area Citizens holds that a development ban may not be used as a substitute for an adequate water supply analysis.

“Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. [citation] The law's informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize.” *Id.* at 432.

Yet the DEIR implicitly relies on policies that purport to restrict development until water supplies are adequate in drawing its conclusions regarding the significance of impacts in the Carmel and Pajaro watersheds. The DEIR's significance conclusions state that “General Plan policies will constrain development until long-term water supplies are assured.” DEIR, p. 4.3-120; *see also* p. 4.3-134. The DEIR concludes that impacts will be significant and unavoidable, *but only because* “[u]ntil then, non-discretionary development on legal lots of record will exacerbate existing water supply problems, and this is considered a significant and unavoidable water supply impact. . . .” DEIR, pp. 4.3-130; *see also* p. 4.3-134 to 4.3-135. The DEIR must be revised to reflect that impacts remain significant and have not been avoided by the General Plan policies or proposed mitigation *regardless* whether development occurs on legal lots of record.

As discussed below, the DEIR fails to provide any reasoned explanation why development on legal lots of record, or any other form of development proposed to be permitted without further discretionary review, should be permitted to occur when it will cause or exacerbate significant impacts.

Furthermore, where a development ban is proposed, the EIR must evaluate the impacts *caused by that ban itself*:

“A provision like WS-1 [ban on development without firm proof of available water supplies] could serve to *supplement* an EIR's 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.*” *Id.* at 444, *emphasis added.*

Here, the proposed limitation of development where water supply is not available would

likely result in displacing development from areas for which the DEIR projects inadequate water supply to other areas. The DEIR makes no attempt to evaluate the effects from policies that would displace development to other areas. For example, if water supplies do not become available in Pajaro and the Monterey Peninsula, development would be displaced to areas in the Salinas Valley where the DEIR purports to find the water supply to be sufficient. The DEIR must evaluate and disclose the effects of displacing the development projected for the Pajaro and Monterey Peninsula areas in Table 3-8 on resources and conditions in the Salinas Valley, including in particular water resources, biological resources, and traffic conditions.

J. Saltwater Intrusion Analysis Inadequate

The DEIR asserts that seawater intrusion will continue at a rate of 2300 acre-feet per year unless an additional water supply of 14,300 acre-feet are supplied from the SVWP outside the CSIP area. DEIR, p. 4.3-35. This conclusion is based on projections of groundwater pumping contained in the 2001 SVWP EIR, which was in turn based on MCWRA sources from 1997. Compare DEIR, Table 4.3-6, p. 4.3-34 to SVWP EIR, Table 1-2. Thus, on page 4.3-116, the DEIR states, “With implementation of the SVWP and CSIP, the Salinas Valley will have sufficient supplies to 2030, and seawater intrusion will be effectively halted in the Castroville area.” And on page 4.3-162, the DEIR states that Seawater intrusion will be controlled in the Salinas valley through the SVWP to 2030.”

First, please explain the conclusion that seawater intrusion will be halted in the Castroville area by 2030 when, in fact, seawater intrusion maps developed by MCWRA show that *by 2005* intrusion had already advanced *past* Castroville in both the 180-foot aquifer and the 400-foot aquifer. Monterey County Water Resources Agency, Historic Seawater Intrusion Maps, Pressure 180 foot aquifer and Pressure 400 foot aquifer, 500 Mg/L Chloride Areas, source MCWRA water quality data, Exhibits 7 and 8.¹²

Additionally, please define “effectively halted” and explain how this conclusion was reached. Please do so in light of the evidence provided above that 1) NOAA’s 2007 Final Biological Opinion limits the SVWP’s surface diversion to 9700 AFY and would therefore not permit additional diversions through the SVWP, and 2) the water demand for expansion of agricultural land discussed above was not assumed by the SVWP EIR, which projected water uses based on 1997 data.

The only certainty seems to be that by 2030 annual seawater intrusion into the Salinas Basin will continue at 2300 AF. Since seawater intrusion would continue, even at a declining rate, throughout the term of the 2007 General Plan, overdraft and seawater intrusion would remain a significant, unmitigated and irreversible impact of development in the Salinas Valley.

¹² Available at <http://www.mcwra.co.monterey.ca.us/SVWP/01swi180.pdf> and <http://www.mcwra.co.monterey.ca.us/SVWP/01swi400.pdf>.

According to Table 4.3-9, 2030 new water demand in the Salinas Valley under the 2007 General Plan would be only 3,830 acre-feet per year. As discussed above, just increasing winery processing capacity to handle 2007 vineyard acreage will increase water demand in the Salinas Basin by between 562 acre-feet per year and 633 acre-feet per year. With seawater intrusion continuing at 2300 acre-feet per year, this increase in water demand represents at least one quarter of the water needed to halt seawater intrusion. As discussed above, we estimate that new agricultural water demand will be at least 12,215 acre-feet per year based on the DEIR's assumption that 450 acres of agricultural land will be added annually, and will more likely be at least 24,759 acre-feet per year based on the last 10 years of conversion data. If the demand in Table 4.3-9 is increased to include this new agricultural water demand, it is clear that saltwater intrusion will not be halted.

K. Proposed 2007 General Plan Policies And Mitigation Measures Are Inadequate

The DEIR recites a list of 2007 General Plan policies in support of its conclusions with respect to the significance of impacts to water resources, including impacts related to water supply, secondary impacts from infrastructure development, overdrafting, and saltwater intrusion. DEIR, pp. 4.3-122 to 4.3-126 (WR-4, water supply); 4.3-142 (WR-5, secondary impacts related to infrastructure); 4.3-4.3-149 to 4.3-153 (WR-6, overdrafting), and 4.3-158 to 4.3-162 (WR-7, saltwater intrusion). The DEIR states that these policies will help ensure that new or expanded potable water supplies and facilities would be provided for future growth." DEIR, pp. 4.3-122.

The DEIR also proposes a number of mitigation measures to address water supply and water supply impacts. DEIR, pp. 4.3-130.

As discussed in the detailed comments set out in the table below, the policies and mitigation measures recited do not provide substantial evidence that the water supply in the Salinas Valley basin will be adequate to future needs or that overdrafting and saltwater intrusion would be avoided in the Salinas Valley. Although the DEIR acknowledges that water supply in other basins cannot be said to be adequate, that some impacts related to infrastructure are significant, and that overdrafting and saltwater intrusion will be significant and unavoidable in other basins, the policies do not represent all feasible mitigation for impacts related to the provision of water supply. Nor do the policies support the DEIR's conclusions that impacts related to provision of water supply will be less than significant or that all feasible mitigation measures have been proposed.

Please address each of the comments in the table below separately, responding to each question or request for information.

In addition to responding to each question or request for information, for each policy or mitigation measure, please explain how it supports findings that significant water supply impacts have been avoided or minimized and/or findings that all feasible mitigation measures have been proposed.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
Policies and Mitigation Cited in WR-4, WR-5, WR-6, WR-7, CUM-4 and CUM-5 Purporting to Avoid, Minimize, or Mitigate Water Supply, Water Supply Infrastructure, Overdrafting, and Salt Water Intrusion Impacts	Comments
POLICIES APPLICABLE COUNTY-WIDE	GENERAL COMMENT: For each policy, please address the identified concerns by revising the policy and/or explaining how, in light of these concerns, the policy can provide a foundation for the DEIR’s conclusion that impacts will be avoided, minimized, or mitigated.
PUBLIC SERVICES ELEMENT	
<p>PS-1.1 Adequate Public Facility and Services (APFS) requirements shall:</p> <p>a. Ensure that APFS needed to support new development are available to meet or exceed the level of service of “Infrastructure and Service Standards” (<i>Table PS-1</i>, next page) concurrent with the impacts of such development;</p> <p>b. Encourage development in infill areas where APFS are available, while acknowledging the rights of property owner’s to economically viable use of existing legal lots of record throughout the county; and</p> <p>c. Seek to achieve acceptable level of service (LOS) standards through improvements funded by fair share impact fees and planned capital improvements (CIFP).</p> <p>PS-1.2 The Adequate Public Facilities and Services (APFS) standards established in <i>Table PS-1</i>, “Infrastructure and Service Standards” shall be used to determine APFS appropriate for new discretionary development.</p> <p>PS-1.3 No discretionary application for new development shall be approved unless the County finds that APFS for that use exist or will be provided concurrent with the new development.</p> <p>PS-1.4 New development shall pay its fair share of the cost of providing APFS to serve the development.</p> <p>PS-1.5 Improvements shall be installed concurrently with each phase of new development in accordance with an infrastructure phasing plan. An infrastructure phasing plan, if needed, shall be approved in concept at the time of project approval.</p> <p>PS-1.6 Only those developments that have or can provide adequate concurrent public services and facilities shall be approved.</p>	<ul style="list-style-type: none"> • The DEIR states that these policies set forth general standards for the provision of adequate public facilities. DEIR, p. 4.3-122. The only apparent relevance of these policies to the sufficiency of water supplies is the provision in Table PS-1 permitting rural development on public lands, agricultural lands, and rural lands based on “individual wells in areas with a proven long term water supply.” Individual wells would also be allowed in Rural Centers, subject only to the requirement that lot size be at least 2.5 acres if both a well and a septic system are proposed. (Table PS-1 simply provides that water for Community Areas shall be provided by public systems.) • Please identify performance standards for a “proven long term water supply.” If the reference to “proven long term water supply” is intended to invoke Policy PS 3.3, please note our comments below with respect to the absence of any performance standards in Policy PS-3.3, which simply postpones identification of “specific criteria for proof of a long term sustainable water supply for new residential or commercial subdivisions.” • Please also note that Policy PS 3.3 does not apply to non-subdivision development, including residential development on lots of record and agricultural development. If Table PS-1 purports to establish a requirement for “proven long term water supply” independent of Policy PS 3.3, please explain how this standard applies to lots of record and agricultural development. If any such independent requirement for a “proven long term water supply” does not apply to lots of record and agricultural development, please

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

	<p>explain why not.</p> <ul style="list-style-type: none"> • Please explain why Table PS-1 does not require that wells in Rural Centers be subject to the requirement that there be a “proven long term water supply.” • Please estimate the effect of these policies in protecting water supplies.
<p>PS-2.1 Coordination among and consolidation with those public water service providers drawing from a common water table to prevent overdrawing the water table is encouraged.</p>	<ul style="list-style-type: none"> • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects. • Please explain who is responsible to implement this policy and in what context. • Please estimate the effect of this policy in protecting water supplies.
<p>PS-2.2 The Water Resources Agency shall assure adequate monitoring of wells in those areas experiencing rapid growth provided adequate funding mechanisms for monitoring are established.</p>	<ul style="list-style-type: none"> • The policy calls for monitoring wells but without specifying what aspect of well performance will be monitored (water supply? water quality? impacts on neighboring wells?), what standards of performance will be required, and what action would be taken if those standards are not met. • Please explain how the County proposes to establish funding mechanisms.

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
	<ul style="list-style-type: none"> • Please explain what action will be taken to achieve the goal of this policy if funding mechanisms are not established.
<p>PS-2.3 New development shall be required to connect to existing water service providers where feasible. Connection to public utilities is preferable to other providers.</p>	<ul style="list-style-type: none"> • What difference will this policy make to ensuring that there is an adequate long term supply of water or that impacts from providing water supply are avoided or minimized? How <i>much</i> difference will it make, if any? • How will feasibility of connecting to existing providers be determined? Will the determination include technical or economic factors or both? Who will make the feasibility determination and in what context? • If the point of the policy is to subject water consumers to fiscal discipline from paying others for water, please explain what the cost difference would be to the consumers who are required to use existing water service providers versus consumers who obtain water from their own wells, taking into account the cost of drilling and maintaining a well and paying for energy. • Why is connection to public utilities “preferable?” What difference does this make to water supply and water supply impacts? • Stating that connection to public utilities is “preferable” does not create an enforceable mandate. Why not <i>require</i> connection to public utilities if it makes any difference?
<p>PS-2.4 Regulations for installing any new domestic well located in consolidated materials (e.g.; hard rock areas) shall be enacted by the County.</p>	<ul style="list-style-type: none"> • The policy has no substantive content and formulation of the regulations it calls for is entirely deferred with no performance standards. • Please explain how this policy is related to conclusions regarding the sufficiency of long term water supplies – it appears to be related to water quality issues.
<p>PS-2.5 Regulations shall be considered for water quality testing for new individual wells on a single lot of record to identify:</p> <ol style="list-style-type: none"> Water quality testing parameters for a one-time required water quality test for individual wells at the time of well construction. A process that allows the required one-time water quality test results to be available to future owners of the well. Regulations pursuant to this policy shall not establish criteria that will prevent the use of the well in the development of the property. 	<ul style="list-style-type: none"> • The policy does not require that regulations actually be enacted, merely “considered.” Why not? • The policy has no substantive content and formulation of the regulations it calls for is entirely deferred with no performance standards. The policy does not even specify relevant parameters for well testing, much less specify actual performance standards, which would require that the policy identify both parameters and values for those parameters. For example, specifying both the parameter

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
<p>d. Agricultural wells shall be exempt from the regulation.</p>	<p>“nitrate content” and the value “45 mg/L” are necessary to providing a performance standard. This policy does neither.</p> <ul style="list-style-type: none"> • What is the point of this policy? Who is to be protected by it? If the purpose is simply to provide information to subsequent buyers, then how can the policy have any effect on the sufficiency of the County’s water supply? • If regulations cannot bar the use of wells, they cannot effectively protect the water supply by preventing overpumping. • Why is the policy not applicable to agricultural wells? • Please estimate the effect of this policy in protecting groundwater supplies.
<p>PS-2.6 A Hydrologic Resources Constraints and Hazards Database shall be developed and maintained in the County Geographic Information System (GIS). The GIS shall be used to identify areas containing hazards and constraints (see <i>Policy S-1.2</i>) that could potentially impact the type or level of development allowed in these areas (<i>Policy OS-3.5</i>). Maps maintained as part of the GIS include:</p> <ul style="list-style-type: none"> a. Impaired water bodies on the State Water Resources Control Board 303d list. b. Important Groundwater Recharge Areas c. 100-year Flood Hazards d. Hard rock areas with constrained groundwater e. Areas of septic tank leachfield unsuitability 	<ul style="list-style-type: none"> • This policy is apparently to be used to identify areas that would require discretionary permits under Policy OS 3.5, although this is not stated here. Please clarify. • Policy S 1.2 calls for developing a “Geologic Constraints and Hazards Database.” It is not clear how the “Hydrologic Resources Constraints and Hazards Database” called for under Policy 2.6 differ, particularly since Policy 2.6 references Policy S 1.2 in connection with identifying areas containing hazards and constraints. • No criteria are provided to identify areas containing hazards and constraints, including Hydrologic Resources Constraints and Hazards. • Please explain the criteria that will be used to identify “. Important Groundwater Recharge Areas.” • Although Policy S 1.2 requires mapping impaired water bodies on the State Water Resources Control Board 303d list, there is no indication how that information would be used to constrain development. Nor is there any indication how identification of other Hydrologic Resources Constraints and Hazards would constrain development. The EIR must explain how this policy would be implemented to regulate development. • No deadline for completing the database is provided and no interim measures are specified. • This policy does not apparently increase water supply or decrease water consumption over baseline conditions. Please estimate the effect of this policy in protecting groundwater

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>PS-2.7 As part of an overall conservation strategy and to improve water quality, Area Plans may include incentive programs that encourage owners to voluntarily take cultivated lands on slopes with highly erosive soils out of production.</p>	<p>supplies.</p> <ul style="list-style-type: none"> • No criteria for “highly erosive soils” are provided. The 2007 General Plan defines erosive soils, but not highly erosive soils. Please identify the areas in the County with “highly erosive soils,” the extent of existing cultivation on those soils, and the expected increases in cultivation of highly erosive soils in the future. • Please explain how this policy is consistent with policies permitting development on slopes in excess of 25%. Since slope will increase erosion even if soils are not “highly erosive,” please explain why the policy does not also call for incentives to take highly sloped land out of cultivation. • This policy has no obvious bearing on the sufficiency of water supply, impacts related to providing water supplies, overdrafting, or saltwater intrusion. Please explain how it is related to these issues. If the relevance of the policy to findings regarding the sufficiency of water supply is the expectation that it would reduce the overall extent of irrigated land in the County, please explain how much land would be retired and how much water would be saved. • The policy does not identify or mandate any program. Area Plans may or may not include incentive programs. • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects • No explanation of the nature of allowable incentives is provided. If incentives require expenditure of County resources, they will not be demonstrably feasible unless the EIR identifies the source of those resources. If incentives are to include development or land use concessions, the concessions should be identified and the secondary environmental effects should be evaluated. • Please estimate the effect of this policy in protecting water supplies.
<p>PS-2.8 The County shall require that all projects be designed to maintain or increase the site’s pre-development absorption of rainfall (minimize runoff), and to recharge groundwater where appropriate. Implementation would include standards that could regulate impervious surfaces, vary by project type, land use, soils and area characteristics, and provide</p>	<ul style="list-style-type: none"> • Please explain whether this policy will apply to “all projects,” as its clear language indicates, or just to projects for which the County retains discretionary permitting authority. If it will not apply to all projects, please explain why not.

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
<p>for water impoundments (retention/detention structures), protecting and planting vegetation, use of permeable paving materials, bioswales, water gardens, and cisterns, and other measures to increase runoff retention, protect water quality, and enhance groundwater recharge. .</p>	<ul style="list-style-type: none"> • In particular, please explain whether this policy will apply to agricultural development, including cultivation of previously uncultivated land. If not, why not? Note that cultivation on slopes, particularly viticulture cultivation that removes armoring rock through deep ripping, can substantially increase runoff. • Please explain how this policy will be implemented in practice. Through what system of project review and subsequent monitoring will the County ensure implementation? Will a hydrological study be required for every project? • It is unclear how the policy will relate to the “runoff performance standards” that are to be developed under Policy S 3.5 and the drainage requirements under Policy S 3.1. Please clarify. For example, under what circumstances and based on what criteria will the County require that projects <i>increase</i> the site’s pre-development absorption of rainfall? • This policy does not increase water supply or decrease water consumption over baseline conditions. Please estimate the effect of this policy in protecting groundwater supplies, noting impermeable clay layers prevent surface recharge in many of the areas that overlay saltwater intrusion.
<p>PS-2.9 Protect and manage groundwater as a valuable and limited shared resource. The County shall use discretionary permits to manage construction of impervious surfaces in important groundwater recharge areas. Potential recharge area protection measures at sites in important groundwater recharge areas include, but are not limited to the following:</p> <ol style="list-style-type: none"> a. Restrict coverage by impervious materials. b. Limit building or parking footprints. c. Require construction of detention/retention facilities on large-scale development project sites overlying important groundwater recharge areas as identified by Monterey County Water Resource Agency. d. Recognize detention/retention facilities on small sites may not be practical, or feasible, and may be difficult to maintain and manage. 	<ul style="list-style-type: none"> • Please identify “important groundwater recharge areas.” • Please note that sections of the County are not susceptible to groundwater recharge due to a clay aquitard. Please explain whether this factor was considered in concluding that this policy would support a finding that water supply impacts would be avoided or minimized. • This policy does not increase water supply or decrease water consumption over baseline conditions. Please estimate the effect of this policy in protecting groundwater supplies. • Please explain whether this policy will be applied to cultivation of previously uncultivated land. If not, why not? Note that cultivation on slopes, particularly viticulture cultivation that removes armoring rock through deep ripping, can substantially increase runoff.
<p>PS-3.1 No new development, except for the first single family dwelling and non-habitable accessory uses on an existing lot of record, for which a</p>	<ul style="list-style-type: none"> • “Long-term <i>sustainable</i> water supply” is not defined in GPU5 or in the GPU5 DEIR.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

discretionary permit is required shall be approved without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity, to serve the development.

- Achieving or even “improving sustainability” (DEIR, p. 4.3-150) is impossible if the term isn’t defined. Please explain what is meant by “long-term sustainable water supply” by identifying standards or criteria for the term.
- The 2007 General Plan Glossary does define “long-term water supply” as “an available supply of water that can be extracted from a basin or hydrogeologic sub-area to service the existing and projected development in that basin or hydrogeologic sub-area for a twenty year period without degrading water quality, damaging the economical extraction of water, or causing significant unavoidable adverse environmental impacts.” Please explain how this definition is related to the term “long-term *sustainable* water supply.”
 - Because the Glossary definition of long-term water supply” is applied to either basins or hydrogeologic sub-areas, it would be possible for the County to ignore the fact that most of the County’s water basins are composed of interconnected sub-areas which impact one another. Thus, the Glossary definition allows the assessment of impacts to be manipulated to ignore basin-wide effects. Findings could be made of long-term water supply within a sub-area, while at the same time ignoring cumulative impacts on the larger basin. Please explain how this problem will be avoided.
 - The Glossary provides no criteria for determining whether water use will “damage the economical extraction” of water. Please identify these criteria. In the Salinas Basin, new water demand will require expanded water treatment, storage and conveyance facilities. These facilities, like new and deeper wells, will increase the cost of water. Would these increased costs represent “damage to the economical extraction of water?” If not, why not?
 - The DEIR claims at p. 4.3-150 that this policy “encourages efforts to *improve* sustainability by reducing overdraft.” Since a water supply is either sustainable or it is not, the reference to “improving sustainability” suggest that the policy will not in fact result in sustainable water supplies. Please explain whether the reference to “improving sustainability” is intended to countenance the possibility that projects would be approved merely on the

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

	<p>basis that they will use less water than existing land use on the site. In this regard, please see our comments on PS 3.2.</p> <ul style="list-style-type: none"> • Please explain why this policy will not be applied to the first single family dwelling and non-habitable accessory uses on an existing lot of record. • Please explain whether this policy will be applied to agricultural development for which a discretionary permit is required. • Please explain why the policy is limited to projects for which a discretionary permit is required. • If the County believes that it has no authority to impose a requirement of proof of a long-term sustainable water supply on projects unless there is a discretionary permit, please explain why. • If the County believes that it has no authority to impose a requirement of proof of a long-term sustainable water supply on projects unless the project requires a discretionary permit, please explain why the 2007 General Plan proposes to exempt from discretionary permitting a number of activities that will consume substantial water resources, including cultivation of previously uncultivated land, development on slopes, development of lots of record, and most development in the AWCP. In view of acknowledged water supply problems, any decision to forego discretionary permitting that would consequently exempt projects from the requirement to prove that there is an adequate water supply makes no sense. • Please explain whether the DEIR's conclusions in section WR4 that water supply impacts in the Pajaro basin and on the Monterey Peninsula will be unavoidably significant (DEIR, p. 4.3-130) is solely attributable to the inapplicability of this policy to development on legal lots of record. • Policy PS 3.3 calls for eventual definition of criteria for proof of a long-term sustainable water supply, but the criteria are only applicable to new <i>subdivisions</i>. To the extent that Policy PS 3.1 is applicable to any development <i>other than</i> subdivisions, there are no apparent plans to provide any formal criteria for proof of a long-term sustainable water supply. Please identify the criteria for long-term sustainable water supply applicable
--	--

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
<p>PS-3.2 In determining whether there is a long-term sustainable water supply, credit may be given for a significant reduction in the historic water use on site. For the purpose of calculating water supply, up to 50% of the average annual water use of 10 of the previous 20 years may be credited toward the net demand of the project.</p>	<p>to development other than subdivisions.</p> <ul style="list-style-type: none"> • The policy will not prevent a net increase in water use from new development unless the water-using activity on the site (e.g, agriculture) is not replaced with new water-using activity (e.g.,, newly cultivated agricultural land) somewhere else in the basin. The DEIR claims agricultural land will be replaced and has remained constant over time. DEIR, p. 4.2-5 to 4.2-7. • This policy does not reflect the fact that in the long term the available sustainable water supplies are interconnected and that use of the common pool of water supplies is a zero sum game. Sufficiency of the long term supply cannot be determined on a parcel-by-parcel basis because it depends on aggregate water use by all of those users drawing from a common pool. Privileging a particular set of future users based on the accident that their development site previously used water unsustainably will penalize all other water users drawing from that common pool. Please explain the rationale for this policy. • In light of the above comments, please estimate the effect of this policy on water supplies, based on data in the DEIR related to conversion of agricultural land for urban uses. • This policy would permit continued unsustainable water use simply on the basis that the site of a proposed development project has historically used water extravagantly. Because those areas are likely to be areas previously used for agriculture, the policy creates an incentive for urbanization of agricultural land – the availability of water. Providing such an incentive is inconsistent with the goals of the Agriculture section of the 2007 General Plan. • What data will be required to demonstrate historic water use? What independent audit of applicants’ claims will be conducted? • Please explain how this policy will be coordinated with Policy PS 3.3.
<p>PS-3.3 Specific criteria for proof of a long term sustainable water supply for new residential or commercial subdivisions shall be developed. Criteria shall include but are not limited to:</p> <ol style="list-style-type: none"> a. Water quality. b. Production capability. c. Recovery rates. d. Effect on wells in the immediate vicinity. 	<ul style="list-style-type: none"> • Please explain why this policy is applicable only to subdivisions. In particular, please explain why it is not applicable to cultivation of previously uncultivated land, development of lots of record, and AWCP activities for which no discretionary permit is required. • The policy provides no performance standards. The “criteria” listed are not in fact

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

e. Existing groundwater conditions.
 f. Technical, managerial and financial capability of the water purveyor of the water system.
 g. Cumulative impacts and planned growth in the area
 h. Status and surety of planned new water supply projects including design, financing mechanism, and environmental review of the project.

standards but empty parameters for which no values are specified. For example, what will be considered to be acceptable impacts to water quality? What will be considered acceptable cumulative impacts? These are issues that must be addressed now, in the aggregate, based on analysis of expected development and the available water sources if this policy is to meaningfully support the DEIR's significance conclusions.

- It appears that the DEIR's conclusions that there is an adequate water supply in the Salinas Basin and that, but for development of lots of record, there would be an adequate supply in other basins is based on this policy and PS 3.1. To the extent the DEIR relies on these policies to support its significance conclusions, the DEIR has simply postponed the development of any empirical basis for those conclusions. In effect, the DEIR claims that there will be enough water (or that there would be, but for lots of record) because the County will not allow development unless there is enough water, *but the County will not actually decide what constitutes enough water until after the General Plan is approved.* Because the criteria for long term sustainable water supply have not been stated, there can be no substantial evidence that there is in fact a long term sustainable water supply. Substantial evidence of a long term sustainable water supply would require that the DEIR determine the sustainable yields of the basins and demonstrate that long term total demand will be within that yield – which would require an overall water balance analysis for each basin. As discussed above, the DEIR does not provide this.
- It appears than none of the “criteria” or parameters identified in the policy actually stands for sustainable yield or would require determination of long term sustainable yield. Please explain which “criteria” would require the determination of the actual long-term sustained yield of each basin and/or hydrogeologic sub-areas.
- Please explain how in practice the to-be-developed criteria will be applied in determining whether to permit new development. Will each development project be required to provide a hydrological analysis that applies the criteria to demonstrate that

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
	<p>there is sufficient water supply? Will the to-be-developed criteria specifically identify in terms of acre-feet per year the actual long-term sustained yield of each basin and/or hydrogeologic sub-areas? If not, will it be up to each project to determine this figure? Will the to-be-developed criteria specifically identify the demand from all other cumulative water users, or will it be up to each project to determine this figure?</p>
<p>PS-3.4 Specific criteria shall be developed for use in the evaluation and approval of adequacy of all new wells. Criteria shall assess both water quality and quantity including, but not limited to:</p> <ul style="list-style-type: none"> a. Water quality. b. Production capability. c. Recovery rates. d. Effect on wells in the immediate vicinity as required by the Monterey County Water Resource Agency. e. Existing groundwater conditions. f. Technical, managerial, and financial capability of the water purveyor of a water system. 	<ul style="list-style-type: none"> • Please address the concerns identified in our comments on Policy PS 3.3, which are applicable to this policy as well. • Will this policy apply to <i>all</i> new wells, including wells for development on legal lots of record? If so, please explain why this policy does not ensure that there will be an adequate water supply for the Monterey Peninsula and the Pajaro basin, areas for which the DEIR concludes that there would be an adequate supply but for development on legal lots of record. • Please explain how this policy will be coordinated with Policy PS 3.3. Will all new wells be required to demonstrate that their use will not interfere with a long term sustainable water supply for all other users in the basin? If not, why not? • The policy appears to restate most of the same “criteria” contained in PS 3.3. Why is it necessary to have a separate policy for new wells and for new subdivisions? • Please explain why there are any differences in the “criteria” under this Policy and the “criteria” listed under Policy PS 3.3. Why does this policy not include as “criteria” the “cumulative impacts and planned growth in the area” and the “status and surety of planned new water supply projects including design, financing mechanism, and environmental review of the project?”
<p>PS-3.5 The County shall require that pump tests or hydrogeologic studies be conducted for new high-capacity wells, including high-capacity urban and agricultural production wells, where there may be a potential to affect existing adjacent domestic or water system wells adversely as determined by the Monterey County Water Resource Agency. In the case of new high-capacity wells for which pump tests or hydrogeologic studies show the potential for significant adverse well interference, the County shall require that the well be relocated or otherwise</p>	<ul style="list-style-type: none"> • Why is the policy limited to effects on existing <i>adjacent</i> domestic or water system wells? • A well may avoid local interference with “adjacent” wells but still contribute to long-term overdrafting and saltwater intrusion. Please explain whether the DEIR relies on this policy in support of its significance conclusions with respect to the sufficiency of water supplies, overdrafting, and saltwater intrusion.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>mitigated to avoid significant well interference.</p>	<ul style="list-style-type: none"> • This policy omits reference to policies AG-3.1 through AG-3.3, dealing with “Routine and Ongoing Agricultural Activities” (ROAA). The list of ROAA has not been finalized, and no timeframe has been given for finalization. Tentatively, however, it proposes irrigation as a routine and ongoing activity. Please explain whether ROAA will be exempt from the requirements of PS-3.5. • Please explain how this policy will be administered. Will the policy require a discretionary permit for all new wells? How and in what context will MCWRA determine whether there may be a potential to affect existing adjacent domestic or water system wells adversely?
<p>PS-3.6 The County and all applicable water management agencies shall not allow the drilling or operation of any new wells in known areas of saltwater intrusion as identified by Monterey County Water Resource Agency until such time as a program has been approved and funded which will minimize or avoid expansion of salt water intrusion into useable groundwater supplies in that area. This policy shall not apply to deepening or replacement of existing wells.</p>	<ul style="list-style-type: none"> • It appears that this policy is intended to avoid or minimize saltwater intrusion. However, basins and/or hydrogeologic sub-areas are interconnected aquifers. Thus, wells inland of saltwater intrusion areas contribute to saltwater intrusion. Water agencies facing saltwater contamination have in the past simply moved production wells inland, drawing the saltwater toward them. Under this policy they may continue to do so. Please explain how this policy could reduce saltwater intrusion. • The policy assumes that a technically feasible program can be approved and funded to avoid expansion of salt water intrusion. Please explain what this program or programs would entail and identify any secondary impacts, taking into account our comments above on the apparent inadequacy of the SVWP to halt saltwater intrusion based on effects on steelhead and failure to account for all water demand, particularly agricultural water demand. To the extent that the DEIR relies on unidentified or infeasible programs as the basis of its conclusions regarding saltwater intrusion, it fails to provide substantial evidence to support those conclusions.
<p>PS-3.7 A determination of a long term sustainable water supply:</p> <p>a. shall not be based on hauled water.</p> <p>b. should be determined on a basin-by-basin basis.</p>	<ul style="list-style-type: none"> • Please see our comments on PS 3.1 through PS 3.5. • Does this policy require that proof of a long term sustainable water supply identify total future water demands in the basin and compare these demands to a long term sustained yield for that basin? If not, why not? • Does “hauled water” include any and all

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
	<p>transfers of water from one basin to another? From any hydrogeologic sub-areas to another?</p> <ul style="list-style-type: none"> • Does hauled water include pumped groundwater that is transferred for use on land that does not overlie the aquifer but which would drain to the aquifer? For example, does this policy prohibit pumping groundwater from the Salinas groundwater basin for use on adjacent hillside land that does not overlie the aquifer? If not, why not?
<p>PS-3.8 The County shall coordinate and collaborate with all agencies responsible for the management of existing and new water resources.</p>	<ul style="list-style-type: none"> • This policy has no substantive enforceable mandate.
<p>PS-3.9 A program to eliminate overdraft of water basins shall be developed as part of the Capital Implementation and Financing Plan (CIFP) for this Plan using a variety of strategies, which may include but is not limited to:</p> <ol style="list-style-type: none"> a. Water banking; b. Groundwater and aquifer recharge and recovery; c. Desalination; d. Pipelines to new supplies; and e. A variety of conjunctive use techniques. <p>The CIFP shall be reviewed every five (5) years in order to evaluate the effectiveness of meeting the strategies noted in this policy. Areas identified to be at or near overdraft shall be a high priority for funding.</p>	<ul style="list-style-type: none"> • The policy assumes that a technically feasible program can be approved and funded to eliminate overdraft. Please explain what this program or programs would entail and identify any secondary impacts, taking into account our comments above on the apparent inadequacy of the SVWP to halt saltwater intrusion based on effects on steelhead and failure to account for all water demand. • The Supreme Court held in <i>Vineyard Area Citizens</i> that vague and unquantified references to a management technique like conjunctive use do not suffice to provide the requisite degree of certainty as to long term supply. <i>Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova</i> (2007) 40 Cal.4th 412, 440. Thus the DEIR must actually quantify expected supply and demand, and, where it relies on management strategies like conservation and conjunctive use, it must quantify the expected yields from these strategies • To the extent that the DEIR relies on unidentified or infeasible program as the basis of its conclusions regarding overdrafting, it fails to provide substantial evidence to support those conclusions.
<p>PS-3.10 Systems that use grey water and cisterns for multi-family residential and commercial landscaping shall be encouraged, subject to a discretionary permit.</p>	<ul style="list-style-type: none"> • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects. Please explain why this policy is not made mandatory.
<p>PS-3.11 A tentative subdivision map and/or vesting tentative subdivision map application for either a standard or minor subdivision shall not be approved until:</p> <ol style="list-style-type: none"> a. The applicant provides evidence of an assured long-term water supply in terms of yield and quality for all lots which are to be created through 	<ul style="list-style-type: none"> • To what extent does this policy impose any additional constraints that are not already imposed by SB 221? • How will this policy be coordinated with Policy PS 3.1 to 3.5? • Please explain why this policy is applied only

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>subdivision. A recommendation on the water supply shall be made to the decision making body by the Director of Health Services and the General Manager of the Monterey County Water Resources Agency, or their respective designees.</p> <p>b. The applicant provides proof that the water supply to serve the lots meets both the water quality and quantity standards as set forth in Title 22 of the California Code of Regulations and County water systems and well regulations (Chapters 15.04 and 15.08 of the Monterey County Code, as may be periodically amended), subject to the review and recommendation by the Director of Health Services to the decision making body.</p>	<p>to subdivisions. Why is it not made applicable to all development projects that will require a water supply, including development of lots of record, AWCP activities that are proposed to be exempted from discretionary permitting, and cultivation of previously uncultivated agricultural land?</p>
<p>PS-3.12 Maximize agricultural water conservation measures to improve water use efficiency and reduce overall water demand. The County shall establish an ordinance identifying conservation measures that reduce agricultural water demand.</p>	<ul style="list-style-type: none"> • The policy provides no performance standards or exemplary measures that could support a finding that impacts are minimized or avoided. • The policy calls for an ordinance “identifying” conservation measures. Please explain whether the policy will also require that these measures actually be implemented. If not, why not? If so, please explain how and in what context the County will ensure that the measures are implemented and enforced.
<p>PS-3.13 Maximize urban water conservation measures to improve water use efficiency and reduce overall water demand. The County shall establish an ordinance identifying conservation measures that reduce potable water demand.</p>	<ul style="list-style-type: none"> • The policy provides no performance standards or exemplary measures that could support a finding that impacts are minimized or avoided. • The policy calls for an ordinance “identifying” conservation measures. Please explain whether the policy will also require that these measures actually be implemented. If not, why not? If so, please explain how and in what context the County will ensure that the measures are implemented and enforced.
<p>PS-3.14 Maximize the use of recycled water as a potable water offset to manage water demands and meet regulatory requirements for wastewater discharge, by employing strategies including, but not limited to, the following:</p> <p>a. Increase the use of treated water where the quality of recycled water is maintained, meets all applicable regulatory standards, is appropriate for the intended use, and re-use will not significantly impact beneficial uses of other water resources.</p> <p>b. Work with the agricultural community to develop new uses for tertiary recycled water and increase the use of tertiary recycled water for irrigation of lands currently being irrigated by groundwater pumping.</p> <p>c. Work with urban water providers to emphasize use of tertiary recycled water for irrigation of parks,</p>	<ul style="list-style-type: none"> • The policy provides no performance standards that could support a finding that impacts are minimized or avoided. • The policy does not create any enforceable mandate because it only calls for some unspecified agency to “work with” others. Without specifying the agency, the specific programs, the resources to be committed, and the standards to be met, the policy cannot support a finding that impacts will be avoided or minimized. • Please estimate the effect of this policy in protecting groundwater supplies, noting that impermeable clay layers prevent surface recharge in many of the areas that overlay saltwater intrusion.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>playfields, schools, golf courses, and other landscape areas to reduce potable water demand.</p> <p>d. Work with urban water providers to convert existing potable water customers to tertiary recycled water as infrastructure and water supply become available.</p>	
<p>PS-3.15 To ensure accuracy and consistency in the evaluation of water supply availability, Monterey County Health Department, in coordination with the MCWRA, shall develop guidelines and procedures for conducting water supply assessments and determining water availability. Adequate availability and provision of water supply, treatment, and conveyance facilities shall be assured to the satisfaction of the County prior to approval of final subdivision maps or any changes in the 2007 General Plan Land Use or Zoning designations.</p>	<ul style="list-style-type: none"> • Please see our comments on Policies PS 3.1 to 3.5, 3.7, and 3.11. This policy calls for guidelines and procedures, but lacks any substantive content or performance standards. It cannot support a finding that water supply impacts will be avoided or minimized. • Please explain why this policy is limited to approval of subdivisions and changes in land use or zoning. Why does it not apply to other water using land use approvals? • Please explain whether all zoning designation changes made as a result of the adoption of the proposed new land use designations in the 2007 General Plan will be required to demonstrate adequate availability and provision of water supply, treatment, and conveyance facilities.
<p>PS-4.4 Groundwater recharge through the use of reclaimed wastewater, not including primary treated wastewater, in accordance with federal, state, and local laws, regulations and ordinances shall be encouraged.</p>	<ul style="list-style-type: none"> • Policies that “support,” “promote,” or “encourage” activities and programs do not create any enforceable constraints on development projects. Please explain why this policy is not made mandatory. • Please estimate the effect of this policy in protecting groundwater supplies, noting that impermeable clay layers prevent surface recharge in many of the areas that overlay saltwater intrusion.
<p>PS-4.7 Specific criteria for new wastewater treatment facilities and proof of the adequacy of existing facilities to service new development shall be developed as part of the implementation of this Plan. Criteria may include but are not limited to:</p> <ol style="list-style-type: none"> a. Service area. b. Demand for service. c. Wet weather storage. d. Recycling of treated wastewater. e. Existing groundwater conditions. f. Effect of recharge on existing groundwater. g. Technical, managerial and financial capability of the wastewater treatment provider. 	<ul style="list-style-type: none"> • The DEIR cites this policy as evidence that recharge will occur. However, because there are in fact no performance standards in this policy (the “criteria” are in fact <i>possible</i> parameters with no values specified), there is no assurance that the policy will have any effect on recharge. In fact, the “criteria” are not even mandated since the policy provides that the “criteria <i>may</i> include . . .effect on recharge.” • Please estimate the effect of this policy in protecting groundwater supplies, noting that impermeable clay layers prevent surface recharge in many of the areas that overlay saltwater intrusion.
<p>PS-4.8 Specific criteria for septic disposal systems to serve individual uses where connection to a wastewater treatment facility is not feasible shall be</p>	<ul style="list-style-type: none"> • The DEIR cites this policy as evidence that recharge will occur. However, because there

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>developed as part of the implementation of this Plan. Criteria may include but are not limited to (consistent with <i>Table PS-1</i>):</p> <ul style="list-style-type: none"> a. Minimum lot size. b. Location of wells. c. Soils testing. d. Areas for backup and repair of leaching systems. e. Existing groundwater conditions. f. Effect of recharge on existing groundwater. g. Consideration of alternatives systems (e.g. mound system, enhanced treatment systems) 	<p>are in fact no performance standards in this policy (the “criteria” are in fact <i>possible</i> parameters with no values specified), there is no assurance that the policy will have any effect on recharge. In fact, the “criteria” are not even mandated since the policy provides that the “criteria <i>may</i> include . . .effect on recharge.”</p> <ul style="list-style-type: none"> • Please estimate the effect of this policy in protecting groundwater supplies, noting that impermeable clay layers prevent surface recharge in many of the areas that overlay saltwater intrusion.
SAFETY ELEMENT	
<p>S-3.5 Runoff Performance Standards that result in an array of site planning and design techniques to reduce storm flows plus capture and recharge runoff shall be developed and implemented, where appropriate, as determined by the Monterey County Water Resources Agency.</p>	<ul style="list-style-type: none"> • This policy explicitly defers formulation of a performance standard to be used for future mitigation of development impacts, so it necessarily fails to include a performance standard. • If this policy would permit a runoff performance standard weaker than requiring that “post-development, off-site peak flow drainage from the area being developed shall not be greater than pre-development peak flow drainage,” then it conflicts with Policy S 3.1. If it would permit more stringent runoff standards, then that should be clarified. • If the intent of this policy is to require not just the development of runoff performance standards but also the development of “an array of site planning and design techniques to reduce storm flows plus capture and recharge runoff,” then the policy lacks any performance standards for those or exemplary measures for those “site planning and design techniques.” • This policy does not increase water supply or decrease water consumption over baseline conditions. Please estimate its effect on protecting existing water supplies and/or avoiding or minimizing water supply impacts.
MITIGATION MEASURES	
<p>Mitigation for 2030 findings:</p> <p>“The following measure is intended to reduce impacts on the Monterey Peninsula during the 2030 planning horizon to below a level of significance. However, for the reasons discussed above, there are no feasible measures that would reduce the impacts of development on existing lots of record in the North County and the Pajaro River below a level of</p>	<ul style="list-style-type: none"> • Please explain why the County does not propose to disallow development of existing lots of record, or to condition it on sufficient water supplies, if that development would result in significant unmitigated impacts. Please explain how many residential units will be developed on existing lots of record in each basin and how much water the County expects

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

significance.

WR-1: Support a Regional Solution for the Monterey Peninsula in addition to the Coastal Water Project

The County will revise the draft 2007 General Plan to include the following new policy:

PS-3.16. The County will participate in the Water for Monterey County Coalition, or similar regional group, for the purpose of identifying and supporting a variety of new water supply projects, water management programs, and multiple agency agreements that will provide additional domestic water supplies for the Monterey Peninsula and Seaside basin, while continuing to protect the Salinas and Pajaro River groundwater basins from saltwater intrusion. The County’s general objective, while recognizing that timeframes will be dependent upon the dynamics of the regional group, will be to complete the cooperative planning of these water supply alternatives within five years of adoption of the General Plan and to implement the selected alternatives within five years after that time.” DEIR, p. 4.3-130.

that development to consume.

- If development of existing legal lots of record cannot for some reason be avoided or appropriately conditioned, please explain why the County does not propose to address this “unavoidable” water consumption by conditioning or barring *other* water consuming development over which the County does have discretion. For example, please explain why Policies PS 3.1 through PS 3.7, which purport to require that discretionary development be conditioned on an adequate water supply, would not take account of the expected water demands from lots of record. After all, Policy PS 3.3(f) requires that cumulative impacts and planned growth be considered in determining whether there is an adequate long term sustainable water supply.
- The DEIR’s significance conclusions for the Monterey Peninsula and the Pajaro Valley assert that water supply would be sufficient but for development of lots of record, but that this development will result in significant impacts. DEIR, p. 4.3-130 to 4.3-131. The DEIR also states that “2007 General Plan policies will constrain other development until long-term water supplies are assured.” DEIR, p. 4.3-130. The implication of these claims is that until long term supplies are secured that are sufficient to serve all expected development on legal lots of record, no other discretionary development will be permitted. Please confirm that this is the case or explain why not.
- PS 3.16 simply postpones the identification of essential water supply programs to support planned development on the Monterey Peninsula and postpones the identification and mitigation of impacts from providing that water supply.
- As comments above demonstrate, the regional group’s (WFMCC’s) current proposal is inconsistent with the proposed expansion of the SVWP on which the DEIR relies for its significance conclusion for the Salinas Valley basin. Furthermore, the DEIR admits that the County does not even support the regional solution currently proposed by the group. DEIR, p. 4.3-130.
- *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434 provides as follows: “If the

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

	<p>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.” <i>See also id.</i> at 444, 446.</p> <ul style="list-style-type: none"> • Here, the DEIR admits that it has not identified adequate water supply for the Monterey Peninsula. Nonetheless, the DEIR proposes to find water supply impacts attributable to development on the Monterey Peninsula, other than development of lots or record, less than significant by virtue of the County’s participation in a regional planning group. This does not meet the <i>Vineyard Area Citizens</i> mandate to identify alternatives, disclose impacts, and propose mitigation. Since the County has not even identified the water supply programs that might be adopted, it cannot reasonably conclude that impacts will be less than significant. (Nor, without weighing the actual environmental costs significant unavoidable impacts could the County adopt a statement of overriding considerations.)
<p>Mitigation for Buildout findings:</p> <p>WR-2: Initiate Planning for Additional Supplies to the Salinas Valley</p> <p>The County will revise the draft 2007 General Plan to include the following new policies:</p> <p>PS-3.17. The County will pursue expansion of the SVWP by initiating investigations of the capacity for the Salinas River water storage and</p>	<ul style="list-style-type: none"> • Regarding PS 3.17, this mitigation is only identified as necessary with respect to Buildout conditions. However, any mitigation calling for the expansion of the SVWP should be listed as essential to support the finding of significance through 2030, not just through buildout, because the DEIR and the SVWP both state that expansion will be required to address saltwater intrusion conditions that will be in place <i>by</i> 2030. DEIR, p. 4.3-35; SVWP EIR, § 3.2.4 (9,700 AFY delivery will only

<p>POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT</p>	
<p>distribution system to be further expanded. This shall also include investigations of expanded conjunctive use, use of recycled water for groundwater recharge and seawater intrusion barrier, and changes in operations of the reservoirs. The County’s overall objective is to have an expansion planned and in service by 2030.</p> <p>PS-3.18. The County will convene and coordinate a working group made up of the Salinas Valley cities, the MCWRA, and other affected entities for the purpose of identifying new water supply projects, water management programs, and multiple agency agreements that will provide additional domestic water supplies for the Salinas Valley. These may include, but not be limited to, expanded conjunctive use programs, further improvements to the upriver reservoirs, additional pipelines to provide more efficient distribution, and expanded use of recycled water to reinforce the hydraulic barrier against seawater intrusion. The County’s objective will be to complete the cooperative planning of these water supply alternatives by 2020 and have projects online by 2030.</p> <p>Mitigation Measure BIO-2.3: Add Considerations regarding Riparian Habitat and Stream Flows to Criteria for Long-Term Water Supply and Well Assessment</p> <p>Public Services Policies PS-3.3 and PS-3.4 establish the criteria for proof of a long-term water supply and for evaluation and approval of new wells. The following criteria shall be added to these policies:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Policy PS-3.3.i—Effects on instream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead. <input type="checkbox"/> Policy PS-3.4.g—Effects on instream flows necessary to support riparian vegetation, wetlands, fish, and other aquatic life including migration potential for steelhead. 	<p>halt expansion based on 1995 water demand; expanded delivery system will be necessary to address continued saltwater intrusion under assumed 2030 conditions).</p> <ul style="list-style-type: none"> • Regarding PS 3.17, please see comments regarding the sufficiency of the proposed expansion of the SVWP above. • Regarding PS 3.18, the DEIR admits that it has not identified adequate water supplies for development permitted under the 2007 General Plan through buildout. Since the County has not identified the water supply programs that might be adopted or the severity of their impacts, it has not weighed the actual environmental costs from the admitted significant unavoidable impacts. Without doing so, the County cannot adopt a statement of overriding considerations. • Regarding policies PS 3.3i and 3.4g, this “mitigation” amounts to nothing more than an admission that the DEIR has not evaluated effects on instream flows caused by water supply projects. In this regard, please see our comments regarding the DEIR’s failure to acknowledge significant impacts on steelhead from the proposed expanded delivery system for the SVWP. The DEIR must be revised to provide information about impacts attributable to changes to flow regimes due to water supply projects. • Furthermore, even if it were permissible to defer the analysis of impacts (and it is not), neither PS 3.3i and 3.4g contain any performance standards (the “criteria” are simply parameters without values that would, as written, permit <i>any</i> degree of adverse effects on instream flows as long as those effects were considered), so they do not meet CEQA’s requirements for deferral of mitigation. • PS 3.3i and 3.4g are proposed as mitigation measures only to address significant effects after 2030 through buildout. Please explain why the DEIR does not propose PS 3.3i and 3.4g as necessary mitigation measures to address adverse effects prior to 2030.
<p>POLICIES LIMITED TO SPECIFIC AREA PLANS</p>	<ul style="list-style-type: none"> • GENERAL COMMENT: For each policy, please address the identified concerns by revising the policy and/or explain how, in light of these concerns, the policy can provide a foundation for the DEIR’s conclusion that erosion and sedimentation

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
	<p style="text-align: center;">impacts will be less than significant.</p> <ul style="list-style-type: none"> • For each policy, please explain why it is limited in application to a specific area plan and is not applied throughout the County
NORTH COUNTY AREA PLAN	
<p>NC-5.1 New developments shall be designed to maximize prime groundwater recharge capabilities and to minimize runoff from the property.</p>	<ul style="list-style-type: none"> • There is no definition in GPU5 or its DEIR of “prime groundwater recharge capability.” Please explain this phrase. • Surface recharge does not occur in most of north Monterey County, so a policy requiring maximizing recharge in North County can do nothing to improve or protect water supply. The DEIR points out on page 4.3-7, according to the California Department of Water Resources, “because of the impermeable nature of the clay aquitard above the 180-foot aquifer, surface recharge (including that from precipitation, agricultural return flows, and river flow) does not occur. Instead, recharge is from underflow originating from the Upper Valley and Forebay Subareas.” • This policy does not increase water supply or decrease water consumption over baseline conditions. Please estimate its effect on water supplies and water supply impacts.
<p>NC-5.2 Water development projects that can offer a viable water supply to water-deficient areas in North County shall be a high priority.</p>	<ul style="list-style-type: none"> • This policy lacks any enforceable mandate. • Please explain how it will be implemented, by whom, and with what resources. Please estimate its effect in securing water supplies and addressing water supply impacts.
GREATER SALINAS AREA PLAN	
<p>GS-1.1 <u>Special Treatment Area: Butterfly Village</u> - Approximately 671 acres located north of San Juan Grade Road and east of Harrison Road shall be designated as a “Special Treatment Area” to permit a planned development in substantial conformance with the Butterfly Village Land Use Plan (<i>Figure LU7</i>) including:</p> <p>a. Approximately 345 acres of neighborhood and community parks and open space uses such as hiking trails, recreation, public parking, storm water detention ponds and lakes for drainage control and water recharge as well as areas preserved for sensitive habitat.</p> <p>b. 71 hospitality units.</p> <p>c. A 20,000 square foot Community Health and Wellness Center that offers a variety of health, fitness and nutrition uses.</p> <p>d. Public facilities, including a fire station, sheriff substation, maintenance yard, independent</p>	<ul style="list-style-type: none"> • The DEIR cites this policy as evidence that adequate infrastructure for potable water will be required. Without evaluating the development’s proposed sources and uses of water in the context of a regional water balance analysis, merely citing this policy does not support the conclusion that water supply impacts from the overall development permitted by the 2007 General Plan will be avoided or minimized.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

wastewater treatment facility, 200 square foot library, and a 10-acre site for a potential elementary school site with athletic fields.

e. Neighborhood Commercial (approximately 90,000 sq. ft.) including mixed use development, to help provide jobs within the project.

f. Development on slopes exceeding 25% and ridgeline development.

g. Up to 1,147 residential units for various income levels ranging from 0.9 units/acre to 20 units/acre.

h. A minimum of 32% inclusionary/workforce levels including but not limited to senior living facilities.

i. Agriculture buffers ranging from 30 feet to 100 feet.

j. Vehicular access from the west via Harrison Road and from the east via San Juan Grade Road.

k. A dedicated easement to accommodate the realignment of the Highway 101 future Prunedale Bypass.

A Community Plan is not required for development of the Butterfly Village STA. The Butterfly Village STA shall be entitled to the exemptions in the General Plan provided for Community Areas and for areas for which a community Plan or Specific Plan has been adopted. However, the areas adjoining the Butterfly Village STA shall not be entitled to rely upon *LU-2.12(d)* and *OS-9.2*. Except as provided for in this General Plan, development shall be guided by the principles and standards contained in Chapters 3-8 of the document entitled “Rancho San Juan Specific Plan” dated November 7, 2005, which are otherwise consistent with the Butterfly Village STA and the Butterfly Village Land Use Plan (*Figure LU7*). (APNs: 113-271-014-000, 113-212-043-000, 113-212-044-000, 113-212-004-000, 113-212-003-000, 113-212-055-000, 113-212-056-000, 113-212-057-000 and 113-212-058-000)

GS-1.8 The land near the town of Spreckels designated as industrial may also be developed partially or wholly as agriculturally related commercial uses provided said agriculturally-related development complies with the following conditions:

a. A comprehensive development plan as a planned general commercial project shall be prepared.

b. Development shall be designed to protect and, where feasible, enhance the riparian corridor along the Salinas River.

c. Proposed development would not deteriorate water quality in the Salinas River or area ground water.

d. Walnut trees along Spreckels Boulevard shall be preserved.

e. Development will be compatible with the

- The policy provides no performance standards for protection and enhancement of the riparian corridor or for protection of water quality.
- The “feasibility” qualification of the obligation to protect the riparian corridor is not explained (technically feasible? economically feasible?) and renders the policy essentially unenforceable.
- Please estimate the effect of this policy on ensuring adequate water supply and explain how it will avoid or minimize water supply impacts.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>agricultural activities on the adjoining parcel.</p>	
<p>GS-5.1 Portions of Gabilan Creek shall be evaluated for a linear park as defined by the County's Parkland Classification System at such time when the County can support another regional park. Until such time, Gabilan Creek shall be:</p> <ol style="list-style-type: none"> a. Maintained in a natural riparian state; b. Kept in a free-flow state devoid of dams; c. Allowed its natural flood capacity through required setbacks conforming to the 100 year flood plain; and d. Kept free from urban encroachment by residential development through required dedication of land in the floodplain corridor. 	<ul style="list-style-type: none"> • Please estimate the effect of this policy on ensuring adequate water supply and explain how it will avoid or minimize water supply impacts.
CENTRAL SALINAS AREA PLAN	
<p>CSV-1.1 <u>Special Treatment Area: Paraiso Hot Springs</u> - The Paraiso Hot Springs properties shall be designated a Special Treatment Area. Recreation and visitor serving land uses for the Paraiso Hot Springs Special Treatment Area may be permitted in accordance with a general development plan and other discretionary approvals such as subdivision maps, use permits and design approvals. The Special Treatment Area may include such uses as a lodge, individual cottages, a visitor center, recreational vehicle accommodations, restaurant, shops, stables, tennis courts, aquaculture, mineral water bottling, hiking trails, vineyards, and orchards. The plan shall address fire safety, access, sewage treatment, water quality, water quantity, drainage, and soil stability issues. (APN: 418-361-004, 418-361-009, 418-361-021, 418-361-022)</p>	<ul style="list-style-type: none"> • This policy permits development as long as some future plan “addresses” water supply. There are no performance standards or exemplary measures that would support a finding that the policy meaningfully contributes to avoidance or minimization of impacts. • Please estimate the effect of this policy on ensuring adequate water supply and explain how it will avoid or minimize water supply impacts.
<p>CSV-1.2 All recreation and visitor-serving commercial land uses shall require a use permit. Said uses on sites greater than 10 acres shall require a comprehensive development plan that addresses hydrology, water quantity and quality, sewage disposal, fire safety, access, drainage, soils, and geology.</p>	<ul style="list-style-type: none"> • This policy permits development as long as some future plan “addresses” water supply. There are no performance standards or exemplary measures that would support a finding that the policy meaningfully contributes to avoidance or minimization of impacts. • Please estimate the effect of this policy on ensuring adequate water supply and explain how it will avoid or minimize water supply impacts.
<p>CSV-5.1 Development shall be designed to maintain groundwater recharge capabilities on the property. To protect and maintain areas for groundwater recharge, preservation of riparian habitats, and flood flow capacity, the main channels of the Arroyo Seco River and the Salinas River shall not be encroached on by development.</p>	<ul style="list-style-type: none"> • This policy does not increase water supply or decrease water consumption over baseline conditions. Please estimate the effect of this policy on ensuring adequate water supply and explain how it will avoid or minimize water supply impacts.
<p>CSV-5.2 Recreation and visitor-serving commercial</p>	<ul style="list-style-type: none"> • There is no definition in GPU5 or its DEIR of

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT

<p>uses shall only be allowed if it can be proven that:</p> <p>a. areas identified by the Water Resources Agency as prime-groundwater recharge areas can be preserved and protected from sources of pollution as determined by the Director of Environmental Health and the Water Resources Agency;</p> <p>b. proposed development can be phased to ensure that existing groundwater supplies are not committed beyond their safe, long-term yields where such yields can be determined.</p> <p>c. floodways associated with the main channels of either the Arroyo Seco River or the Salinas River will not be encroached on by development because of the necessity to protect and maintain these areas for groundwater recharge, preservation of riparian habitats, and flood flow capacity as determined by the Water Resources Agency.</p> <p>d. the proposed development meets both water quality and quantity standards expressed in Title 22 of the California Code of Regulations and <i>Title 15.04</i> of the Monterey County Code as determined by the Director of Environmental Health;</p> <p>e. the proposed development meets the minimum standards of the Regional Water Quality Control Basin Plan when septic systems are proposed and also will not adversely affect groundwater quality, as determined by the Director of Environmental Health; and</p> <p>f. the proposed development will not generate levels of runoff which will either cause erosion or adversely affect surface water resources as determined by the Water Resources Agency.</p>	<p>“prime groundwater recharge capability.” Please explain this phrase.</p> <ul style="list-style-type: none"> • Preservation of existing recharge areas does not increase water supply or decrease water consumption over baseline conditions. Please estimate its effect on water supplies and water supply impacts. • Please explain how section “b” of the policy will be coordinated with Policies PS 3.1 through 3.7, which purport to condition development on proof of a “long-term sustainable water supply.” • Please explain whether there is any difference between proof of a “long-term sustainable water supply” and ensuring “that existing groundwater supplies are not committed beyond their safe, long-term yields where such yields can be determined.” • Please explain how and whether Policies PS 3.1 through 3.7 would be applied in the Central Salinas valley where safe, long-term yields cannot be determined. • Preservation of recharge areas does not increase water supplies or decrease consumption over baseline conditions. Please estimate the effect of section “c” this policy on water supply and water supply impacts. • Please explain whether and how this policy will be applied to recreation and visitor-serving commercial use projects in the Winery Corridor that do not require discretionary permits. If not, why not? If not, how will the impacts this policy is intended to avoid be addressed for recreation and visitor-serving commercial use projects in the Winery Corridor that do not require discretionary permits? • Please explain why this policy is limited to recreation and visitor-serving commercial uses. Why is this policy not applied to residential projects and to cultivation of previously cultivated land?
<p>CSV-5.3 The Spence/Potter Road area, including the Special Treatment Area described in <i>Policy CSV-1.3</i> is designated a study area for alternative land uses to support the agricultural industry. Prior to new development, other than those consistent with the underlying land use designation, in the Spence/Potter Road study area, the following must be completed:</p> <p>a. A cumulative impact analysis of industrial build-out of the study area, including road capacity, highway access, drainage, and viewshed impacts</p>	<ul style="list-style-type: none"> • Prevention of increased runoff does not increase water supplies or decrease consumption over baseline conditions. Please estimate the effect of this policy on water supply and water supply impacts

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>from Highway 101;</p> <p>b. Recommended changes to the Special Treatment Area boundaries or allowable uses within the Special Treatment Area, as necessary, to address the impacts identified;</p> <p>c. A drainage management plan to mitigate runoff to adjoining farmlands for the entire study area;</p> <p>d. Amendments to the General Plan, as necessary, and ordinance amendments to address revised landscaping and screening standards; and</p> <p>e. An implementation plan to fund and construct the identified infrastructure improvements.</p> <p>The studies and plans identified in this policy may be paid for by the County or interested property owners.</p>	
CARMEL VALLEY MASTER PLAN	
<p>CV-5.1 Pumping from the Carmel River aquifer shall be managed in a manner consistent with the Carmel River Management Program. All beneficial uses of the total water resources of the Carmel River and its tributaries shall be considered and provided for in planning decisions.</p>	<ul style="list-style-type: none"> • The DEIR does not discuss the Carmel River Management Program. Please explain the program. • Please explain how this policy will be implemented in practice.
<p>CV-5.2 Water projects designed to address future growth in the Carmel Valley may be supported.</p>	<ul style="list-style-type: none"> • This policy has no enforceable mandate.
<p>CV-5.3 Development shall incorporate designs with water reclamation, conservation, and new source production in order to:</p> <p>a. maintain the ecological and economic environment;</p> <p>b. maintain the rural character; and</p> <p>c. create additional water for the area where possible including, but not limited to, on-site stormwater retention and infiltration basins.</p>	<ul style="list-style-type: none"> • Please explain whether the possibility of creating additional water will be determined with reference to technical or economic feasibility or both. Please estimate how much additional water this policy will create.
<p>CV-5.4 The County shall establish regulations for Carmel Valley that limit development to vacant lots of record and already approved projects, unless additional supplies are identified. Reclaimed water may be used as an additional water source to replace domestic water supply in landscape irrigation and other approved uses provided the project shows conclusively that it would not create any adverse environmental impacts such as groundwater degradation.</p>	<ul style="list-style-type: none"> • Please explain why the County does not prevent development on lots of record unless sufficient water is available. For example, please explain why the County does not 1) condition issuance of building permits on demonstration of sufficient water supply, 2) re-designate allowable land uses to bar development without adequate proof of long term sustainable water supply, or 3) condition issuance of well permits for lots of record on demonstration of an adequate long term water supply. • Please explain why the County does not seek adjudication of the Carmel Valley aquifer in order to ensure that development of lots of record does not cause significant impacts.
<p>CV-5.5 Parts of the Carmel Valley aquifer are susceptible to contamination from development in areas not served by public wastewater systems.</p>	<ul style="list-style-type: none"> • This policy would not increase supplies or reduce demand compared to baseline conditions. Please estimate the effect this

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
<p>Development projects that include an on-site septic system shall provide geologic and soils surveys that assess if conditions could preclude or restrict the possibility of satisfactorily locating such a system where it would not pose a threat of contamination to the aquifer. New development shall be carefully reviewed for proper siting and design of on-site sewage disposal systems in accordance with the standards of the Carmel Valley Wastewater Study.</p>	<p>policy has on water supplies and water supply impacts.</p>
<p>CV-5.6 Containment structures or other measures shall be required to control the runoff of pollutants from commercial areas or other sites where chemical storage or accidental chemical spillage is possible.</p>	<ul style="list-style-type: none"> • This policy would not increase supplies or reduce demand compared to baseline conditions. Please estimate the effect this policy has on water supplies and water supply impacts.
CACHAGUA AREA PLAN	
<p>CACH-3.5 Mining or commercial timber, or other resource production operations that include methods to screen areas, vehicle access, impacts on roadways, noise impacts, measures to control on site and off site drainage and reclamation plans for mined or quarried areas may be considered in the Planning Area. Impacts on watersheds, local roads, flora and fauna shall be mitigated.</p>	<ul style="list-style-type: none"> • This policy would not increase supplies or reduce demand compared to baseline conditions. Please estimate the effect this policy has on water supplies and water supply impacts. • No performance standards for mitigation of watershed impacts are provided.
<p>CACH-5.1 The Planning Area should not be deprived of water reasonably required for the beneficial needs of its inhabitants. Groundwater shall not be exported to points outside the Planning Area boundaries.</p>	<ul style="list-style-type: none"> • This policy would not increase supplies or reduce demand compared to baseline conditions. Please estimate the effect this policy has on water supplies and water supply impacts. • Please explain whether and how this policy adds any constraints on development not already included in Policy PS 3.7.
SOUTH COUNTY AREA PLAN	
<p>SC-5.1 New development shall not diminish the groundwater recharge capabilities in the South County Planning Area where the following resources have been identified: a. Valuable natural groundwater recharge areas, or b. Artificial groundwater recharge projects. Areas that are highly susceptible to water quality degradation because of either high water tables or rapid percolation rates shall require more strict enforcement of this policy. Agricultural land uses in such areas should be maintained to preserve groundwater quality.</p>	<ul style="list-style-type: none"> • This policy would not increase supplies or reduce demand compared to baseline conditions. Please estimate the effect this policy has on water supplies and water supply impacts. • This policy implies that some new development <i>would</i> be allowed to diminish recharge capabilities. Please reconcile this with Policies PS 2.8, which appears to require that <i>all</i> new development maintain or increase recharge. • Please explain whether this policy will be applied to cultivation of previously uncultivated land. If not, why not? Note that cultivation on slopes, particularly viticulture cultivation that removes armoring rock through deep ripping, can substantially

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
	increase runoff.
SC-5.3 New development may not encroach on the main channels and associated floodways of the Nacimiento, San Antonio, and Salinas Rivers in order to conserve groundwater recharge, preserve riparian habitats, and protect flood flow capacity.	<ul style="list-style-type: none"> This policy does not increase water supply or decrease water consumption over baseline conditions. Please estimate the effect of this policy on ensuring adequate water supply and explain how it will avoid or minimize water supply impacts.
FORT ORD MASTER PLAN	
Hydrology and Water Quality Policy A-1: At the project approval stage, the County shall require new development to demonstrate that all measures will be taken to ensure that runoff is minimized and infiltration maximized in groundwater recharge areas.	<ul style="list-style-type: none"> Please explain how this policy is different in effect than Policy PS 2.8, which appears to require that all new development maintain or increase recharge. If this policy is more stringent, please explain why it should not be adopted County-wide.
Hydrology and Water Quality Policy A-2: To avoid adversely affecting groundwater recharge of surface water users in downstream areas, the County shall ensure that land use and drainage facilities on newly developed lands do not decrease the magnitude and duration of flows less than the mean annual flow in creeks downstream of the development sites.	<ul style="list-style-type: none"> Please explain how this policy is different in effect than Policy PS 2.8, which appears to require that all new development maintain or increase recharge. If this policy is more stringent, please explain why it should not be adopted County-wide.
Hydrology and Water Quality Policy B-1: The County shall ensure additional water to critically deficient areas.	<ul style="list-style-type: none"> Please identify the critically deficient areas and explain how this policy will be implemented.
Hydrology and Water Quality Policy B-2: The County shall condition approval of development plans on verification of an assured long-term water supply for the projects.	<ul style="list-style-type: none"> Please explain how this policy is different in effect than Policies PS 3.1 through 3.7, which purport to require that all new development demonstrate a long-term sustainable water supply. If this policy is more stringent, please explain why it should not be adopted County-wide.
Hydrology and Water Quality Policy C-1: The County shall comply with all mandated water quality programs and establish local water quality programs as needed.	<ul style="list-style-type: none"> Please estimate the effect of this policy on water supply and water supply impacts.
Hydrology and Water Quality Policy C-3: The MCWRA and the County shall cooperate with the MCWRA and the MPWMD to mitigate further seawater intrusion, based on the Salinas Valley Basin Management Plan.	<ul style="list-style-type: none"> This policy does not apparently add any enforceable mandate since it does not commit the County to a definite course of action.
Program C-3.5: The County shall carry out all actions necessary to ensure that the installation of water supply wells comply with the State of California Water Well Standards and well standards established by the Monterey County Health Department.	<ul style="list-style-type: none"> Please estimate the effect of this policy on water supply and water supply impacts.
Program C-3.6: The County shall carry out all actions necessary to ensure that the distribution and storage of potable and non-potable water comply	<ul style="list-style-type: none"> Please estimate the effect of this policy on water supply and water supply impacts.

POLICIES AND MITIGATION MEASURES CITED IN DEIR AS THE BASIS FOR CONCLUDING THAT WATER SUPPLY IMPACTS WILL BE LESS THAN SIGNIFICANT	
---	--

with the State Health Department regulations through Title 22.	
--	--

L. Cumulative Impact Analysis Is Inadequate; and No Mitigation Is Proposed for Cumulative Impacts

As noted above, the DEIR fails to provide an adequate water balance analysis: it fails to quantify projected County water use and supply by basin, and if fails to project water use by other users of the same supplies, in particular, the incorporated cities within the County. Nonetheless, despite the absence of any quantitative basis for the conclusion, the DEIR concludes that County water use will make a considerable contribution to a cumulatively significant water supply impact. DEIR, p. 6-13. The DEIR fails to clarify whether this impact will occur by 2030 or only upon buildout, and whether it will occur in all basins. The DEIR also fails to explain whether the finding of cumulative significance in CUM-4 “Water Supply” is intended to reflect a finding that overdrafting and salt water intrusion impacts will be significant.

Please clarify the basis for this conclusion by providing a water balance analysis that compares all projected water uses, including projected city use, to projected water supplies by basin. Please explain whether the cumulatively considerable conclusion applies to all basins, including the Salinas River basin. Please explain whether the impact will occur by 2030 or only later. Please explain whether the finding of cumulative significance includes a finding that overdrafting and salt water intrusion will be cumulatively significant.

Despite the finding that impacts will be cumulatively considerable, the DEIR proposes *no* additional mitigation. CEQA requires that all feasible mitigation be proposed when impacts are found to be significant.

In particular, the DEIR must propose all feasible mitigation for cumulative impacts to the Salinas river basin. This is particularly critical because the DEIR concluded (albeit erroneously) that water supply impacts attributable to development in the unincorporated areas of the County within the Salinas Valley basin would be less than significant and, accordingly, proposed no mitigation to address water supply impacts in the Salinas River basin. Feasible mitigation for impacts in this basin are available, including restrictions on conversion of land for agricultural use, mandatory conservation measures, and limitations on all forms of development (including development of lots of record) without proof of adequate long term sustainable water supply.

V. TRAFFIC ISSUES

A. Assumptions For Scenarios Evaluated Are Not Clearly Stated

The DEIR’s traffic analyses include eight cases that purport to evaluate impacts under various planning horizons (2030 conditions and 2092 buildout conditions) and roadway network assumptions (with and without the roadways assumed to be built through the TAMC impact fee and the proposed County impact fee) for both project-specific and cumulative impacts.

The DEIR’s methodology section identifies various analysis scenarios. These differ with respect to three variables: *land use assumptions* (current land use, current land use plus growth only in the unincorporated County, current land use plus growth in both the unincorporated areas and cities); *planning horizon* (2008, 2032, 2092); and *transportation network* (existing 2008 network, 2008 network plus the roadways assumed to be built through the TAMC impact fee and the proposed County impact fee). Although the narrative discussion identifies only “five analysis scenarios” (DEIR, p. 4.6-19), Table 4.6-10 actually sets out six scenarios. Some of these scenarios are also apparently used for the air quality analysis, although, as discussed in comments on air quality, the DEIR fails to state the assumptions reflected in the air quality “scenarios” and “conditions” as well. See Tables 4.7-3, 4.7-5, 4.7-6. The DEIR should clarify the relationship between the five analysis scenarios set out on pp. 4.6-19 to 20, the six scenarios identified in Table 4.6-10, and the scenarios set out in the air quality analysis in Tables 4.7-3, 4.7-5, and 4.7-6.

More problematically, the DEIR’s actual traffic impact analyses include not 5 or 6 but 8 purportedly distinct scenarios: TRAN 1A, 1B, 2A, 2B, 3A, 3B, 4A, and 4B. Unfortunately the text of the DEIR does not clearly set out the land use assumptions, the planning horizon, and the network assumptions for each of these scenarios. It is possible to discern some of the assumptions for TRAN 1B, 2B, 3B, and 4B (the “B scenarios”) based on comparisons of the scenario descriptions and impact analyses, but the DEIR should be revised to clearly state these assumptions.

Neither the land use assumptions nor the roadway network assumptions are stated for TRAN 1A, 2A, 3A, and 4A (the “A scenarios”). While it is possible to discern some of the assumptions, the DEIR should be revised to clearly state these assumptions.

The table below sets out the apparent assumptions in the eight scenarios evaluated and summarizes the DEIR’s conclusions regarding the significance of impacts. Please clarify whether this table accurately reflects the assumptions used in the traffic analyses and supply the missing information.

Scenario Number	Scenario Name	Planning Horizon	Land Use Assumptions	Network	Evaluates Impacts on	Finding
-----------------	---------------	------------------	----------------------	---------	----------------------	---------

Scenario Number	Scenario Name	Planning Horizon	Land Use Assumptions	Network	Evaluates Impacts on	Finding
1A	Existing plus Project Development to 2030 – Project-Specific Impacts of the Project	2030	Not specified – apparently assumes growth in unincorporated area of County but no growth in Cities, which would be consistent with scenario 1B	Not specified	“roadway or intersection operations in the immediate proximity of the development”	Less Than Significant based on Policies C1.3 and 1.4
1B	Existing plus Project Development to 2030 – County and Regional Roadway LOS Impacts	2030	This is the “project level analysis required by CEQA” and so it considers only growth in the unincorporated County (p. 4.6-38)	Not specified, but may assume 2008 network	Specific major County and Regional Roadways	Significant and Unavoidable. 6 County segments operating at D or below will drop one LOS level; DEIR states that 2 [sic, 4] Regional Roadway Segments operating at D or below will drop one LOS level, but Table 4.6-15 shows that 4 will.
2A	Project Specific Impacts of the Development under 2030 Cumulative plus Project Conditions	2030	Not specified, but apparently assumes growth to 2030 in unincorporated County and Cities	Not specified	Purportedly evaluates both “project-specific impacts” that are “exclusively attributable to the development” <i>and</i> “impacts to the public roadway system in the immediate vicinity of the development site [that] are <i>cumulative</i> with other development in the area” (p. 4.6-57)	Less Than Significant, based on same policies cited in TRAN 1A

Scenario Number	Scenario Name	Planning Horizon	Land Use Assumptions	Network	Evaluates Impacts on	Finding
2B	County and Regional Roadway LOS Impacts (2030 Cumulative plus Project)	2030	“Development and land use allowed under the 2007 General Plan cumulatively with development in incorporated Cities and adjacent counties” (p. 4.6-68)	Not specified, but may have assumed 2008 network plus the roadways assumed to be built through the TAMC impact fee and the proposed County impact fee	Specific major County and Regional Roadways	<p>Significant and Unavoidable. Cumulative development to 2030 will increase the number of County roadway segments operating below LOS D by 17, from 17 to 34, and will cause 2 new LOS deficiencies to County roads in Carmel Valley. (p. 4.6-59.)</p> <p>Cumulative development to 2030 will increase the number of Regional roadway segments operating at deficient LOS by 23, from 47 to 70. (p. 4.6-64.)</p> <p>Four external segments will be cumulatively impacted. (p. 4.6-67).</p> <p>DEIR finds that impacts will be SUI due to funding shortfall and that the rate of development growth will outpace project completion of planned roadway improvements. (p. 4.6-68 to 69.)</p> <p>Note that CVMP fully mitigates impacts in CV except for one segment where it is concluded that</p>

Scenario Number	Scenario Name	Planning Horizon	Land Use Assumptions	Network	Evaluates Impacts on	Finding
						there may not be community consensus or funding to correct an existing deficiency.
3A	Project-specific Impacts of the Development under Existing plus Project Buildout	2092	Not specified, but apparently assumes buildout as of 2092 in unincorporated County but not any growth in Cities, based on distinction between 3A/B cases and 4A/B cases	Not specified	Apparently evaluates both “project-specific impacts” that are “exclusively attributable to the development” and “impacts to the public roadway system in the immediate vicinity of the development site [that] are cumulative with other development in the area” (p. 4.6-79)	Less Than Significant, based on policies C1.4 and C1.3
3B	County and Regional Roadway LOS Impacts (Existing plus Project Buildout)	2092	Not specified, but apparently assumes buildout as of 2092 in unincorporated County but not any growth in Cities, based on distinction between 3A/B scenarios and 4A/B scenarios	Not specified, but may have assumed 2008 network plus the roadways assumed to be built through the TAMC impact fee and the proposed County impact fee	Specific major County and Regional Roadways	Significant and Unavoidable. Through 2092, buildout traffic impacts to County roadways results in 16 additional LOS deficiencies plus 2 additional deficiencies in CV. (p. 4.6-80). It causes 10 additional LOS deficiencies to regional roadways. (p. 4.6-83.) It causes 4 additional LOS deficiencies in external

Scenario Number	Scenario Name	Planning Horizon	Land Use Assumptions	Network	Evaluates Impacts on	Finding
						roadways. (p. 4.6-86.) Although the DEIR states that mitigation for TRAN 2B is applicable, no additional mitigation is proposed and the impact is found SUI.
4A	Project-Specific Impacts of the Development under Buildout Cumulative plus Project Conditions	2092	Apparently assumes cumulative growth in County and Cities	Not specified	Not specified. Apparently evaluates the same impacts as in 2A and 3A	Less Than Significant, based on unspecified General Plan policies, presumably C1.3 and C1.4
4B	County and Regional Roadway LOS Impacts (Buildout Cumulative plus Project)	2092	“forecast year 2092 conditions with full implementation of the allowed uses in the 2007 General Plan and projected growth in incorporated cities through the year 2092” (p. 4.6-93)	Not specified, but may have assumed 2008 network plus the roadways assumed to be built through the TAMC impact fee and the proposed County impact fee	Specific major County and Regional Roadways	Significant and Unavoidable. Results in 25 additional LOS deficiencies on County roads. (p. 4.6-95.) Results in 20 additional LOS deficiencies to County roads in CV. (p. 4.6-98.) Results in unspecified number of LOS deficiencies on regional segments – all segments are at LOS F in table 4.6-25, which is not discussed in the text. (p. 4.6-98 to 99). Results in 7 external segment LOS deficiencies. (p. 4.6-100.) Finds that impact remains SUI

Scenario Number	Scenario Name	Planning Horizon	Land Use Assumptions	Network	Evaluates Impacts on	Finding
						because of funding shortfall despite development fees. (p. 4.6-102.)

B. No Evaluation Of The Project’s Impacts Based Only On Planned County Roadway Improvements

Table 4.6-10, p. 4.6-21, sets out land use and transportation network assumptions for each scenario evaluated. The Existing plus Project 2030 scenario does not modify the existing network to include either the TAMC or proposed County projects, whereas the Cumulative 2030 scenario includes both the TAMC and proposed County projects.

Thus, it appears that there is no scenario that evaluates the impacts of development in the unincorporated County allowed under the 2007 GP and assuming only the proposed County roadway network improvements. The DEIR states that scenario 1B constitutes the “project level analysis required by CEQA” and so it considers only growth in the unincorporated County. DEIR, p. 4.6-38. Since the proposed County roadway improvements are the only set of improvements actually under County control, and, as discussed below, funding for all of the proposed TAMC improvements is speculative at best, one essential scenario should have assumed growth in the unincorporated areas to 2030 *and* assumed only the proposed County roadway improvements.

C. Ambiguity In Use Of Terms “Cumulative” And “Project Specific”

There is an ambiguity in the DEIR’s use of the terms “Project-specific” and “cumulative” in its discussions of the eight traffic scenarios it evaluates. Because this ambiguity must be understood to evaluate the DEIR’s claims regarding the significance of traffic impacts, we discuss it here.

Typically, the term “project-specific” describes an impact analysis that considers only the effects of the project at issue and the term “cumulative” describes an impact analysis that considers the effects of the project at issue together with other past, present, and foreseeable future projects. However, the DEIR uses the term “project” to refer to both the pending decision whether to adopt the 2007 General Plan *and* to future individual development projects that might be build consistent with the 2007 General Plan. Thus, even though the DEIR’s non-quantitative traffic analysis scenarios TRAN 1A, 2A, 3A, AND 4A (the “A” scenarios) are termed “project-specific” they actually

purport to evaluate both the project-specific and cumulative effects of future individual development projects.

First, note that the “B” scenarios distinguish “cumulative” and “project level” impacts based on whether future development in incorporated Cities and adjacent counties is assumed. In its “B” scenarios, all of which quantitatively evaluate impacts to a set of major County and Regional roadways, the DEIR evaluates two scenarios that assume *only* the development allowed in the unincorporated County, with no growth assumed in the cities and adjacent counties (1B – to 2030, and 3B – to 2092), and it evaluates two “cumulative impact” scenarios that assume growth in *both* the County and in incorporated cities and adjacent counties (2B – to 2030, and 4B – to 2092). The DEIR explains that the 1B scenario is the “project level analysis required by CEQA” and thus it considers only the growth in the unincorporated County. DEIR, p. 4.6-38. It appears that the 3B scenario is also a “project level” analysis. Thus, in the context of the “B” scenarios, the “project” is the adoption of the 2007 general plan, not the development of any specific development project.

The “A” scenarios purport to evaluate the “project-specific” impacts from future individual development projects that are permitted by the 2007 General Plan. In the context of the “A” scenarios, the term “project” refers to those future individual development projects, *and* to the Project that consists of the currently pending decision whether to adopt the 2007 General Plan itself. Thus, the DEIR uses the term “project-specific” to describe all of the “A” scenarios, even though the DEIR’s analysis and conclusions for each of these scenarios actually purports to consider both the individual or “direct” impacts of future development projects *and* those project’s contributions to cumulatively significant impacts – impacts that will be considered, and for which mitigation will be required when these individual development projects are approved in the future.

For example, the DEIR states that scenario 2A, “Project Specific Impacts of the Development under 2030 Cumulative plus Project Conditions,” evaluates both “project-specific impacts” that are “exclusively attributable to the development” *and* “impacts to the public roadway system in the immediate vicinity of the development site [that] are cumulative with other development in the area.” DEIR, p. 4.6-57. Similarly, the DEIR states that scenario 3A, “Project-specific Impacts of the Development under Existing plus Project Buildout,” also evaluates both “project-specific impacts” that are “exclusively attributable to the development” *and* “impacts to the public roadway system in the immediate vicinity of the development site [that] are cumulative with other development in the area.” DEIR, p. 4.6-79.

Thus, the discussion of scenario 2A uses the term “cumulative” to refer both to the fact that development in incorporated Cities is assumed, *and* to refer to the fact that the impacts that are at evaluated include “impacts to the public roadway system in the immediate vicinity of the development site [that] are cumulative with other development in the area.”

Conversely, the discussion of scenario 3A uses the term “project-specific” to refer both to the fact that development in the incorporated cities and adjacent counties is not assumed *and* to distinguish “project-specific impacts” that are “exclusively attributable to the development” from “impacts to the public roadway system in the immediate vicinity of the development site [that] are cumulative with other development in the area.”

D. Evaluation Of Tran 1a, 2a, 3a, And 4a Fails To Identify The Extent Of Areas For Which Impacts Are Found To Be Less Than Significant

The DEIR’s discussion of impacts at TRAN 1A, 2A, 3A, and 4A concludes that “project-specific deficiencies in roadway or intersection operations in the immediate proximity of the development” (DEIR, pp. 4.6-31) will be fully mitigated, primarily through Policies C1.3 and 1.4. However, the DEIR’s conclusion that localized impacts will be fully mitigated is so vague as to be meaningless because neither the DEIR nor the General Plan define the critical terms that refer to the geographic *scope* of the impacts that are purportedly avoided or mitigated through General Plan policies. These terms include “project-specific deficiencies in roadway or intersection operations in the immediate proximity of the development” (DEIR, p. 6.6-31), “project-specific localized development impacts” (DEIR, p. 6.6-31), and “tier 1” impacts (DEIR, p. 3.6-29 and 30).

Contrary to the DEIR’s claim at p. 4.6-29 and 30, the three “tiers” of roadway level of service impacts were not “described earlier.” There *is* no earlier description of the tiers of impacts in the transportation section.¹³ The only hint at the meaning of Tier 1 is provided in the DEIR’s discussion of significance criteria. The DEIR explains that LOS is determined with reference to the V/C ratio based on ADT rather than peak hour volumes in its evaluation of some, but not all, impacts. It states that “[t]his measure is applied to two of the three tiers of impacts described earlier; Tier 2: county roads and Tier 3: regional roads and major roads in incorporated cities. This measure is not applied to the first tier of impacts-direct impacts-which are impacts specific to individual developments related to access and localized impacts.” DEIR, p. 4.6-29. This contextual definition is no help because the scope of “localized impacts” remains unclear.

It appears that Tiers 2 and 3 may refer to impacts to *types of roadways*, whereas Tier 1 refers to impacts that are *within some unspecified distance* of an individual development project. If that is in fact the way these terms are used, then there is a fundamental ambiguity with respect to impacts on County roads, regional roads, and major roads in incorporated cities that happen to be within the “localized area” included in a particular individual project’s Tier 1 area. Are these impacts Tier 1 or Tier 2 and 3 impacts? Are the County roads included in Tier 2 just those major County roads that are quantitatively evaluated in the DEIR’s “B” scenarios, or are all County roads included in Tier 2? The DEIR must be revised to explain what geographic area and what roads are

¹³ The term “Tier 3” is used in Policy C1.11, referring to mitigation of regional transportation impacts, but neither the DEIR nor the GP actually define what roadways are included in Tiers 1, 2, and 3 or, if Tier 3 refers to a certain geographic scope around an individual project, what the extent of that scope is.

included in the localized areas for which the DEIR concludes in the “A” scenarios that impacts will be less than significant.

A meaningful definition of the geographic scope of the “localized area” would be the study area required for a project traffic analysis under ITE’s procedures. ITE, *Transportation Impact Analyses for Site Development*, 2006, Table 2-3, *Suggested Study Area Limits for Transportation Impact Analyses*, p. 10, Exhibit 11. For example, under ITE’s recommended procedure, a traffic study for a project generating 200 to 500 peak hour trips would consider all signalized intersections within 0.5 miles and all major unsignalized intersections and access drives within 0.25 miles.

Referencing ITE’s study area definition as the basis of the DEIR’s claims that general plan policies will mitigate “localized” traffic impacts would be consistent with the implication in the DEIR’s discussion of the “A” scenarios that future project-specific CEQA reviews will identify individual and cumulative impacts and require mitigation.

This definition is also required if the DEIR purports to present a complete analysis of *all* future traffic impacts. The DEIR’s approach to traffic impact analysis whereby it quantitatively evaluates impacts to a specific set of major roadways and then qualitatively evaluates impacts to all other unspecified roadways would not be complete unless the roadways subject to the qualitative analysis included all of the roadways potentially affected by future development. The ITE procedure for identifying facilities subject to a traffic study is intended to ensure that all relevant impacts are evaluated.

However, if the DEIR were to use the ITE traffic study criterion as the geographic scope of the localized impacts evaluated in the “A” scenarios, then, as discussed below, its significance conclusion would have to be revised because 1) the DEIR admits that impacts to many specific County and regional roadways evaluated under the “B” scenarios, which will be included in the ITE study area for at least some projects, cannot feasibly be mitigated, and 2) no policies actually ensure that cumulative impacts to all other facilities will be mitigated.

If the DEIR is not revised to define the “localized” area evaluated in the “A” scenarios with reference to the ITE study area, then it must be revised to provide some explanation of the geographic scope implicit in its claim that general plan policies will ensure that localized impacts will not be significant.

E. DEIR’s Conclusion Of No Significant Impact In TRAN 1A, 2A, 3A, and 4A Is Invalid Because The Localized Areas Contain The Roadways Found To Suffer Degraded LOS In The DEIR’s Evaluation Of TRAN 1B, 2B, 3B, And 4B

The geographic scope of “localized impacts” for many future development projects would include portions of the roadways evaluated in the “B” scenarios and found to suffer significant unmitigated impacts. Thus, the conclusion in TRAN 1A, 2A, 3A, and 4A is not be valid for projects whose scope includes those roadways because the

DEIR admits in its analysis of TRAN 1B, 2B, 3B, and 4B that impacts to these roadways will remain significant and unavoidable. The DEIR admits in its discussion of the “B” scenarios that numerous impacts to County and Regional roadways cannot be mitigated, primarily due to lack of available funding. DEIR, pp. 4.6-44 to 45, 69, 87 to 88, 103. If the “localized area” is defined so narrowly as to exclude all County and regional roadways, then the conclusion in the “A scenarios” is essentially nothing more than the trivial requirement that future projects provide driveway access. Presumably the DEIR is making a broader claim than that.

The DEIR must be revised to provide a meaningful definition of so-called Tier 1 or localized impacts. Since the area included in any meaningful definition would contain County or regional roadways for which the DEIR finds any significant unmitigated impacts under the “B” scenarios, the significance conclusion must be revised to find that there will in fact be significant unmitigated impacts.

F. DEIR’s Conclusion Under TRAN 1A, 2A, 3A, And 4A That Localized Impacts Will Be Fully Mitigated Is Unfounded Because The Policies Recited As The Basis For The Conclusion Do Not Support The Conclusion

The DEIR’s discussion of impacts in the “A” scenarios concludes that “project-specific deficiencies in roadway or intersection operations in the immediate proximity of the development” (DEIR, pp. 4.6-31) will be fully mitigated through Circulation Policies C1.3 and 1.4 and Land Use Policy 1.4.¹⁴ DEIR, pp. 4.6-31 to 33, 57 to 58, 78 to 79, and 93 to 94. The DEIR’s discussion of impacts in the “A” scenarios concludes that “project-specific deficiencies in roadway or intersection operations in the immediate proximity of the development” (DEIR, pp. 4.6-31) will be fully mitigated through Policies C1.3 and 1.4. DEIR, pp. 4.6-31 to 33, 57 to 58, 78 to 79, and 93 to 94. The DEIR states that these impacts include “impacts to the public roadway system in the immediate vicinity of the development site [that] are *cumulative* with other development in the area.” DEIR, pp. 4.6-57 and 79.

There is no substantial evidence that Policies C 1.3 and C 1.4 will ensure that cumulative impacts are mitigated. In fact, as set forth in the discussion below, it is evident that Policy C1.3 and C1.4 would permit unmitigated cumulative impacts.

¹⁴ Reference is also made to policies C2.1, 2.2, and 2.7. DEIR, p. 4.6-32. These policies are limited in scope, applying to concentrated commodity movements (C1.1), protecting transportation facilities from encroachment (C2.2) and requiring new development to be located with access to transportation (C2.7). These Policies do not require mitigation of prospective impacts to roadways. Similarly, the referenced Policies C3.5, 4.3, 4.5, and 4.9, requiring accommodation of pedestrians, bicycles, and transit, do not require mitigation of prospective impacts to roadways, even if they may somewhat attenuate those impacts. DEIR, p. 4.6-32. The reference to Policy LU 1.7 is also somewhat oblique: this Policy calls for encouragement of clustering residential development onto portions of a given piece of property most suitable for development where infrastructure exists or can be provided. This Policy does not require but merely encourages clustering, and it does not require future development to mitigate transportation impacts. Significantly, while these policies are recited in the discussion of TRAN 1A, none of these policies are mentioned in the discussions of TRAN 2A, 3A, and 4A, which mention only Policies C1.3 and 1.4.

Policy C1.3 provides that projects that “are found to result in reducing a County road below LOS D,” or the applicable LOS per Policy C1.1, will be required to be phased so that LOS D is maintained concurrent with development. The implication on a casual reading is that development will be barred until there is an assurance that acceptable LOS would be maintained concurrently. This reading is also suggested by the reference to Policy LU 1.4, which states that “growth areas shall be designated only where an adequate level of services and facilities such as . . . transportation . . . exists or can be assured concurrent with growth and development.” However, a closer reading of Policy C1.3 and 1.4 demonstrates that their language would 1) permit development that makes cumulatively considerable contributions to unacceptable LOS as long as LOS were not pushed from LOS D to E or E to F by that project alone, and 2) permit development to go forward on the basis of fair share payments even though those payments would not in fact result in acceptable LOS.

- 1. Mitigation of all cumulatively considerable contributions to significant impacts is not required by Policy C1.3 because the policy can be construed to require phasing only when LOS is pushed from D to E or E to F and because Policy C1.3 does not address cumulative impacts**

Policy C1.3 can be construed to require phasing development projects only when the project at issue is the straw that breaks the camel’s back by pushing LOS from D to E or from E to F. This construction is evident from the impact analyses at TRAN 1B, 2B, 3B, and 4B which treat an impact as significant only if it pushes LOS from D to E or from E to F. Under this approach, where LOS is already at F, the DEIR treats impacts as less than significant by definition. This approach also treats substantial degradation of V/C ratios as insignificant where the existing LOS is at D or E but does not degrade to the next level.

The DEIR’s significance criteria is ambiguous in this regard, stating that a significant impact occurs if the project will “add any traffic to a County roadway or State Highway that operates below LOS D without the project *and* the project worsens the LOS based on the measure of performance.” DEIR, pp. 4.6-29 to 30. The construction of the phrase “degraded further” in Policy C1.1b is similarly ambiguous. Policy C1.1b states that “County roads operating at LOS D or below at the time of adopting this General Plan shall not be allowed to be *degraded further* except in Community Areas where a lower LOS may be approved through the Community Plan process.”

The DEIR must be revised to clarify whether, in these contexts, “degraded further” means driven from D to E or from E to F, or whether a considerable contribution to an increase in the V/C ratio that did not itself result in a change from D to E or E to F would be considered to be “further degradation?” If “degraded further” does include a cumulatively considerable contribution short of a change from D to E or E to F, then the DEIR must be revised to clarify how much degradation in LOS would be considered cumulatively considerable contribution.

Under the “final straw” reading of “further degraded” that is permitted by the existing wording of the general plan policies, Policy C1.3 would permit approval of projects that make cumulatively considerable contributions to degraded intersections without any assurance of mitigation. Individual projects could be serially approved based on project-level CEQA analyses that show that the LOS is not pushed downward a full LOS level (i.e., from D to E or from E to F) until finally some project does have that result. While the County could conceivably cease all discretionary approvals affecting the roadway at that point, external growth and ministerial permitting would likely result in the eventual unmitigated degradation of the LOS to the next level. Furthermore, it would be irrational to require mitigation of cumulative impacts only from the last straw project.

Furthermore, Policy C1.3 does not itself address cumulative impacts. Its phasing requirement applies only to “projects that are found to result in reducing a County road below LOS D.” Only Policy C1.4 explicitly addresses cumulative impacts. If Policy C1.3 is intended to address cumulative impacts, the EIR must explain how its language will be so construed.

Thus, Policy C1.3 should be rewritten and clarified to require phasing all of those projects (i.e., conditioning project approval on the actual construction of mitigating facilities) that make any cumulatively considerable contributions to significant traffic impacts. This requires that the County rewrite the policy and define a cumulatively considerable contribution so as to ensure that unmitigated impacts do not eventually result in degraded LOS without any project being required to address the impact. An appropriate definition would be *any* increase in the V/C ratio of a facility that is already at LOS D.

The fact that, as written, C1.3 cannot be readily construed to require phasing projects with cumulatively considerable impacts means that C1.3 cannot be the basis of a conclusion that cumulative impacts will be mitigated on either the major County and Regional roadways evaluated in the “B” scenarios (which the DEIR admits will have unmitigated impacts) *or* the other unspecified County and city roadways affected by future individual development projects purportedly evaluated in the “A” scenarios.

2. Policy C1.4 permits projects to proceed on the basis of fair share payments toward mitigation of cumulative impacts even though the DEIR admits that cumulative impacts to numerous specific roadways cannot feasibly be mitigated by these payments

Policy C1.4 provides that “direct on-site and off-site circulation improvements that mitigate project impacts shall be constructed concurrently,” but permits new development merely to make fair share payments toward off-site improvements that “mitigate cumulative impacts,” pursuant to Policies C1.8 and C1.11. Policy C1.4 does *not* assure that cumulative impacts to those specific County and regional roadways specifically evaluated in the DEIR’s “B” scenarios will be mitigated. As noted above, the DEIR admits in its discussion of the “B” scenarios that numerous

impacts to County and Regional roadways cannot be mitigated, primarily due to lack of available funding.¹⁵ DEIR, pp. 4.6-44 to 45, 69, 87 to 88, 103. Thus, Policy C1.4 cannot be the basis of a conclusion that cumulative impacts will be mitigated on the major County and Regional roadways evaluated in the “B” scenarios, which the DEIR admits will suffer unmitigated impacts from future development that cannot feasibly be mitigated.

3. Policy C1.4 permits projects to proceed on the basis of fair share payments toward mitigation of cumulative impacts even though the DEIR provides no substantial evidence that cumulative impacts to these unidentified roadways will be mitigated

The DEIR’s conclusion in the “A” scenarios that all cumulative impacts will be mitigated for a set of unspecified roadways cannot be supported on the basis of Policy C1.4 either, even if the claim is limited to roadways other than those that were specifically evaluated in the DEIR’s “B” scenarios and found to suffer unmitigated impacts. There are numerous county roadways, arterial and smaller, that were not included in the set of roadways evaluated under the “B” scenarios, and these roadways will be affected by cumulative future development. Policy C1.4 states

“Direct on-site and direct off-site circulation improvements that mitigate project impacts shall be constructed concurrently with new development. Off-site circulation improvements which mitigate cumulative impacts either shall be constructed concurrently with new development, or a fair share payment pursuant to Policies C-1.8 and C-1.11 shall be made.”

Presumably the terms “direct on-site” and “direct off-site circulation improvements” are intended to reference improvements that are necessary to mitigate a future project’s impacts that are individually significant. With regard to *cumulative* impacts (as opposed to “direct” or individually significant impacts), Policy C 1.4 is disjunctive: mitigation is supposed to occur through 1) some unspecified mechanism whereby “off-site circulation improvements which mitigate cumulative impacts either shall be constructed concurrently with new development,” or 2) “a fair share payments pursuant to Policies C-1.8 and C-1.11.” The inability of these two disjunctive prongs of Policy C1.4 to mitigate all cumulative impacts is addressed in two parts immediately below.

First, Policies C-1.8 and C-1.11 pertain to the proposed County Traffic Impact Fee Policy and the adopted TAMC Regional Traffic Impact Fee, both of which are programs that are targeted to support a defined set of roadway improvements. See 2008 General Plan Update Errata/Addendum, Sep. 3, 2008, Table C-1, 2008 Regional Development Impact Fee – Project List; DEIR, p. 4.6-24, Table 4.6-12, TAMC Regional Traffic Impact Fee Program Projects. As discussed above, the DEIR admits in its analysis of the “B” scenarios that, despite the assumed construction of these

¹⁵ Although TRAN 1B and 3B evaluate “project-specific” impacts to these roadways, the “project” referred to is the approval of the 2007 General Plan, and the development impacts evaluated include the essentially cumulative impact of all development that occurs in the unincorporated area of the County.

improvements through these impact fee programs, significant unmitigated impacts will remain. DEIR, pp. 4.6-44 to 45, 69, 87 to 88, 103.

The language of Policy C 1.8 does not even apparently apply to development projects within the unincorporated County, since the first sentence of the Policy states that “[d]evelopment proposed *in cities and surrounding jurisdictions* shall be carefully reviewed to assess the proposed development’s impact on the County’s circulation system.” 2008 General Plan Update Errata/Addendum, Sep. 3, 2008. Thus, Policy C1.8 appears to be intended to ensure that the County take steps to see that development outside the County’s jurisdiction be reviewed so as to require extra-territorial development to mitigate impacts on County facilities. It is unclear how this relates, if at all, to the proposed¹⁶ County Traffic Impact fee program since it is unlikely that development projects outside the County’s jurisdiction could be required to make contributions to a County impact fee program. At any rate, assuming that projects do make fair share contributions to the proposed County Traffic Impact fee program identified in Policy C1.8, those contributions would only fund a specific set of improvements. Therefore, this program cannot be the basis of the DEIR’s conclusion that cumulative impacts to *all* of the unidentified facilities that the “A” scenarios purport to address will be mitigated.

The language of Policy C1.11 cited by Policy C1.4 is apparently restricted to the mitigation of so-called “Tier 3 impacts” (although that language is not defined in the General Plan) through construction of the specific facilities designated through the TAMC Countywide Traffic Impact Fee Program. Again, this mitigation is limited to a specific set of facilities to which TAMC proposes to dedicate its proceeds (and, which require substantial amounts of additional funding that has yet to be identified, as discussed below). Thus, neither Policy C 1.8 nor C 1.11 would ensure concurrent mitigation of cumulative impacts to 1) unidentified facilities not included on the specific list of roadway improvement projects for which these fee programs were designed, or 2) the identified facilities that *are* included on the specific list of projects but to which the DEIR nonetheless concludes that impacts will remain significant and unavoidable.

Second, while Policy C-1.4’s first prong *states* that “off-site circulation improvements which mitigate cumulative impacts either *shall be constructed concurrently with new development . . .*”, there are no programs or implementation measures that would ensure that cumulative impacts to the unidentified roadway facilities *not* included on the TAMC or County impact fee project list are actually mitigated through concurrent construction paid for by fair share fees, or otherwise. Policy C 1.4 simply does not identify any mechanism that would actually be put in place through the General Plan that would ensure that this occurred. *Murietta Valley Unifed School District v. County of Riverside* (1991) 228 Cal.App.3d 1212 requires that a general plan actually contain appropriate financing mechanisms or other arrangements that implement

¹⁶ The September 3, 2008 Errata/Addendum revises the text of Policy C1.8 to state that the “County . . . has adopted a County Traffic Impact fee.” It is unclear whether the County has in fact adopted the Traffic Impact fee since the Errata continues to refer to “*Proposed* Transportation Facilities” to be funded by a County Traffic Impact Fee. The EIR must clarify the status of this program.

policies mandating the provision of facilities. As noted, neither the County's proposed Traffic Impact Fee program nor TAMC's Regional Traffic Impact Fee program address all of the unidentified County roadways purportedly evaluated in the DEIR's "A" scenarios, so these programs do not qualify as the essential implementing mechanism.

Furthermore, the previously proposed language in Policy C 1.8 calling for *ad hoc* fees pending adoption of a County Traffic Impact Fee program was eliminated in the September 3, 2008 Errata/Addendum to the General Plan; thus, even if there were some evidence that *ad hoc* exactions of fair share payments could mitigate cumulative impacts, this provision has been excised. See 2008 General Plan Update Errata/Addendum, Sept. 3, 2008, revised Policy C-1.8. And, as discussed below, there are no *other* policies that will ensure that all cumulative impacts are addressed.

4. No other policies will ensure that cumulative impacts are mitigated before development occurs

a. Policy C1.1 does not ensure that cumulative impacts are mitigated before development occurs

Policy C1.1, allowing Community Plans, Area Plans, and Land Use Plans to re-designate a LOS lower than D, is not identified by the DEIR as the basis of its conclusion in the "A" scenarios that the impacts, including cumulative impacts to roadways in the vicinity of specific future projects, will be less than significant. If the DEIR's conclusion does rest on the assumption that cumulative impacts can be "mitigated" by adopting a lower LOS, the County has an obligation to disclose this. A "policy" of simply lowering the announced LOS standard whenever it cannot be met does not meet the Planning and Zoning law's requirement that a circulation element support the land use element. And an EIR whose conclusions rest on the undisclosed intention to define away impacts by *ad hoc* reclassification of the acceptable LOS for a set of unidentified but affected facilities would not meet CEQA's good faith disclosure requirements.

b. Policy C1.2 does not ensure that cumulative impacts are mitigated before development occurs

Policy C1.2, requiring achievement of LOS standards through adoption of as yet unspecified Capital Improvement and Financing Plans ("CIFP"), is also not identified by the DEIR as the basis of its conclusion that the impacts under the "A" scenarios are less than significant. Even if it were cited, it would not suffice. Policy C1.2 does not require that acceptable LOS be achieved *until 2027*. The DEIR states that the General Plan's planning horizon is 20 years. DEIR, p. 3-8. Thus, as written, Policy C1.2 permits deficient LOS for the duration of the General Plan's planning horizon, which, as discussed below, is fundamentally inconsistent with the correlation requirement under Government Code Section 65302(b). And Policy C1.2 does not explain what the consequence of failing to meet the LOS standard would be, *e.g.*, it does *not* require phasing development until an adequate LOS is achieved.

c. The “APFS” policies cannot ensure that cumulative impacts are mitigated before development occurs

Conceivably, the DEIR’s conclusions in the “A” scenarios intended to reference the undefined and speculative Capital Improvement and Financing Plan (“CIFP”) process by reciting Land Use Policy 1.4, which provides that “growth areas shall be designated only where an adequate level of services and facilities such as . . . transportation . . . exists or can be assured concurrent with growth and development.” Policy LU 1.4 may in turn conceivably be intended to invoke Public Service Policies PS1.1 through 1.6, which purport to require that no new discretionary development be allowed unless Adequate Public Facilities and Services (“APFS”) requirements are met. See e.g., PS1.3. If this is the basis of the DEIR’s conclusions with respect to the significance of cumulative impacts in the “A” scenarios, the DEIR must be revised to say so.

However, even if the APFS Policies were cited as the basis of the DEIR’s conclusion in the “A” scenarios (and they were not), these policies would not support the DEIR’s finding that cumulative impacts of individual development projects will be avoided by concurrent construction of improvements for the following reasons, which are discussed more fully in the sections immediately below:

- There will be enormous administrative and financial burdens associated with implementation of CIFPs as the CIFP idea is sketched in Policies C1.2 and PS 1.1 to 1.6 – burdens which the DEIR has not made a good faith effort to disclose;
- Although the APFS requirements include addressing *existing* LOS deficiencies, there are no policies that would require this before 2027;
- Policies permitting exceptions to the LOS D standard are incomplete, inconsistent, and uncontrolled, and, if relied upon, would render the General Plan LOS standard meaningless; and
- Like Policy C1.2, Policies PS1.1 through 1.6 fail CEQA’s requirements for payment of impact fees as mitigation: there are in fact no funded and adopted CIFPs in place, the necessary improvements are not identified, the proposed benefit areas are not specified, there is no evidence that funding necessary capital improvements is feasible and substantial evidence to the contrary, and there is no provision for interim measures pending completion of the CIFPs.

Thus, the undefined CIFP program does not provide a basis to conclude that future cumulative impacts in the area of individual development projects will be mitigated.

- i. *Administrative burden of completing CIFPs is not disclosed and will lead to development moratorium or violation of policies requiring CIFPs*

It is not clear how many CIFPs will be required, what areas they will cover, and whether they will overlap. It *appears* that the CIFPs referenced in C1.2 may be the same CIFPs that are required under PS 1.1, but this is not at all clear. For example, the 20 year planning horizon for attaining acceptable LOS under the CIFPs required by Policy C1.2 is not compatible with the requirement that APFS standards be met concurrent with new development. This inconsistency must be explained.

Policy C1.2 states that CIFPs may cover a benefit area consisting of a Planning Area, a Community Area, or the County as a whole. Note 4 to Table PS-1 mentions Rural Centers as well, so it appears that CIFPs are required for Rural Centers. See also DEIR, p. 3-44. A CIFP will be required for the AWCP. GP, p. AWCP-19; DEIR, p. 4.6-116 to 117. The scheme for meeting APFS requirements in PS 1.1-1.6 contemplates that a CIFP be in place before any development occurs that may create LOS deficiencies. Thus, there could be as many as 23 CIFPs required to be developed (or perhaps as few as one impossibly comprehensive County-wide CIFP). Twenty-three CIFPs would be required if there were one County-wide CIFP and also a CIFP for each of the 8 Area Plans, the Carmel Valley Master Plan, the AWCP, each of the 5 Community Areas, and each of the 7 rural centers.

If the CIFPs referenced by Policies PS1.1 through 1.6 and AWCP section 4.5 are the same CIFPs referenced by Policy C1.2, it should be noted that Policy C1.2 requires that *all* of these plans be developed within 18 months, but it does not say who will be responsible for preparing these CIFPs. For example, it is not evident that development proponents are standing by ready to shoulder this burden. The coordinated development of this many plans within 18 months is a formidable administrative task – for either the County or development proponents.

Preparation of a CIFP would require identification and costing of necessary improvements, which in turn would require traffic studies, which in turn would require a specific proposal for future development.

CEQA analysis would be required before the County committed itself to construction of a specific set of improvements through the adoption of a CIFP, because the construction of those improvements would potentially cause environmental impacts. While this CEQA analysis might be undertaken in connection with the CEQA analysis required for adoption of plans for Community Areas or Rural Centers, plans for all of these development areas are unlikely to be proposed or completed within the next 18 months. Because there are presumably no current plans to revise the Area Plans after adoption of the 2007 General Plan, independent CEQA analysis would be required for CIFPs for which the benefit area is a Planning Area.

The DEIR states that “development of Rural Centers is supposed to be a secondary priority after the development of Community Plans for the Community Areas,” so it is unclear how and why the 18 month deadline would have to be met for the rural center CIFPs. DEIR, p. 3-43.

Policy C1.2 and Policies PS1.1 to 1.6 must be clarified to explain 1) whether the CIFP's identified in Policy C1.2 are the same as those identified in Policies PS1.1 to 1.6, 2) how many CIFPs will be required, 3) whether and how they will overlap, 4) who will pay for their development, 5) how they will be completed timely, 6) whether CEQA analysis for CIFPs will be undertaken separately or in conjunction with plans for Community Areas and Rural Centers, and 7) why and when CIFPs will be required for Rural Centers.

In view of the substantial magnitude of the administrative task of preparing adequate CIFPs (independent of the task of obtaining funding), and in view of the lack of clarity about the CIFP process itself, it is unreasonable for the DEIR to conclude that future development will proceed unimpeded by this administrative burden.

Thus, the DEIR should acknowledge that the administrative process to complete CIFPs will constitute a development moratorium, and should explain how that process could be achieved within 18 months, particularly in view of the enormous delay in adoption of TAMC's Regional traffic impact fee and the County's own proposed traffic impact fee. If development is to be permitted in Community Areas and Rural Centers despite the absence of a CIFP, the General Plan should clarify under what conditions this would be permitted and how that would be consistent with Policies C1.2 and PS 1.1 through 1.6.

ii. Existing LOS deficiencies must be corrected

Policies PS1.1 through 1.6 require that no new development be allowed unless APFS requirements are met. See e.g., PS1-3. Policy PS1.1 states that APFS requirements shall "ensure that APFS needed to support new development are available" concurrent with the impacts of development and shall "seek to achieve acceptable level of service (LOS) standards through improvements funded by fair share impact fees and planned capital improvements (CIFP)." Thus, a CIFP must be in place that ensures correction of *existing* LOS deficiencies and prevents future cumulative impacts before any new development can be permitted in the CIFP's benefit area. This conclusion is reinforced by the reference to CIFPs in Policy C1.2 that are apparently intended to correct existing LOS deficiencies.

This conclusion is also reinforced by CEQA definition of cumulative impacts, which are caused by *past and present development*, not just foreseeable future development. CEQA Guidelines, § 15355(b). The General Plan and DEIR should make it clear that any delay in preparation of the required CIFPs and any delay in correction of *existing* LOS deficiencies will result in a development moratorium. In view of the 20 year period allowed by Policy C1.2 to achieve acceptable LOS, it appears that the enforcement of the APFS requirement may effectively bar development for a substantial period of time.

If the County does not intend to correct existing LOS deficiencies before permitting additional development, then it must clearly explain under what circumstances this development will be permitted. As discussed immediately below, the proposed General Plan Policies do not do this.

- iii. *Exception to requirement to meet LOS D where LOS is already below D must be clarified*

Policy C1.3 provides that projects that “are found to result in reducing a County road below LOS D,” or the applicable LOS per Policy C1.1, will be required to be phased so that LOS D is maintained concurrent with development. Policy C1.3 provides two exceptions, one of which is apparently intended to permit development to go forward even though existing LOS degradations have not been rectified. The language of the Policy must be clarified, and the DEIR must be revised to explain to what extent its conclusions that cumulative impacts will be mitigated rest on this exception.

Under its first exception, Policy C1.3 provides that if LOS is already below D *and* the roadway has been identified as a top priority in the CIFP, then Policy C1.4 (calling for fair share payments toward mitigation of cumulative impacts) applies. Based on this language, if the LOS is below D and 1) there *is* no CIFP (e.g., before a CIFP is developed) *or* 2) the CIFP has not identified the road as a top priority, then development will have to be phased, i.e., not permitted, until LOS meets LOS D. In effect, the policy would bar most development where the existing LOS is below D until a CIFP makes improvement of the affected facility a top priority. If this is the case, the EIR must so state.

If it is not the case, then the EIR should explain under what circumstances development would be permitted before there is a CIFP or if a CIFP has not identified the affected facility as a top priority.

Policy C1.3 apparently qualifies the requirement that LOS D be achieved with the phrase “or the applicable LOS per Policy C-1.1,” which allows a lower LOS to be designated in Community Areas or through Area Plans and “Land Use Plans.” If Policy C1.3 does *not* require meeting LOS D and only requires meeting the applicable LOS per Policy C1.1, then the DEIR must disclose whether the conclusion in TRAN 1A, 2A, 3A, and 4A that there will be no LOS impacts depends on the assumption that LOS will be permitted to degrade below LOS D through Policy C1.1. If the DEIR’s conclusion in the “A” scenarios does depend on wholesale re-designation of LOS standards, the LOS designations in the General Plan are essentially meaningless since they are infinitely malleable and the DEIR’s analysis amounts to the claim that new development can meet LOS standards because the County can change them whenever it wants to for whatever reason it chooses. And if the County plans wholesale re-designation of LOS standards, then it is entirely unclear why Policy C1.2 permits a 20-year period to achieve acceptable LOS.

As discussed above, if the DEIR's conclusion does depend on the assumption that LOS standards will be relaxed, then the DEIR must disclose where LOS designations will be relaxed and what constraints will be imposed on such re-designations. Policy C1.1 references entirely unspecified "benefits" that must be cited to justify re-designation of LOS standards for Area Plans, but it imposes no "benefit" requirement on re-designations by Community Plans or "Land Use Plans." "Benefit" requirements for re-designations of LOS standards must be explained and meaningfully constrained. For example, the DEIR must explain whether the "benefits" test would include considerations unrelated to transportation.

Furthermore, the term "Land Use Plan" is not defined. This term should be dropped, because it apparently would permit *ad hoc* re-designation of LOS standards by developers' plans for specific projects. Only Community Plans and Area Plans – plans that are less likely to be driven by individual developers' interests – should be allowed to specify lower LOS standards. Otherwise, the LOS designations will be meaningless in practice since they could be evaded by any and all individual development projects.

The County must clarify what "top priority" means in the context of Policies C1.3 and 1.4. The term is entirely undefined and obviously presents a substantial loophole to allow development to aggravate existing LOS deficiencies on the basis of an entirely unconstrained act of announcing good intentions. A reasonable construction of "top priority" would require that a CIFP include a planned, approved, and fully funded improvement project that is scheduled for completion by the time the development project is completed that would ensure 1) that existing deficiencies in the LOS are corrected and 2) cumulatively considerable contributions to reductions in V/C ratios are avoided. Any construction of "top priority" short of this would not ensure that cumulative impacts are avoided, and the DEIR's conclusion that cumulative impacts are avoided in the "A" scenarios would lack any foundation. Merely designating an improvement as a "top priority" without such a requirement is meaningless.

Under its second exception, Policy C1.3 excepts a list of projects including "first single family dwelling," second units, and non-discretionary use for commercially designated properties. The DEIR and General Plan must clarify whether this policy excepts only a single unit development of a "first single family dwelling" on a single lot of record, or whether it excepts a residential subdivision containing multiple "first single family dwellings?" Do non-discretionary uses in commercially designated properties include ministerial winery permits? If so, these uses have the potential to generate substantial traffic, which will not be mitigated. This must be disclosed.

iv. *Funding not identified or likely to be available for CIFPs*

When impact fees are proposed as mitigation, the record must contain evidence that the necessary infrastructure improvements will actually be constructed when needed. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189. An agency must provide substantial evidence that the impact fees will be used to implement

a “reasonable, enforceable plan or program.” *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189.

Because the CIFPs have not been developed, because there is substantial uncertainty as to their requirements, and because there is no evidence that the CIFPs can be developed timely, much less funded timely, it is clear that here is no enforceable plan or program.

Furthermore, there is substantial evidence that funding for the CIFPs is not and will not be available. The 2007 General Plan does not identify funding sources. Instead, it states that “[m]eeting transportation needs in an era of limited funding presents a significant challenge” 2007 GP, p. Circ-1. It discusses the need to link circulation strategies to growth and land use plans and then goes on to say that “[d]eveloping and implementing funding solutions are also necessary.” 2007 GP, p. Circ-2. Acknowledging the need to develop a plan is not a plan.

The 2007 General Plan mentions development impact fees in Policies C1-2(d) (unspecified TIF), C1.4 (unspecified “fair share payments”), C1.8 (proposed county TIF), and C1.11 (TAMC TIF). However, as discussed above, the TAMC and proposed County fees are admittedly insufficient to mitigate future impacts, even to the limited set of roadways to which their proceeds will be devoted.

The only policies that address funding other than development impact fees are vague policies to “support and encourage” TAMC’s efforts to find funding (Policy C1.6), to seek funding from “TAMC and other available resources” (Policy C1-7), to use “all available public and private sources” of funding (Policy C1.9). Plans to beg for funds from other agencies have been specifically found to be an inadequate foundation for a circulation element. *Concerned Citizens of Calaveras County v. Calaveras County Board of Supervisors* (1985) 166 Cal.App.3d 90, 103.

Payment of impact fees for improvements that are infeasible does not constitute the necessary commitment to mitigation: where the cost of highway improvements necessary to mitigate impacts are clearly beyond the means of the local jurisdiction, it cannot be reasonably argued that mitigation is feasible. *Napa Citizens v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 364. The record must show how the balance of necessary funds over and above development impact fees would be obtained so that the agency has substantial evidence in support of its expectation that needed improvements will be built. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189; *see also Endangered habitats League v. County of Orange* (2005) 131 Cal.App. 4th 777, 785 (regardless of reasonableness of developer’s contribution, a fee program is insufficient mitigation where agency will not have sufficient funds).

Nor does the DEIR identify an adequate source of funding for the improvements necessary to address future cumulative impacts. Indeed, as discussed below, neither the 2007 General Plan nor the DEIR even identify all of the improvements that would have

to be funded in order to attain adequate LOS. The DEIR's admission that funding is not available to address the impacts to the specific facilities evaluated in the "B" scenarios is substantial evidence that there will not be sufficient funding to address all of the other cumulative impacts purportedly evaluated in the "A" scenarios. Indeed, the DEIR *admits* that the rate of growth will outpace construction of new transportation facilities. DEIR, p. 4.6-44 to 45.

Experience demonstrates that funding will not be available to maintain roads, correct existing LOS deficiencies, and complete the funding of planned improvements. For example, development impact fees represent only \$328 million of the \$1.18 billion required for the projects identified in TAMC's Regional Impact Fee Nexus Study Update. Kimberly Horne, Regional Impact Fee Nexus Study Update, March 26, 2008, p. iii to iv. The balance of funding, corresponding to the contributions of existing and out-of-county traffic, must come from other sources, which the Nexus Study does not identify. TAMC's current investment plan calls for \$1.8 billion in spending, but is critically dependent on raising \$1 billion from a 25-year ½ cent sales tax, a measure that has repeatedly been defeated by the voters, most recently in November 2008. TAMC, Investment Plan for transportation Sales Taxes in Monterey County, available at <http://www.tamcmonterey.org/programs/plan/tip.html>. The TAMC investment plan also depends on obtaining \$410 million in matching state and federal funding – which will not be available without the sales tax passage. Thus, the funding that is necessary actually to complete the identified improvements remains speculative.

If TAMC has been unable to identify complete funding for a *partial* set of the necessary regional improvements despite its efforts over many years, it would be pure speculation to assume that the County will be able to obtain funding for an undefined set of improvements through a CIFP mechanism that has yet to be planned, much less adopted.

The DEIR does not contain any substantial evidence that the County's own proposed limited traffic impact fee program identified in the revised Policy C1.8 is itself a feasible means to construct the proposed improvements. As noted, this program purports to address only a limited set of improvements to certain County roads. Although the revised Policy C1.8 states that the County's traffic impact fee program has been adopted, there is no evidence that it has in fact been adopted. LandWatch requested information about this program and was advised by County staff that 1) the County Impact Fee is still being developed; 2) the list of roadways identified in GPU5 and the DEIR are the draft candidates; and 3) the program will probably be taken to the Board of Supervisors after GPU5 is adopted. If the County fee program has been adopted, or even developed past the draft stage, the DEIR must be revised to include information about its approval status, its sources of funding, the adequacy of that funding, the specific roadway improvement projects to be constructed, the timing of those improvements, and responsibility for implementation. Without this information, there is no evidence that this program is feasible.

Even if this proposed County program were fully funded, these improvements would not mitigate all of the impacts identified under the “B” scenarios, much less all of the impacts to unspecified roadways purportedly addressed under the “A” scenarios. There is simply no available information about funding for improvements necessary to mitigate cumulative impacts to all of the unspecified roadways purportedly evaluated in the “A” scenarios. In view of the evidence that even limited roadway improvements are beyond to financial capability of the County, it is entirely unreasonable to assume that the vaguely sketched CIFP process will be adequately funded. The DEIR must be revised to acknowledge this fact, and to acknowledge that there is no substantial evidence that cumulative impacts in “localized areas” will be less than significant.

G. Lack of Full Analysis

The DEIR purports to provide a full quantitative analysis and specific proposed mitigation of impacts to Carmel Valley Master Plan and to the area included in the AWCP, but fails to do so for all other areas of the County. This level of analysis should have been provided for other areas instead of the incomplete qualitative analysis under the “A” scenarios. There is no justification for ignoring the details of roadway impacts in other areas of the County, particularly in areas where the location and level of future development intensity is substantially constrained.

H. Inadequate First Tier Cumulative Analysis

CEQA permits future project-level EIR’s to tier from a cumulative impact analysis in the first tier, and partially exempts a project consistent with a general plan from cumulative impact analysis. The DEIR’s “A” scenario impact analysis purports to find that future cumulative impacts to roadways proximate to a project will not be cumulatively considerable, but it contains no assumptions about localized cumulative conditions and no analysis of specific roadway segments. Without such information, the conclusion in the “A” scenarios does not fulfill CEQA’s requirements for an adequate first tier cumulative impact analysis that could permit future projects to dispense with cumulative impact review of localized impacts. In fact, there is no real content to this “analysis” since it is not based on anything more than a recitation of policies without applying them to any facts or assumptions.

The DEIR should be revised to provide detailed quantitative analysis of cumulative impacts to all roadways for which future impacts can reasonably be predicted based on the 2007 General Plan’s constraints on the intensity and location of development. Where specific quantitative analysis is not provided, the DEIR must be revised to acknowledge that future projects will not be able to “tier” from the 2007 General Plan DEIR’s cumulative impact analysis.

I. Failure to Propose All Feasible Mitigation

For the reasons set out above, the DEIR’s conclusion that general plan policies will avoid all cumulative impacts from future development projects in localized areas

evaluated under the “A” scenarios is not based on substantial evidence. Furthermore, the DEIR admits that future development will cause significant unmitigated impacts to the County and regional roadways evaluated in the “B” scenarios. DEIR, pp. 4.6-44 to 45, 69, 87 to 88, 103.

Accordingly, the DEIR must be revised to propose all feasible mitigation to address cumulative impacts. In light of the apparent inability of the County to fund future roadway improvements, the key mitigation must be an enforceable ban on future development projects that make a considerable contribution to a significant cumulative impact until there is an adopted, funded program that will result in the construction of necessary improvements prior to occupancy of the project. The policies in the 2007 General Plan do not accomplish this.

J. Significance Criteria For Transportation Impacts Not Specified

The discussion of significance criteria states that the measure of significance for Tier 2 and 3 impacts is LOS, determined by the V/C ratio using ADT rather than peak hour traffic. DEIR, p. 4.6-29. It states that “this measure is not applied to Tier 1 impacts” and it makes clear that it employs the VC ADT method only because the DEIR is a program level or first tier EIR.

From this discussion, it is not clear what criteria are assumed by the DEIR in its evaluation of the impacts purportedly evaluated under the “A” scenarios. Because there are no actual quantitative analyses of Tier 1 impacts, this cannot be determined from context. Furthermore, neither the DEIR nor the 2007 General Plan state what significance criteria will be used in evaluating future projects and in devising future CIFPs to attain acceptable LOS. Conceivably, future projects might be evaluated with reference to V/C ratios (ADT or peak hour), signal delay, or density.

The DEIR and the 2007 General Plan must be revised to identify the significance criteria the County will use for CIFPs and future project level traffic analyses.

K. Circulation Plan Inadequacies Under Planning and Zoning Law

1. Lack of correlation

Government Code Section 65302(b) requires that the circulation element identify “the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.” The consistency doctrine *also* requires that a General Plan be internally consistent. Gov. Code, § 65300.5. The statutory requirement that the circulation element correlate with the land use element of a general plan (Gov. Code, § 65302(b)) effectively requires the circulation element to set forth service standards as well as proposals to address changes in roadway demand caused by changes in land use. *Concerned Citizens of Calaveras County v. Calaveras County Board of Supervisors* (1985) 166 Cal.App.3d 90, 100.

Specifically, growth must not impair circulation standards. *Id.* at 99-103. In *Concerned Citizens of Calaveras County* the court held that achieving the mandatory correlation of the circulation and land use elements required that a county actually identify funding sources and a real plan to address deficient levels of service before allowing additional growth. *Id.* at 103.

Goal C-1 and Policy C1.2 do not require that acceptable LOS be achieved *until* 2027, which is admittedly the end of the 2007 General Plan's planning horizon. On its face, this policy fails to make the necessary commitment to correlating the circulation and land use elements.

Furthermore, neither the DEIR nor the 2007 General Plan (through Figure 6 in the 2007 General Plan, Highways and Roads, or otherwise) identifies the improvements that would be necessary to mitigate all cumulative impacts of future development projects and meet an acceptable level of service. In *TwainHarte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 701-702, the Court held that a circulation element was invalid because "the circulation element does not attempt to describe or discuss the changes or increases in demands on the various roadways or transportation facilities of the County as a result of changes in uses of land which will or may result from implementation of the decision system and the general plan." The Court noted that "it seems apparent from a review of the general plan, the supporting MEIR, and the MEIR documentation that there is no way to determine whether in fact the circulation element is correlated with the proposed land use element." *Id.* And that is the case here too, because the circulation element simply does not propose an adequate roadway system or a plan to get one.

As discussed above, the roadway network assumed in the DEIR's "B" scenarios are admittedly inadequate to attain LOS standards. No additional improvements are even identified, much less proposed, that would attain LOS standards. No specific roadways were evaluated and no specific improvements were proposed in the DEIR's "A" scenarios. Thus the 2007 General Plan simply fails to identify "the general location and extent of existing and proposed major thoroughfares, [and] transportation routes" that would support and be correlated with the proposed land use.

And, as discussed above, neither the General Plan nor the DEIR identify a sufficient funding source for those limited improvements that are identified, much less the unidentified improvements that will be necessary to attain adequate LOS in the future.

2. Incomplete and inconsistent policies

The 2007 General Plan fails to put forth coherent and consistent circulation policies. The discussion above identifies the following deficiencies:

- Policies C1.3 and C1.4 do not clearly require phasing development projects unless the project is the straw that breaks the camel's back, pushing LOS

from D to E or E to F. The policy will not support the goal of acceptable LOS unless they are rewritten to require phasing when a project makes a considerable contribution to any LOS deficiency.

- If Policy C1.3 is intended to require phasing projects that make considerable contributions to cumulative impacts, it must be revised to say so. If it is not revised, then it does not support the goal of acceptable LOS.
- Cumulative impacts in Policy C1.4 (and C1.3, if revised) must be defined so that a project that makes a considerable contribution to a degraded LOS must be phased. This requires that the County rewrite the policy and define a cumulatively considerable contribution so as to ensure that unmitigated impacts do not eventually result in degraded LOS without any project being required to address the impact. An appropriate definition would be *any* increase in the V/C ratio of a facility that is already at LOS D.
- The term “degraded further” in Policy C1.1(b) must be defined to include any increase in the V/C ratio of a facility that is already at LOS D.
- Policy C1.4 must be revised to identify a specific mechanism whereby “off-site circulation improvements which mitigate cumulative impacts either shall be constructed concurrently with new development” for those cumulative impacts that will not be completely mitigated by the proposed County TIF and the TAMC TIF.
- The language of Policy C1.8 must be revised so that the proposed County TIF is clearly applicable to projects in the unincorporated area, not just development proposed in cities and surrounding jurisdictions.
- If policy C1.8 is intended to apply to development in cities and surrounding jurisdictions, then the General Plan must explain the basis of the County’s jurisdiction to impose its development impact fees.
- The language of Policy C1.4 is apparently restricted to the mitigation of so-called “Tier 3 impacts. The policy must provide a definition of Tier 3.
- The General Plan does not explain the relation of the CIFPs required under Policy C1.2 and Policies PS 1.1 to 1.6. The requirement that the CIFPs identified under C1.2 be developed within 18 months is infeasible and inconsistent with the APFS scheme under PS 1.1 through 1.6, which implies that CIFPs will be prepared only when new development is actually proposed, and is inconsistent with the low planning priority for Rural Centers.

- The deferral of the implementation plan to meet LOS standards through unspecified CIFPs, including the identification of necessary changes to the circulation system, renders the 2007 General Plan incomplete and internally inconsistent. *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212, 1236-1238 (Government Code Section 65300.5 requirement for internal consistency violated when general plan lacks implementation measure that would actually ensure coordination of school facility provision with development). The administrative process for developing the CIFP scheme under Policy C1.2 and Policies PS 1.1 to 1.6 is insufficiently defined. Policy C1.2 and Policies PS1.1 to 1.6 must be clarified to explain 1) whether the CIFP's identified in Policy C1.2 are the same as those identified in Policies PS1.1 to 1.6, 2) how many CIFPs will be required, 3) whether and how they will overlap, 4) who will pay for their development, 5) how they will be completed timely, 6) whether CEQA analysis for CIFPs will be undertaken separately or in conjunction with plans for Community Areas and Rural Centers, and 7) why and when CIFPs will be required for Rural Centers.

- A policy to address existing LOS deficiencies caused by past development, development currently in the entitlement process but not subject to the 2007 General Plan, and development for which no further entitlements are required must be developed that identifies actual funding sources. Development impact fees cannot be used for this purpose due to nexus and proportionality requirements.

- The exceptions to requirement to meet LOS D where LOS is already below D must be clarified as discussed above.
 - Policy C1.4 must explain under what circumstances development would be permitted before there is a CIFP or if a CIFP has not identified the affected facility as a top priority. .”
 - “Benefit” requirements for re-designations of LOS standards must be required whenever LOS is re-designated.
 - Benefit requirements must be explained and meaningfully constrained.
 - “Land Use Plans” should be defined so as to preclude ad hoc re-designation of LOS standards for individual development projects, or eliminated from Policy C1.1.
 - The term “top priority” in the context of Policies C1.3 and 1.4 must be defined to require that a CIFP include a planned, approved, and fully funded improvement project that is scheduled for completion by the time the development project is completed that would ensure 1) that existing deficiencies in the LOS are corrected and 2) cumulatively considerable contributions to reductions in V/C ratios are avoided.

- Policy C1.3's exceptions for a "first single family dwelling" should be clarified to make it clear that it applies only to a single unit development of a on a single lot of record and that non-discretionary uses in commercially designated properties do not include ministerial winery permits.
- The basis for determining LOS standards must be identified, e.g., whether measures are to be based on V/C ratio, density, or delay, and whether measures are to be based on peak hour or ADT.

In addition, the following problems must be addressed:

- Policy C1.1b is identified as an exception to the basic requirement that LOS D be maintained. It provides that an existing LOS below D may not be "degraded further," except for "County roads . . . in Community Areas," which may be further degraded through the Community Plan process. There is substantial ambiguity in the use of the word "except" in the basic statement of policy (LOS D shall apply "except as follows") and within the following language of Policy C1.1b (where LOS is already below D it shall not be degraded further "except in community Areas where..."). This ambiguous language which might be argued to mean that there are two exceptions to the LOS D standard: 1) if the existing LOS is already degraded below LOS D and 2) if a lower LOS is designated through the Community Plan process. The policy must be clarified to make it clear that the only exceptions to requiring LOS D are situations in which Community Plans or Area Plans designate a lower LOS. If the intent of the General Plan were to accept all existing LOS designations that are lower than LOS D as acceptable, then Policy C1.2 calling for attainment of acceptable LOS by 2027 would make no sense, since all roadways would already be, by fiat, at an acceptable LOS. Since Policies C1.1(a) and (c) make clear that Community Plans, Area Plans, and "Land Use Plans" may designate an acceptable LOS below LOS D, Policy C1.1b is unnecessary. The requirement that existing LOS below D should not be "further degraded" should be restated as a separate policy, not an exception to the basic requirement that LOS D be maintained.
- Table PS-1 note 4 states that an LOS standard may be less than D for "rural roads directly serving Community Centers and Rural Centers," referencing Policy C 1.1. It also provides that Community Area development may proceed even if the LOS on "adjacent rural roads" is lower than D. Based on note 4 to Table PS-1, it is not clear whether the General Plan will allow LOS below D for *any* County road or just 1) rural roads directly serving Community Centers and Rural Centers and/or "rural roads" that are "adjacent" to Community Centers. The language of note 4 and Policy C1.1 must be clarified to identify just which roads may be redesignated and whether they must be "in" Community Areas (per Policy C1.1(a)),

“adjacent” to Community Centers (per note 4 to Table PS-1), or “directly serving Community Centers and Rural Centers (per note 4 to Table PS-1).” The term “rural road” must be clarified as well since it is also stated as a limiting condition. The language of Policy C1.1 makes no reference to Rural Centers in its specification of areas for which lower LOS designations are permitted, so the reference in Table PS-1 note 4 to Rural Centers should be eliminated as inconsistent.

- The language of Policy C1.1 must be clarified to ensure that it applies only to County roads under the County jurisdiction since the County has no authority to reduce LOS standards for regional roadways not under its jurisdiction.
- Policy C1.2 must be clarified to require that existing deficiencies below LOS D be addressed by CIFPs unless a lower LOS is designated through Policy C1.1. (See comment above re Policy C1.1(b) explaining that Policy C1.1(b) cannot be construed to except such roadways from the LOS D standard as long as they are not further degraded.)
- PS1.1 through 1.6 requires that no new development be allowed unless APFS requirements are met. See e.g., PS1-3. Policy PS1.1 states that APFS requirements shall “ensure that APFS needed to support new development are available” concurrent with the impacts of development and shall “seek to achieve acceptable level of service (LOS) standards through improvements funded by fair share impact fees and planned capital improvements (CIFP).” Thus, it appears that a CIFP must be in place that ensures correction of *existing* LOS deficiencies before any new development can be permitted in the CIFP’s benefit area. If this is not the case, then the reference to CIFPs in Policy PS1.1(c) makes no sense. If it is the case, then the General Plan should make it clear that the delay in preparation of the required CIFPs will result in a development moratorium. If development is to be permitted in Community Areas despite the absence of a CIFP, the General Plan should clarify under what conditions this would be permitted and how that would be consistent with Policy C1.2.
- Policy C1.4 provides that “direct on-site and off-site circulation improvements that mitigate project impacts shall be constructed concurrently,” but permits new development merely to make fair share payments toward off-site improvements that “mitigate cumulative impacts,” pursuant to Policies C1.8 and C1.11. Policy C1.4 must provide an unambiguous set of criteria for determining which impacts are “direct” and therefore must be mitigated by concurrent construction and which impacts are “cumulative” and therefore eligible for mere fair-share payments. “Direct impacts” should be considered to be all impacts to intersections and roadway segments which ITE requires to be included in a traffic study

where the project's traffic by itself results in a degradation of LOS standards.

L. Basis for Identification of External Roadways Incomplete

The basis of the DEIR's selection of roadways external to the County for analysis not clear because the disjunctive sentence purporting to explain this is not finished. DEIR, p. 4.6-10 ("These external regional roadways were selected because they either represent extent of AMBAG model [or what?]). The DEIR must be revised to explain this.

M. No Significance Conclusion Or Mitigation Proposed For Impacts Of AWCP Under Existing Plus Project Conditions

The DEIR fails to provide a significance conclusion for traffic impacts associated with the AWCP under the Existing plus Project conditions. DEIR, p. 4.6-110 to 113. Table 4.6-27 indicates that there will be unacceptable LOS on Reservation Road/River Road/ Ft. Romie Road/Arroyos Seco Road between Las Palmas Road and Las Palmas Parkway (LOS D going to LOS F) and on County road G14 between US-101 and San Lucas road (LOS D going to LOS F). Despite this, no significant impact is identified and no mitigation is proposed. It appears that the DEIR text is simply incomplete.

The DEIR must be revised to acknowledge the significance of both impacts and to propose adequate mitigation. Note that the proposed Mitigation Measure TRAN-5A for impacts under 2030 Cumulative plus Project Conditions does not address the impact at Reservation Road/River Road/ Ft. Romie Road/Arroyos Seco Road between Las Palmas Road and Las Palmas Parkway.

N. Mitigation Of AWCP Impacts Inadequate

The DEIR states that mitigation for impacts caused by the AWCP in the 2030 Cumulative plus Project conditions and the Existing plus Project Buildout of the General Plan is to be improvements funded through 1) project-specific mitigation for individual projects, and 2) funding improvements through CIFP for AWCP. DEIR, p. 4.6-116, 119-120. However, because most of the AWCP projects will not require CEQA review, project-specific mitigation for those projects will not be required. And as discussed above, there is no evidence that a CIFP program will in fact mitigate cumulative impacts because the CIFP does not exist and cannot likely be funded

Section 3.3 of the AWCP exempts the following uses from CEQA review: artisan wineries, tasting rooms, visitor-serving uses, and food service facilities. See also DEIR, pp. 3-40 to 3-41. The DEIR's finding that AWCP projects may have a significant impact on roadways and that mitigation measures may be required, calls into question the CEQA exemptions proposed in AWCP Section 3.3.

To the extent that the 2007 General Plan proposes to permit most of the AWCP projects without CEQA review, this DEIR constitutes the first and final tier of environmental review for those projects. Thus, it is critical that the DEIR meet CEQA's requirements for the sufficiency of impact fees as mitigation. This requires that the EIR provide evidence that the necessary infrastructure improvements will actually be constructed when needed by identifying a "reasonable, enforceable plan or program" and showing that the necessary funds will be available. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189; *see also Endangered Habitats League v. County of Orange* (2005) 131 Cal.App. 4th 777, 785.

The 2007 General Plan's discussion of the Financing Plan for the AWCP CIFP acknowledges that benefit areas have yet to be defined, improvements have yet to be identified and costed, funding sources and mechanisms have yet to be identified, and a schedule for completion of improvements has yet to be adopted. 2007 GP, pp. AWCP-19 to 20. References to a CIFP plan that has not yet been developed will not suffice, particularly when, as discussed above, there is substantial uncertainty as to the administrative structure and feasibility of funding the CIFP program.

The DEIR itself states with respect to the necessary improvements to mitigate AWCP traffic impacts that there are various triggers that would result in implementation of improvements:

"These improvements would be implemented when:

1. A proposed development's project-specific assessment identifies a direct impact to the facility in terms of either LOS or safety.
2. A proposed development gains access from an intersection within the segment.
3. A corridor-wide nexus study prepared for the required Capital Improvement and Financing Plan identifies the level of development that can occur before triggering the improvements." DEIR, p. 4.6-116.

There appears to be no bases for these claims in the 2007 General Plan's discussion of the AWCP or its Circulation policies. If there are, the DEIR should identify them.

More fundamentally, these triggers that the DEIR suggests would result in timely mitigation are not a sufficient basis to conclude that impacts will be mitigated for the following reasons:

- As noted, most projects in the AWCP will not require CEQA review and so will not have occasion to generate a "project-specific assessment [that] identifies a direct impact." Furthermore, nothing in this language would address cumulative as opposed to "direct" impacts.

- A project without a CEQA assessment and that does not gain access on the segment (i.e., does not have a driveway on the segment) may nonetheless cause, or make cumulatively considerable contributions to impacts.
- There are no policies that would require a project that does gain access from an intersection within the segment to ensure that improvements are timely implemented.
- Unmitigated impacts may occur if development occurs before the nexus study is complete; nothing in the AWCP requires that a nexus study be completed at any particular time.
- A project may make an unmitigated considerable contribution to a cumulatively significant impact because there is nothing in any identified policy that requires that improvements be constructed before reaching some specified “development level that can occur before triggering improvements.” As discussed above, the circulation policies are written so as to require only the “last straw” project that pushes LOS from D to E or from E to F to be phased until improvements are provided. Under these policies traffic conditions may be permitted to deteriorate until LOS deficiencies cannot be rectified by fair share payments made by the straw that breaks the camel’s back.

The DEIR must be revised to propose a specific, enforceable program of mitigation for impacts in the AWCP. If the proposed mitigation depends of fair share payments, then the DEIR must meet CEQA’s requirement for payment of impact fees as mitigation.

O. Inconsistency And Uncertainty of Proposed Improvements

The proposed improvements to County roads to be funded by the proposed County traffic impact fee are not consistently identified. Table 4.6-13 includes widening Espinosa Road. DEIR, p. 4.6-26. This improvement is not identified on Table C-2 of the Errata/Addendum. The DEIR must be revised to clarify this inconsistency. If the quantitative traffic analyses in the “B” scenarios evaluated in the DEIR incorrectly assume this improvement, they must be revised.

This inconsistency points out the fundamental defect in predicating the quantitative traffic analysis on a network of roadway improvements that have not in fact been adopted and for which funding has not been identified. Instead of assuming the existence of the roadway improvements that may or may not be adopted by the County and assuming the funding of TAMC and County improvements for which adequate funding has yet to be identified, the traffic analysis should evaluate impacts based on a network that is reasonably certain to be in place. This analysis should be used to identify all of the necessary improvements, which should then be required as mitigation measures before additional development is permitted.

P. Transit Policy Conflicts Not Acknowledged

The DEIR finds that the 2007 General Plan would not conflict with the provision of alternative transportation since the Plan would concentrate development in Community Areas, Rural Centers and Affordable Housing Opportunity overlays. DEIR, pp. 4.6-53, 4.6-77, and 4.6-107. The analysis assumes that these areas can readily be served by alternative modes of transportation. It fails to account for communities such as Pajaro and the seven rural centers dispersed throughout the county at densities and locations that are not readily serviced by public transit (over 1,000 units). Furthermore, the 2007 General Plan allows for subdivisions outside any of the areas described above as well as sprawl development of over 2,000 units in the planning areas, not to mention the potential development of over 2,000 units dispersed throughout coastal areas.

The DEIR must be revised to acknowledge that the inability to support these areas with transit will constitute a conflict with policies supporting transit. This is a significant impact and an inconsistency between the land use and circulation elements.

Q. AWCP Safety Issues

The DEIR fails to address safety issues related to the conflict between agricultural vehicles which use County roads and visitors to wine tasting facilities. Slow moving and wide-load agricultural vehicles on narrow roads are intrinsically inconsistent with such visitors.

R. Maintenance Impacts

The DEIR does not address the impact of new development on deteriorating roads and highways. The County has a deferred maintenance cost of \$800 million. At current annual expenditures and with proposed development, the roadways will continue to degrade increasing safety hazards and more and more potholes.

S. Inexplicable Improvements In LOS

On page 4.6-27, the DEIR indicates that a minimum growth rate of 0.1% has been used on State Highways to ensure that traffic volumes do not decrease. However, the DEIR does not specify whether such an adjustment has been made to other roadways. Examination of LOS tables within each scenario indicates that traffic conditions are projected to improve on many segments in the future, which is generally inconsistent with projected population increases. For example, there are 11 segments in Table 4.6-14 that operate better in 2030 with project traffic than under existing conditions. There are 15 segments in Table 4.6-15 that get better, and 9 in Table 4.6-16. While a few of these may be caused by road improvements, there is no reason to suggest that this is caused by changes in traffic patterns that will occur "...in the future caused by the redistribution of jobs and housing." DEIR, pp. 4.6-33 to 34. Each of the other scenarios show some

segments operating better in the future than they do today, but there are more in the 2030 plus project scenario than in any other.

Please explain for each roadway segment for which the traffic analysis projects improvement whether the improvement is due to changes in the roadway network, or whether it is due to some other factor. If the other factor is a purported redistribution of jobs and housing, please explain specifically where those changes will occur.

While a better jobs-to-housing balance *may* result in less congestion, it is not obvious that jobs in particular locations will be filled by residents from that location. Accordingly, please explain how the traffic model assigns particular job opportunities to particular housing units.

T. Truck Traffic Understated After 2030

Truck trips do not increase proportionally as they should throughout the years. Page 4.6-4 indicates there were 10,800 daily truck trips in 1995 that increased to 12,800 in 2006, an increase of 11% (about 1% per year). Page 4.6-39 assumes an increase of 6,000 trucks from 2006 to 2030, an increase of 48% (about 2% per year). Page 4.6-87 assumes a 20% growth in truck traffic over 62 years from 2030 to buildout in 2092, an increase of 0.33% per year. With one truck equivalent to several cars (on the order of 3 to 5), there appears to have been a substantial understatement of the congestion effects of truck trips in the years after 2030.

U. AWCP Weekend Traffic Assumptions Not Justified

It is not clear why the DEIR uses Napa's Highway 29 to predict AWCP weekend traffic. DEIR, p. 4.6-109. The methodology section states that the traffic forecast applies the ratio of weekday to weekend traffic in Napa to the AMBAG model's weekday forecasts for roads within the AWCP. First, it is unclear whether and how the AMBAG model was updated to reflect the weekday traffic from the AWCP. Since the model was based on AMBAG's 2004 forecasts and the AWCP land use was not planned at that time, it would be surprising if the AMBAG model included weekday traffic from 50 wineries. Please explain whether and how the AMBAG was updated to reflect weekday winery traffic.

Even if the AMBAG model was manually updated to include weekday traffic from 50 wineries and all other development projected in the 2007 General Plan, there is still no *a priori* reason to assume that the relation between weekday and weekend traffic in a fully developed winery community like Napa predicts the relation between weekday traffic in Monterey's winery corridor and future weekend traffic in that corridor. For this prediction to be justified, the DEIR must supply information about the mix of non-winery related traffic, likely visitor origins, and density of wineries. Please also explain how the weekday/weekend ratio assumed compares to the ratio along the Silverado Trail in Napa, with the wineries in Paso Robles, in Temecula, or at other locations.

VI. AGRICULTURAL ISSUES

The 2007 General Plan DEIR concludes that loss of important farmland will be a significant unavoidable impact. AG-1, DEIR, p. 4.2-11 to 4.2-21. It concludes that conversion of farmland to non-agricultural use will be significant and unavoidable. AG-3, DEIR, p. 4.2-25 to 4.2-28. It concludes that the 2007 General Plan will make a considerable contribution to the loss of farmland, which is a significant cumulative impact. CUM-1, DEIR, p. 6-9 to 6-10.

The DEIR distinguishes Impact AG-1 and AG-3. AG-1 is the loss of farmland through the 2007 General Plan's direct re-designation of land for urban uses, which the DEIR identifies as 2,571 acres. DEIR, p. 4.2-11. Impact AG-3 is the future conversion of farmland due to indirect economic pressure. As distinguished from the conversions at issue in Impact AG-1, these future conversions would require a General Plan amendment to change the land use designation.

AS WRITTEN, POLICY AG-1.12 DOES NOT APPLY TO IMPACT AG-1: In connection with its discussion of Impact AG-1, loss of important farmland, the DEIR admits that 2,571 acres will be lost to urban development based on direct land use re-designations. DEIR, p. 4.2-11. The DEIR then recites a list of policies that it claims will "minimize adverse effects on conversion to the maximum extent practicable." DEIR, pp. 4.2-12. One of the policies recited is AG 1.12, which "requires the County to establish a program to mitigate the loss of Important Farmland *when a proposed change of land use designation* would result in the loss of Important Farmland (as mapped by the California Department of Conservation), including annexation of agricultural land to an incorporated area." DEIR, p. 4.2-13, emphasis added. As written, Policy AG 1.12 would not avoid, minimize, or compensate for Impact AG-1: none of the 2,571 acres at issue in AG-1 would require a change of land use designation because all of these acres are designated for non-agricultural use by the 2007 General Plan itself. Please explain why this policy is listed as a means of avoiding, minimizing or compensation for Impact AG-1.

IF MITIGATION FOR FUTURE LAND USE CHANGES IS FEASIBLE, THEN IT SHOULD BE APPLIED TO THE CURRENTLY PROPOSED LAND USE CHANGES: The DEIR provides no reason that the to-be-devised mitigation program under Policy AG 1.12 cannot be applied to the agricultural lands at issue in impact AG-1. There is none. Although the to-be-devised program is entirely unspecified, such a program might require, for example, conservation easements to protect other farmland or designation of permanent buffers. These measures could be imposed on the 2,571 acres of re-designated land at issue in Impact AG-1 as a condition of any actual change in use through future development. The DEIR should be revised to require this since it is feasible mitigation.

POLICY AG 1.12 MUST BE REVISED: Policy AG 1.12 lacks both performance specifications and meaningful exemplary measures. The policy mentions "ratios, payment of fees, or some other mechanism," but does not explain what a "ratio" might

be, much less provide an actual value for that ratio. Nor are values provided for fee payments. The proposed reliance on *ad hoc* mitigation approved by the Board of Supervisors pending completion of the Policy AG 1.12 mitigation program constitutes an entirely standardless deferral of mitigation – the 2007 General Plan does not even hint at the types of mechanisms or standards that might be required in the interim. Indeed, the DEIR itself admits that policy AG 1.12 is essentially meaningless because the program has not been specified:

“The requirements of the prospective mitigation program to be developed under Policy 1.12 to protect remaining Important Farmland permanently would partially reduce the significance of this impact. However, *because the requirements are yet to be determined, the effectiveness of that program cannot be known at this time.*” DEIR, p. 4.2-18, emphasis added.

The DEIR cannot conclude that all feasible mitigation has been identified when this policy has no actual content. No reason is provided for the deferral of the development of the requirements for this program. The DEIR must be revised to propose meaningful mitigation; if the mitigation must be deferred then performance standards must be specified and a reason for deferral must be articulated.

Furthermore, the exemption from Policy AG 1.12 of Community Center Plans and Rural Center Plans that include any kind of mitigation programs makes no sense. As written, Policy AG 1.12 would permit an entirely toothless mitigation policy to be devised for a Community Center Plan or Rural Center Plan as an alternative to whatever program the County eventually devises.

AGRICULTURAL BUFFERS SHOULD BE PERMANENT: As the DEIR admits, the buffer policy in 1982 General Plan (Policy 30.0.2) was more stringent because it requires permanent buffers. DEIR, p. 5-10. However, the 2007 General Plan Policy AG 1.2 no longer requires that buffers be permanent. CEQA requires that an agency explain and provide substantial evidence to justify its decision to omit previously adopted mitigation measures. *Napa Citizens v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 364. Since permanent buffers self-evidently provide better protection of agricultural land, the County must justify relaxing this requirement.

OTHER POLICIES CITED ARE INADEQUATE: The DEIR cites various Policies from the Agricultural Element as evidence that all feasible mitigation has been proposed. Many of these policies lack substantive performance standards and exemplary measures, are unenforceable, or are so vague as to provide no real assurance that agricultural land will be protected.

Policy AG 1.2 regarding buffers purports to identify “criteria” for buffers, but the factors listed are not standards. They are merely parameters for which the policy specifies no values. For example, the policy states that factors such as drainage and crop types shall be “considered,” but, as written, the Policy provides no actual standards that would create an enforceable obligation to provide a particular buffer.

Policy AG 1.3 barring subdivision of Important Farmland excepts subdivisions in Community Plan and Rural Center areas as long as there is an entirely unspecified “alternative farmland preservation strategy.” As written, an entirely toothless alternative strategy could be adopted, which would avoid any meaningful control on subdivision of Important Farmland. The County must provide clear, enforceable standards for the “alternative farmland preservation strategy.”

Policy AG 1.4 calls for “encouraging” large lot agricultural zoning and making agriculture a “top priority.” This policy does not create any enforceable obligation for the County or for future developers.

Policy AG 1.5 calls for a future ordinance to provide tax and economic incentives for farming. No performance standards or exemplary measures are identified and no enforceable obligation is created.

Policy AG 1.7 “encourages” clustering of agricultural housing. It should be revised to *require* this.

Policy AG 2.3 permits conversion of farmland for agricultural processing facilities for products grown *outside* the County. While limited processing facilities to accommodate local farm production may encourage retention of land in agricultural use, the conversion of farmland to process produce grown outside the County can have no beneficial effect on viability of local agriculture. Please explain why this provision has been added.

VII. AIR QUALITY ISSUES

Attached as Exhibit 12 are comments on the DEIR's air quality analysis provided by Autumn Wind Associates, Inc. Our comments below summarize some of these comments and make additional points. Please respond to both sets of comments separately.

A. Failure to Document Assumptions and Methodology

The DEIR's analysis of consistency with the Air Quality Management Plan is based on Table 4.7-3, purporting to list projected population and VMT growth in Monterey County. DEIR, p. 4.7-15. Its analysis of criteria pollutant emissions is based on emission calculations using the EMFAC 2007 model. DEIR, p. 4.7-22. The DEIR states that "Appendix A describes the methodology and model inputs for existing year, future year, and buildout of the 2007 General Plan."

LandWatch requested documentation of these sources. John Farrow, letter to Carl Holm, September 18, 2008. In its request, LandWatch pointed out that Appendix A does *not* contain a description of the "methodology and model inputs for existing year, future year, and buildout of the 2007 General Plan" and requested this information. Land Watch specifically requested the following information:

1. The source document identified at Table 4.7-3, Projected population and VMT Growth in Monterey County (Kimberly-Horn (2008)).
2. "Appendix A" referenced at page 4.7-22, which "describes the methodology and model inputs" for the criteria pollutant emissions calculations. In this regard, please note that the DEIR table of Contents identifies Appendix A as the Notice of Preparation. Thus, there must be either an error in designation or two Appendices A.
3. The source document used to prepare Table 4.7-5, Criteria Pollutant Emissions from Mobile Sources. Note that the "Appendix A" requested above, describing "the methodology and model inputs" for the criteria pollutant emissions calculations, may or may not contain the EMFAC or URBEMIS model runs themselves. Please produce the output from the model runs used to calculate criteria pollutants.

On October 3, 2008 the County acknowledged that the reference to Appendix A was an error. Wendy Strimling, letter to John Farrow, Oct. 3, 2008. Ms. Strimling's October 3 letter explained that there is no source document supporting Table 4.7-3 and that it was prepared by Kimley-Horn and Associates. She explained that Table 4.7-3's population and employment projections were based on Section 4.6.3.1 and 4.6.3.2 of the DEIR (the sections describing the methodology and analysis scenarios for the traffic analyses), and that Vehicle Miles Traveled (VMT) for each scenario was developed using the AMBAG travel demand forecasting model.

As discussed above, LandWatch objects to the refusal to make the AMBAG model available. Comments above demonstrate that the demographic data provided in the DEIR is not consistent with the purported AMBAG sources. Comments above also point out that the DEIR fails to clearly state the assumptions reflected in the traffic and air quality “scenarios” and “conditions,” including the assumptions in Tables 4.7-3, 4.7-5, 4.7-6 in the air quality section. The DEIR must clarify the relationship between the five traffic analysis scenarios set out on pp. 4.6-19 to 20, the six traffic analysis scenarios identified in Table 4.6-10, and the scenarios set out in the air quality analysis in Tables 4.7-3, 4.7-5, and 4.7-6.

On October 7, the County provided documents purporting to respond to LandWatch’s second and third requests, the requests for the methodology and model inputs used for criteria pollutant emissions calculations and the calculations themselves. Wendy Strimling, letter to John Farrow, Oct. 7, 2008. The County provided a document captioned “Air Quality Technical Information – Criteria Pollutant Modeling,” a similar document related to Carbon Monoxide modeling, and two printouts from EMFAC 2007. Although the County updated the DEIR’s reference list and extended the comment deadline, it did not correct the “typo” in the DEIR referring to Appendix A or provide the technical information to the rest of the public.

The document captioned “Air Quality Technical Information – Criteria Pollutant Modeling” contains a Table 1 that provides the same yearly VMT data as is contained in Table 4.7-6, but the document does not provide any explanation of the actual assumptions used to develop the scenarios. One of the datum is the clearly absurd representation that the project will result in only an annual increase of vehicle miles of only 369,679 miles. As Autumn Wind points out in the attached comments, this figure implies that each of the 36,166 new residents of the County will average only 10 vehicle miles per year. As discussed below, it is apparent that the Tables 4.7-6 projecting changes in criteria pollutants contain significant errors. However, the County’s failure to provide documentation of the traffic and air quality analysis assumptions makes it difficult or impossible for the public to determine what the DEIR might have meant to claim.

As Autumn Wind points out, the document captioned “Air Quality Technical Information – Criteria Pollutant Modeling” and the employment, population, and housing data by Traffic Analysis Zone data provided by the County does not permit the public to trace the DEIR’s analytic route from the General Plan land use designations and policies to demographic assumptions by TAZ, from that TAZ data to vehicle miles traveled, and from VMT to criteria emissions. Autumn Wind also demonstrates based on the data that was made available that the modeling for criteria pollutants was far too simplistic in its approach.

B. Inconsistency With 2008 Air Quality Management Plan

The DEIR concludes that the Project is consistent with the “Clean Air Plan” on the basis of finding that the projected 2030 countywide population in Table 4.7-3 of

602,790 is no larger than the population assumed in the Clean Air Plan. DEIR, p. 4.7-16. As Autumn Wind demonstrates, the 515,549 population for 2030 assumed in the MBUAPCD 2008 Air Quality Management Plan is in fact smaller than that projected in the DEIR. Thus, on its face, the Project is inconsistent with the 2008 Air Quality Management Plan.

The DEIR's consistency determination is apparently based on the sterile and circular argument that the AMBAG 2004 population assumptions used by the DEIR are the same as the assumptions used in preparing the previous Air Quality Management Plan. Notes to Table 4.6-11, which was the source for table 4.7-3, state that "Existing plus Project 2030 and Cumulative 2030 land uses were *adjusted* to match the published AMBAG 2004 Population, Employment and Housing Unit forecasts." DEIR, p. 4.6-22, emphasis added. "Adjusting" the purportedly Project-specific population data in Tables 4.6-11 and 4.7-3 to make them consistent with AMBAG data renders the consistency finding nothing more than the empty observation that the DEIR has *assumed* consistency by adjusting the population data to make it consistent. There is no evidence that this consistency finding actually reflects any consideration of the effects of the 2007 General Plan on growth in the County.

LandWatch again asks that the County explain how it projects the effects of the 2007 General Plan on population growth. In particular, LandWatch requests that the County reconcile the purportedly bottom-up projections of growth in each Area Plan, Community Area, Rural Center, and Affordable Housing Overlay (See DEIR, Table 3-8) with AMBAG projections and with the proposed development constraints in the 2007 General Plan. The DEIR must be revised to base its consistency analysis on the actual effects of the 2007 General Plan on growth reflected in land use constraints, not on the sterile observation that the Project is consistent because the DEIR uses consistent assumptions.

C. Mobile Source Emissions of Criteria Pollutants

Impact AQ3 is captioned as "Net Change in ozone Precursor (ROG and NOx) and Particulate matter. (Significant and Unavoidable.)" DEIR, p. 4.7-21. It is difficult to determine what impact is being evaluated and what conclusion is reached. The discussion centers on two sources of ozone precursors, mobile sources and winery sources. The DEIR concludes with respect to impact AQ3 that that emissions from wineries will result in a significant impact. For mobile sources, the DEIR makes conflicting claims; in some places it asserts that mobile source emissions will increase and in other places it claims they will decrease:

- The DEIR states at page 4.7-22: "As Table 4.7-6 indicates, implementation of the 2007 General Plan would result in *net decreases* in ROG, Nox, CO, and PM2.5 emissions, while PM10 emissions would increase."

- The DEIR states at page 4.7-26: “Implementation of the 2007 General Plan *would result in increased emissions of criteria pollutants and VOCs.* Implementation of the 2007 General Plan would result in increased mobile and area source emissions due to increased vehicle trips and VMT, and increased development.”
- But then the DEIR states at pp. 4.7-26: "As indicated in Table 4.7-5, 2030 conditions (2030 With Project - 2000 conditions) would result in *a net decrease in ROG, Nox, CO, PM2.5, and PM10 emissions.* . . . Decreases in emissions rates are sufficient to offset the increases in VMT seen between 2000 and 2030 project conditions, resulting in the decreased ROG, Nox, CO, PM2.5, and PM10 emissions observed in Table 4.7-5."¹⁷
- The DEIR concludes at page 4.7-28: "In summary, implementation of the 2007 General Plan *would result in a decrease in ROG, Nox, CO, PM2.5, and PM10 emissions.*"

These conflicting claims must be resolved in a revised and recirculated DEIR.

It appears that the basis of the conclusion that mobile source criteria pollutants will not create a significant impact is the row in Table 4.7-6 captioned “2030 Project Increase (2030 With Project – 2000).” However, as noted above, because the DEIR did not supply Appendix A and neither the DEIR nor the information subsequently provided by the County contain any clear explanation of the demographic assumptions for the air quality scenarios, it is difficult to identify the precise basis for the DEIR’s various and conflicting claims regarding the effect of the project on criteria pollutants.

The DEIR’s claim that implementation of the 2007 General Plan would result in decrease in emissions is not coherent. The proper baseline for evaluation of a new county general plan is existing conditions on the ground, not hypothetical conditions reflecting build-out under existing land use designations. *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354. Given that the baseline for analysis must be existing conditions, it is difficult to understand how the unincorporated area of the County could grow by 10,015 or 13,438 new residential units by 2030 (depending whether the analysis is based on Table 3-8 or Table 4.6-11) and still result in a decrease in emissions compared to existing conditions without those 10,015 or 13,438 new units. As Autumn Wind points out, *any* increase in VMT attributable to growth in the County must result in increased emissions (unless the General Plan itself causes all incremental VMT to be produced by zero emission vehicles, which it does not).

¹⁷ Note that the references here may actually be to Table 4.7-6, not Table 4.7-5, but that is unclear too. Table 4.7-5 does not contain a row captioned “2030 conditions (2030 With Project - 2000 conditions.” However, Table 4.7-6 contains a row captioned “2030 Project Increase (2030 With Project - 2000 conditions).” As discussed below, Table 4.7-6 contains a fundamental error in calculating the purported contribution of the project to baseline conditions.

As Autumn Wind indicates, the DEIR's repeated observation that increases in VMT will be offset by decreases in emissions rates (DEIR, pp. 4.7-22, 4.7-26) are irrelevant and misleading. Even if vehicle emission rates are projected to decline, that decline is entirely unrelated to the 2007 General Plan, and the increases in VMT due to new growth will still contribute *some* level of additional emissions over the baseline existing conditions. The Project could result in a decrease in emissions *only if VMT were actually reduced*, but the DEIR does not claim that VMT will be reduced. As long as VMT attributable to growth permitted under the general plan, emissions will increase by some amount over the baseline. This amount must be disclosed and compared to a significance threshold. Without this, the DEIR's analysis of criteria pollutants is meaningless.

Furthermore, the DEIR's Table 4.7-6, which is the source of the DEIR's claim that emissions will decrease, appears to contain or reflect some fundamental math error. The row captioned "2030 Project Increase (2030 With Project – 2000)" was calculated by subtracting the data in Table 4.7-5 for "2000" from the data in Table 4.7-5 for "2030 With Project." It appears that either 1) the "2000" data includes emissions from incorporated cities, which should not be subtracted from emissions from unincorporated areas only; or 2) the "2030 with Project" data in Table 4.7-5 does not include baseline emissions from existing development because it is *already* expressed as a net increase attributable to growth in the unincorporated area, in which case it makes no sense to subtract baseline 2000 data from it again. At any rate, it is simply not credible that emissions attributable to growth in the unincorporated area under the 2007 General Plan could be a negative number as is stated in Table 4.7-6.

Additional inconsistencies are apparent in the discussion of Table 4.7-6 and the data itself. First, Table 4.7-6 shows that yearly VMT for the row captioned "2030 Project Increase (2030 With Project – 2000)" will be 369,679 miles. This is the same number identified in Table 1 of the document provided to LandWatch captioned "Air Quality Technical Information – Criteria Pollutant Modeling." This comes to about 36 miles per year for each of the 10,015 new residential units identified in Table 3-8. This is not a credible figure. Second, even though the 369,679 mile increase in VMT is not a credible figure, it is a positive number, and therefore is inconsistent with the negative numbers given for emissions in the remainder of the row captioned "2030 Project Increase (2030 With Project – 2000)." Third, the DEIR states that "As Table 4.7-6 indicates, implementation of the 2007 General Plan would result in net decreases in ROG, NOX, CO, and PM2.5 emissions, while PM10 emissions would increase." DEIR, p. 4.7-22. There is no line on Table 4.7-6 (or Table 4.7-5) in which PM10 emissions have a different sign than other emissions. Fourth, it appears that the "2030 Cumulative Buildout" condition in Table 4.7-5 should have been labeled "Cumulative Buildout" since the data in this row are the same as the data with that caption in Table 4.7-6.

These inconsistencies must be explained and corrected. More importantly, the DEIR must be revised and recirculated to evaluate the project's actual increase in criteria emissions.

D. Construction Impacts Not Mitigated

Autumn Wind demonstrates that the DEIR unacceptably fails to quantitatively evaluate construction emissions or to support its qualitative claim that these emissions are less than significant after mitigation. Proposed mitigation for construction PM10 is either unrelated to construction (MM AQ-3) or may actually weaken air quality protections (MMAQ1 and 2). The DEIR's qualitative evaluation of construction PM10 emissions is based on the recitation of proposed policies. The DEIR purports to find impacts less than significant after adding the requirement that projects comply with the air district's PM10 requirements – but that requirement was already included in the list of proposed policies the DEIR purports to have considered in finding that PM10 impacts would be significant. The DEIR also claims that the winery corridor air quality impacts will be mitigated by air quality policies included in three Area Plan – after stating that these Area Plans do not contain air quality policies. This sloppy and formulaic discussion vividly demonstrates that the qualitative discussion of construction PM10 is simply vacuous.

The DEIR failed even to consider construction emissions of ozone precursors (ROG, NOx), based on their inclusion in the regional emission budget. If this were sufficient reason not to evaluate an emission class, no air quality discussion would be required at all, since virtually all categories of emissions are included in regional emission budgets.

CEQA requires that the DEIR present a substantive analysis of all potentially significant emissions.

E. Diesel Particulate Matter Health Risks Not Adequately Evaluated Or Mitigated

Autumn Wind explains that the DEIR's rationale for failing to evaluate the health risks from diesel particulate matter ("DPM") is flawed. The fact that exposure durations may be less than 70 years is irrelevant in view of OEHHA's determination that this modeling parameter is appropriate. The other rationale offered by the DEIR – that exposure will be minimal due to the types of proposed projects – is simply not coherent. The DEIR's failure of analysis cannot excuse future projects from analysis of this risk.

Autumn Wind also demonstrates that the qualitative analysis of regional DPM exposure is not adequate and that that the proposed mitigation will not render impacts less than significant. The DEIR must be revised to provide a meaningful discussion and adequate mitigation.

VIII. BIOLOGICAL RESOURCES ISSUES

Enclosed as Exhibit 13 are comments provided by TRA Environmental Sciences, Inc. As TRA Environmental summarizes its comments:

- The DEIR does not provide substantive analysis of impacts to biological resources based on correlating the expected location and intensity of development and the affected resources. Most of the impact analyses consist of recitations of lists of policies from the 2007 General Plan without any meaningful discussion linking those policies to impact avoidance, minimization, or compensation. Many of the policies lack any substantive content, *e.g.*, lack any performance standards or examples of the content of implementing programs. Many of the policies defer the formulation of mitigation without deadlines for completion or interim measures. No reasons are given for these deferrals. Many of the policies lack any enforceable mandate. We have provided detailed comments on most of the policies cited as the basis for the DEIR's impact analyses.
- Mitigation measures that are proposed to supplement the 2007 General Plan policies suffer from the same defects as the policies themselves.
- Substantial new agricultural cultivation, especially vineyard development, is projected in the County, but the DEIR fails to describe this activity accurately. The description of winery corridor is inconsistent and incomplete. Because these activities will have significant effects on biological resources, they must be accurately described.
- Impacts to movement corridors and habitat fragmentation were not adequately evaluated because the DEIR did not develop or consider available empirical information about important conservation areas, movement corridors, and habitat linkages.
- Mitigation of habitat fragmentation and interruption of movement corridors and habitat linkages is inadequate. The mitigation of these landscape-scale impacts must be formulated in a first-tier EIR, not postponed to future project-level CEQA reviews, particularly since much of the development activity that will affect these resources is to be exempted from future CEQA review.
- The DEIR failed to evaluate steelhead impacts from increased diversions from the Salinas River, continued operation of the Nacimiento and San Antonio Dams to support growth, and sedimentation.
- Although the DEIR acknowledges that growth will make a considerable contribution to cumulatively significant impacts, it proposes no mitigation to address this.

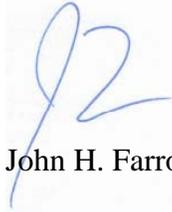
January 30, 2009
Page 162

We ask that the County respond to the comments by TRA Environmental Sciences, Inc., in full.

Thank you for the opportunity to submit these comments.

Yours sincerely,

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

A handwritten signature in blue ink, appearing to read 'JH Farrow', is positioned above the printed name.

John H. Farrow

JHF: ms
Enclosures