Founded in 1997
LandWatch
monterey county
Post Office Box 1876
Salinas, CA 93902-1876
831-759-2824
Website: www.landwatch.org
Email: landwatch@mclw.org
Fax: 831-759-2825

August 18, 2014

David Mack, Associate Planner
County of Monterey Planning Department
168 West Alisal, 2nd Floor
Salinas, CA 93901

SUBJECT: RDEIR FOR FERRINI RANCH

Dear Mr. Mack:

LandWatch Monterey County has reviewed the Draft EIR ("DEIR") and Revised Draft EIR ("RDEIR") for the proposed project. LandWatch has previously commented on the DEIR. LandWatch incorporates its previous comments by reference and will expect the Final EIR to respond in full to those comments.

THE PROJECT

The RDEIR has not altered the project description, although it has provided a new alternatives analysis. Therefore, it appears that the proposed project still consists of a proposed Combined Development Permit for the construction of a 212-unit subdivision on 870 acres and all associated physical improvements, including removal of trees and grading on slopes greater than 30 percent within the Toro Planning Area. A portion of the property is not zoned, and the County intends to reclassify the entire project site with Low Density Residential, 2.5 acres per dwelling unit with Visual Sensitivity, and Design Control overlays (LDR/2.5-VS-D zoning) consistent with the General Plan Land Use Map as a part of the 2010 General Plan Implementation.

The 212 residential lots would consist of 169 market-rate single-family residential lots and 43 inclusionary housing units. The proposed project includes open space designation for Parcels A-C totaling approximately 600 acres; future development of a winery and related uses on Parcel D totally 34.7-acres; and four private roadway parcels totaling 43.1 acres. Three access points would be provided at the following locations: near the entrance of Toro County Park and the State Route 68/Portola interchange; River Road; and San Benancio Road. Action by the County to agree to sell/lease a portion of Toro County Park would require additional review under the National Environmental Protection Act (NEPA) because these County parklands were obtained using federal grant money.

The application also includes the following: (1) a General Plan Amendment to amend the designation of the area of proposed Parcel D (34.7 acres) from Low Density Residential 1–5 Acres/Unit to Agricultural Industrial; (2) a zoning reclassification of proposed Parcel D (34.7 acres) from the LDR/2.5-VS (Low Density Residential, 2.5 Acres/Unit with Visual Sensitivity) zoning district to the AI-VS (Agricultural Industrial, with Visual Sensitivity) zoning district; (3) a Use Permit for removal of approximately 921 protected oak trees (approximately 14 acres of oak woodlands); and (4) a Use Permit for development of roadways and driveways in areas with slopes greater than 30 percent. The proposed project would also include the construction of on-site roadways, infrastructure, utility improvements, and hiking trails. A Development Agreement may also be executed between the County and the applicant.

Independent of project approval, the County intends to rezone the entire project site with LDR/2.5-VS-D zoning as part of the 2010 General Plan Implementation. The project applicant is requesting that Parcel D be rezoned to AI-VS (Agricultural Industrial), which would also be subject to VS and D overlays. DEIR p. 3.9-13

SUMMARY OF COMMENTS

As set forth in detail below, LandWatch has the following concerns about the project:

- The DEIR and RDEIR fail to provide sufficiently detailed project description to support analysis of impacts. For example, even though the Monterey County Code requires applications for subdivisions to include building foot prints and landscaping, streets and roads, water supply, sewage disposal, and stormwater runoff facilities, the EIR does not provide all of this information. A detailed site plan should be provided. That site plan should be overlaid on each map of affected resources, e.g., the maps of biological communities, riparian zones, wetlands and other waters, California Tiger Salamander habitat, oak woodlands, hazardous soils and steep slopes, flood areas, and cultural and historic resources. Only with a map of the actual project overlaid on the affected resources can the public understand the project impacts.

- State and local wildfire control regulations and the Monterey County Community Wildfire Protection Plan require and authorize substantial "fuel modification" (vegetation removal) activities. Even though these activities will affect biological and aesthetic resources, the DEIR and RDEIR fail to describe these foreseeable aspects of the project. LandWatch is particularly concerned that, despite LandWatch's detailed comments on the effect of fuel modification on biological resources in its DEIR comments, the RDEIR's biological resources analysis fails even to mention fuel modification. Indeed, the only reference to fuel modification in the DEIR's discussion of biological resource mitigation was removed in the RDEIR. It is difficult to understand the failure to address this issue in the RDEIR.

- The DEIR and RDEIR propose 16 mitigation measures that call for future redesign of the site plan to address various impacts. There is no evidence that these deferred site plan revisions are feasible or mutually compatible. It is unclear whether the deferred site plan revisions will fully or only partially mitigate impacts because many of the mitigation measures require site plan revision only "as feasible" – and standards for determining feasibility are not identified. It is also unclear if site plan revisions to address one impact would cause or aggravate other types of impacts. The EIR should be revised to identify the site plan that is actually going to be permitted so that impacts can be identified.

- The new alternatives consist largely of various site plan revisions. However, the RDEIR fails to clarify the relation between mitigation measures calling for future site plan revisions and the alternatives. It is unclear whether the alternatives fully address, partially address, or fail to address the impacts for which the EIR proposes deferred site plan revisions as mitigation. If an alternative were approved instead of the proposed project, the EIR fails to provide sufficient information to determine what mitigation measures would still be applicable.

- The range of alternatives is not reasonable. Even though it is clear that both clustering of development and reducing unit counts would more fully mitigate impacts, the RDEIR does not evaluate such an alternative. Indeed, it saddles the clustering alternative (Alternative 4) with an apparently infeasible new above-grade traffic interchange for SR 68 – a costly poison pill apparently intended to relieve the developer of the obligation to seriously evaluate clustering.

- The alternatives analysis injects uncertainty into the previous traffic analysis by including a new analysis, buried in an attachment, which changes the traffic baseline and uses a different threshold of significance. If the standards and methods for determining for what is an acceptable traffic impact to SR 68 are going to be changed, the County must revise and recirculate the traffic analysis too. And LandWatch reiterates its prior objection that the traffic analysis must evaluate the project impacts with reference to existing conditions, not just with respect to hypothetical future conditions.

- The revised air quality analysis fails adequately to assess cumulative impacts and toxic air contaminants from this project, which is located adjacent to a school.

- The RDEIR fails to propose adequate mitigation for greenhouse gas impacts even though it admits that the impact remains significant and unavoidable. All feasible mitigation measures are required.

- At least eight mitigation measures for biological and aesthetic impacts include uncoordinated and deferred provisions for an onsite open space area. No reason is given for deferral of the identification of the open space area and the preparation of a

management plan. The public is entitled to see how this plan will actually be specified and coordinated to judge if it will be feasible and effective.

- Mitigation for impacts to biological resources is inadequate because it relies on legally uncertain measures, defers the formulation of mitigation without justification, fails to provide performance standards, fails to require a preference for on-site mitigation, and fails to avoid or compensate for lost habitat for some species.

- The RDEIR provides no meaningful analysis of cumulative biological impacts. This is particularly disturbing given that the combination of existing development and other foreseeable projects elevates the importance of protecting the existing habitat on the Ferrini site and providing a critical link between habitat to the north and south.

LandWatch submits the following detailed comments on the RDEIR.

PROJECT DESCRIPTION

1. EIR must provide project description that reflects all site redesign required by mitigation measures. The RDEIR fails to provide an adequate project description that includes the project redesign required by numerous mitigation measures. Recirculation of the EIR with an adequate project description that resolves the numerous mitigation constraints and shows actual building envelopes, landscaping areas, and vegetation removal for wildfire protection is critical to evaluation of impacts, determination of project feasibility, and selection of alternatives.

In particular, The RDEIR fails to present an accurate description of the project in feasible final form because numerous mitigation measures call for modifications to the site plan to avoid impacts.

The DEIR and RDEIR contain the following 16 mitigation measures ("MMs") calling for project redesign:

> MM 3.1-1 – relocate lots outside critical viewshed and 100-foot setback; specify scenic and conservation easement for opens space areas; designate entire project area as B-6 overlay area barring future subdivisions. For these "restricted areas" the following restrictions will apply, which may result in unspecified future "relocation and reduction of proposed building envelopes" as follows:
>
> > "Development within these restricted areas is subject to a Use Permit (Monterey County Zoning Code Sections 21.38.050 and 21.46.030) and the development

> standards identified in Section 21.38.060 of the Monterey County Zoning Code, as well as the design review and site plan review process. In addition to the standards and requirements of Chapters 21.44 and 21.46 of the Monterey County Zoning Code, future development proposed on these lots shall be subject to review and approval as to the proposed building site location, topography, existing vegetation, proposed landscaping, proposed parking layout, proposed grading, and any identified environmentally sensitive habitats and hazards. This review may result in relocation and reduction of proposed building envelopes in order to assure protection of the public viewshed and neighborhood character, and to assure the visual integrity of certain developments and to avoid natural resources that are important components of these visually sensitive areas." DEIR 3.1-21.

MM3.1-6 – relocate structures on Parcel D so not visible from SR68.

MM3.3-1a and 1b – modify site plan for special status plant species protection.

MM3.3-2b – modify site plan for California Tiger Salamader ("CTS") by constructing new breeding pond in location that is not finally determined and by making development of 7 lots contingent on CTS use of new breeding pond.

MM3.3-4a – relocate lots to avoid riparian habitat.

MM 3.3-4b – relocate lots to avoid wetland habitat.

MM 3.3-8a – relocate lots to avoid migration corridor.

MM3.3-5 – avoidance of impacts to waters of the U.S.

MM3.3-6a – modification of site plans to preserve trees.

MM3.4-1a, b, and c – modification of site plan to avoid impacts to cultural and historic resources in locations not disclosed in the EIR.

MM3.7-4 – relocate lots for flood protection.

MM3.10-3 – modify site plan to include 2 acres of on-site parkland.

MM 3.10-4a – modify site plan to relocate alignment of Ferrini Ranch Road.

There is no evidence that all of this proposed mitigation is feasible since redesign to address one impact may not be consistent with redesign to avoid another impact.

The only way to ensure that mitigation calling for project redesign is feasible is to prepare a site plan that conforms to each of the proposed mitigation measures calling for site redesign. Please provide this information.

Furthermore, redesign may cause or aggravate impacts in ways that have not been evaluated. The only way to identify these impacts is to prepare a site plan that conforms to the proposed mitigation measures calling for site redesign and then to overlay that new design on the resource area maps (e.g., Figures 3.3-1showing biological communities, 3.3-2 showing riparian zones, 3.3-3 showing wetlands and other waters, 3.3-4 showing potential CTS ponds, 3.3-5 showing CTS dispersal distances, 3.3-6 showing CTS barrier and crossing locations,1 3.3-8 showing proposed CTS mitigation ponds, as well as the other resource area maps or figures showing oak trees, soils, steep slopes, flood areas, and cultural and historic resources) to determine whether and how the redesigned project would impact these resources. Please provide this information.

We noted that a site plan showing building footprints and landscaping should already be available since it is required for an application for a subdivision map under Monterey County Code Section 19.05.040L3C(3) (requiring an applicant to submit a "to-scale site plan showing proposed building foot prints and landscaping, streets and roads, water supply, sewage disposal, and stormwater runoff facilities"). See also MCC section 19.05.040L1A(1) (substantially the same information requirement). Please provide a to-scale site plan showing proposed building foot prints and landscaping, streets and roads, water supply, sewage disposal, and stormwater runoff facilities.

As discussed below, state and local regulations that require or permit extensive fuel modification to preserve structures in wildland fires will result in additional habitat loss and potential take of protected plants and wildlife. For example, fuel modification requiring extensive vegetation removal is required and/or permitted by the California Department of Forestry and Fire Protection's General Guidelines for Creating Defensible Space and by the Monterey County Community Wildfire Protection Plan ("MCCWPP") adopted by the County on December 17, 2010. The project site has a high fire risk and is a high priority for fuel modification work. Fuel modification may be required or permitted to protect not just residences, but roadways and infrastructure. The DEIR and RDEIR fail to reflect the loss of vegetation and habitat that may be required for fuel modification. Accordingly, the revised site design should provide not just layouts and roadways, but also building envelopes, landscaped areas and wildfire defensible space clearings, all of which have the potential to impact critical resources. Please provide this information.

In sum, we ask that the EIR provide a revised site plan that

[1] We note that Figure 3.3-6 appears to include lot layouts from one of the alternatives, not the project itself.

1) conforms to the proposed mitigation measures calling for site redesign,
2) includes building envelopes, landscaped areas and foreseeable wildfire defensible space clearings, and
3) overlays that information on each of the resource area maps.

If it is not feasible to design the project to conform to each of the listed mitigation measures so as to *fully* avoid the specified impact, please explain why.

Some mitigation measures would permit offsite compensation of impacts that cannot be fully avoided by site redesign. If it is not feasible to design the project to conform to each of the listed mitigation measures so as to fully avoid the specified impact, then please provide a revised site plan that avoids *or minimizes* the specified impacts. In this event, please indicate whether impacts that are only minimized may be compensated through off-site measures.

ALTERNATIVES ANALYSIS

2. EIR must explain relation of alternatives and mitigation measures. The alternatives analysis must specify whether the alternative project redesigns actually meet the requirements of the proposed mitigation measures that call for project redesign.

CEQA requires that significant impacts be addressed either through mitigation or alternatives. The alternatives analysis purports to address various significant impacts by redesigning the project. However, the purely qualitative assessment in the alternatives analysis as to whether the impact in each resource area is "greater or less" is not sufficient to enable the public or decision makers to understand whether and how each alternative would meet the requirements of the numerous mitigation measures that call for redesign of the project. Without this information, it is impossible to make an informed choice between alternatives. It is also impossible to determine whether, if a particular alternative is approved instead of the proposed project, the mitigation proposed for the proposed project would still be required.

To address this informational shortcoming, for each alternative (other than the no-project alternative) and for each of the following mitigation measures calling for site plan revisions to avoid or minimize significant impacts, please indicate whether

1) the site plan revisions would avoid the significant impact,
2) the site plan revisions would minimize the impact, or
3) it cannot be determined whether the revisions would avoid or minimize the impact because further information is required.

Please respond for alternatives 2, 3, 4, and 5 and for each of the following mitigation measures:

MM 3.1-1 – relocate lots outside critical viewshed and 100-foot setback
MM3.1-6 – relocate structures on Parcel D so not visible from SR68
MM3.3-1a and 1b – modify site plan for special status plant species protection
MM3.3-2b – modify site plan for CTS by constructing new breeding pond in location that is not finally determined and by making development of 7 lots contingent on CTS use of new breeding pond
MM3.3-4a – relocate lots to avoid riparian habitat
MM 3.3-4b – relocate lots to avoid wetland habitat
MM 3.3-8a – relocate lots to avoid migration corridor
MM3.3-5 – avoidance of impacts to waters of the U.S.
MM3.3-6a – modification of site plans to preserve trees
MM3.4-1a, b, and c – modification of site plan to avoid impacts to cultural and historic resources in locations not disclosed in the EIR
MM3.7-4 – relocate lots for flood protection
MM3.10-3 – modify site plan to include 2 acres of on-site parkland
MM 3.10-4a – modify site plan to relocate alignment of Ferrini Ranch Road

If the site plan revision will minimize but not avoid the impact (i.e., not reduce it to a less than significant level), please explain why avoidance is not feasible.

If it cannot be determined whether the revisions would avoid or minimize the impact because further information is required, please identify the nature of that further required information and explain why it is not available now and/or cannot be obtained with reasonable investigation.

A response to this comment could include a table or matrix relating alternatives to mitigation measures. However, please provide the requested narrative responses explaining why avoidance is not feasible (if it is not) and/or discussing the need for additional information (if applicable).

3. EIR should evaluate an alternative that avoids or minimizes all impacts for which mitigation measures call for site redesign. The EIR should evaluate an alternative that would fully avoid, or at least minimize as feasible, all impacts from which for which mitigation measures call for site redesign. Please present and discuss such an alternative to the extent that it is feasible. Please note that the information necessary to develop this alternative should be reflected in the response to the two comments above.

4. Alternative 4's above grade interchange is an infeasible poison pill, eliminating any serious consideration of a clustering alternative. CEQA requires an EIR to discuss feasible alternatives. Alternative 4 includes alternative site access in the form of an above grade interchange, which is not currently planned or funded, and which would be prohibitively costly for the Ferrini Ranch project to undertake by itself. If the Ferrini project were required only to

make fair share payments, there is no evidence that the balance of the cost of an interchange project could feasibly be funded.

Please provide an estimate of the cost of the interchange. Please explain how this interchange could be funded and put into place timely to address significant impacts.

There is no point in providing a discussion of an infeasible alternative. Clustering development may well be an important means reducing impacts to biological, cultural, soils, and other resources. However, the inclusion of an apparently infeasible interchange renders the analysis pointless.

Furthermore, the unnecessary impacts of the interchange confuse the analysis. For example, the discussion finds geology and soils impacts from Alternative 4 to be greater than the impacts of the proposed project, but this is only because of the massive impacts that would be caused by the interchange project. The discussion of hydrology and water quality impacts and noise suffers from the same defect.

In sum, inclusion of the interchange is in effect a poison pill to Alternative 4, likely rendering it infeasible and unnecessarily causing additional impacts.

Please consider a revision of Alternative 4 with a feasible option for project access, e.g, the intersection option proposed for alternatives 3 and 5 or the access proposed for the preferred project.

5. A better alternative would combine clustering and reduced unit count with feasible access. Biological impacts would be materially reduced by clustering lots, by reducing the number of lots, and by leaving large undeveloped areas at the western and eastern ends of the west parcel to support connectivity with adjacent open space and to reduce fragmentation of habitat. It is clear that clustering and reducing unit counts would reduce other impacts. We ask that the EIR discuss a feasible alternative that would include both clustering and reduced unit count and that would address the insufficiently analyzed and mitigated impacts to biological resources, including movement corridors. Please discuss an alternative that

- clusters lots as in Alternative 4;
- reduces unit count as in Alternative 5;
- redesigns lot layouts to meet the constraints identified in each of the mitigation measures calling for site redesign (see comments 1 and 2 above);
- avoids any development at the western and eastern edges of the western parcel in order to reduce or avoid impacts to wildlife movement corridors by eliminating development nodes 1 and 7.
- Provides a feasible access method, such as the new intersection discused in alternatives 3 and 5.

6. Traffic analysis for Alternatives 3 and 5 cannot support comparisons or conclusions. The RDEIR presents a fundamentally new traffic analysis buried as an "attachment" to the alternatives analysis, which relies on a different threshold of significance and baseline than used for the traffic analysis in the DEIR. The EIR cannot rely on this new analysis unless and until the DEIR's traffic analysis is revised and recirculated. The new analysis also further demonstrates that the DEIR erred in failing to provide an analysis based on existing conditions.

The DEIR traffic analysis expressly based its determination of significance for both the "project plus background conditions" scenario and the "project plus cumulative conditions" scenario on thresholds of significance that exclusively reference Level of Service ("LOS") thresholds. Although corridor travel time was discussed, travel time or changes in travel time were not identified as a threshold of significance in the DEIR for any analysis scenario.

As LandWatch objected, the DEIR relied on a future condition baseline, i.e., "background conditions," consisting of existing conditions plus about 50 planned projects and numerous planned roadway improvements. LandWatch DEIR comment # 45. The DEIR failed to provide an existing conditions baseline. An existing conditions baseline analysis is required unless it would be uninformative or misleading. Here, it is particularly important to provide an existing conditions analysis because the status of the future traffic improvement projects and future development projects assumed in the "background conditions" analysis is not made clear in the EIR. Many of the development projects and some of the assumed traffic improvements may never be constructed.

Despite the DEIR's previous reliance on a "background conditions" analysis and LOS-based thresholds of significance, the RDEIR presents an apples-to-oranges traffic report that is based on an existing conditions baseline and that uses a corridor travel time criterion to determine significance. This new traffic analysis in the form of a memo attached to the alternatives analysis. RDEIR, Attachment 1 to Section 4.0, 2/23/12 memo from Wood Rodgers.

The Wood Rodgers memo states that the purpose of its analysis is "to determine the improvements needed on SR68 to accommodate the project's additional traffic and new signalized access while improving traffic safety, reducing neighborhood cut-through traffic, and decreasing travel time for existing traffic on SR 68." Wood Rodgers at 1. The analysis concludes that under existing plus project conditions, extension of the 4-lane section of SR68 west to the BLM parking lot together with intersection improvements completed, under construction, or planned at three locations will result in a 2.3 minute decrease in combined EB/WB AM/PM travel time compared to existing conditions. Wood Rodgers at 9-11. Based on this, the RDEIR concludes that provision of a new intersection providing project access at Torero Drive and a 1.2 mile 4-lane expansion of SR 68 under alternatives 3b and 5 "would result in a corridor travel time neutral condition." RDEIR at 4.0-35, 4.0-62 to 63.

The EIR cannot rely on the set of improvements evaluated by Wood Rodgers to conclude that project-level and/or cumulative impacts are adequately mitigated under Alternatives 3 and 5, or even that the impacts under Alternatives 3 and 5 are less than the impacts for the preferred project for several reasons.

First, unlike the DEIR, the Wood Rodgers memo impact analysis for baseline plus project uses existing conditions as a baseline. See RDEIR at 4.0-36, fn 8. There is no evidence that any conclusion based on existing conditions would hold for the "background plus project" or "cumulative conditions" scenarios analyzed in the DEIR because those scenarios differ with respect to assumed traffic volumes and assumed traffic improvements.

Second, the Wood Rodgers memo does not evaluate impacts with reference to the LOS thresholds used in the DEIR to determine significance. The Wood Rodgers memo does not even discuss LOS impacts. The RDEIR states that for Alternative 3, "it is assumed that all mitigation would still be required under this alternative," and that operations would be "slightly improved but they would remain significant and unavoidable in some [unspecified] locations." RDEIR 4.0-33 to 34, emphasis added. It drew the same conclusion for Alternative 5. RDEIR 4.0-62 to 63. However, these conclusions were not supported by any analysis; in particular, there is no analysis of impacts in terms of the LOS metrics used in the DEIR.

In sum, the Wood Rodgers memo cannot be used to support the conclusion that any previously identified traffic impacts would be less than significant under Alternatives 3 or 5 because the Wood Rodgers memo does not address this question and because the DEIR does not identify changes to the SR 68 corridor travel time as a threshold of significance.

The Wood Rodgers analysis cannot even be used to compare the relative severity of impacts from the proposed project in the DEIR analysis to impacts under Alternatives 3 and 5 in the RDEIR because 1) the analyses used different baselines, 2) the analyses used different assumptions about roadway improvements, 3) the analyses use different thresholds of significance. This latter point is critical because the Wood Rodgers analysis does not even determine LOS for segments, and it contains no information about volume to capacity ratios, which are the DEIR's basis for determining whether impacts to segments at LOS D and E are significant. Furthermore, the Wood Rodgers analysis does not even analyze the same segmentation of SR 68: segments 10 and 11 in the DEIR analysis (Torero to Begin/End Freeway and Begin/End Freeway to Portola) are not distinguished in the Wood Rodgers analysis. In sum, no apples-to-apples comparison is possible.

LandWatch reiterates its objection that the EIR must provide an assessment of impacts under an existing conditions baseline. The California Supreme Court held in *Neighbors for Smart Rail v.Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 452 that an agency must provide an existing conditions baseline or justify its omission by showing it would be

uninformative or misleading to provide an existing conditions baseline analysis. The County has not and cannot make the showing required by *Neighbors for Smart Rail*, in part because the new Woods Rodgers alternatives analysis traffic study presumably purports to show that it is neither misleading nor uninformative to provide an existing conditions analysis. Furthermore, as LandWatch objected in its DEIR comments, there is a lack of clarity and confusion about the status of the future improvements assumed in the DEIR's "background conditions" baseline. This confusion could be obviated by an existing conditions analysis based on what has actually been constructed.

Please address the following specific comments regarding the new Woods Rodgers traffic analysis.

(a) Please provide information and manuals sufficient to reveal the character, function and operation of the travel time method used in the RDEIR and DEIR road segment studies. The method, including the computer model (Synchro Sim Traffic), is not accessible to the general public nor to most County staff and decision makers; for example, the logical connections between (a) data used as input to the Synchro Sim Traffic software and (b) the numerical results of the program's calculations, are opaque in the absence of software documentation and instructions. Furthermore, the character of the input data other than traffic volumes, and the data itself (e.g., roadway specifications and changes in specifications used in the calculations) is not provided. Neither is an adequate description given for the procedure using "GPS and GIS-based technology" that yields the travel time and average travel speed. Effectively the methods used in the memorandum (both "SimTraffic" and "GPS") for obtaining average travel speeds amount to a "black box" from the perspective of the public; no documentation is provided to the public (even those technically literate) to enable understanding the method or to evaluate its character, function and operation.

(b) Please discuss, providing explanatory and relevant quantitative information, the process and efficacy of the calibration of the Sim Traffic model (Woods Rogers Memo, p.5 [unnumbered]). The calibration does not seem to have been adequate; Table 1 shows Sim Traffic times *consistently exceeding* GPS travel times by from nearly 6% to almost 15%, in *addition* to inherent traffic count fluctuations of from 10% to 20%. Furthermore, a particular adverse consequence of this may be present in the table for "Existing Plus Project (Scenario 3) PM …" eastbound data (Appendix A) for segment 8, where the difference between existing plus project travel time and existing travel time is reported as -3.88 seconds and this accounts entirely for the shorter net "corridor time" for Scenario 3. But had the GPS time rather than the "calibrated" Sim Traffic time (in this case 30% higher than GPS), not 13% as suggested in Table 1) been used, the difference would have essentially disappeared. Error, fluctuations, and uncertainty appear to have been treated

cavalierly and may well be overwhelming the reported data here. There are other examples in the data sets, but this one clearly is critical and should serve as evidence that a significant problem may exist and should be clarified.

(c) Please assess the effects of error, fluctuations and uncertainty (quantitatively evaluated) on the capacity of the Sim Traffic software method to estimate the effects of hypothetical future conditions (e.g., background, cumulative) on roadways. What assumptions does the model make; how are changes in traffic volume taken into account; what is its reliability relative to simpler approaches such as using traffic volumes and (equivalently) average vehicle headway to evaluate significance of impacts?

(d) Please explain quantitatively the source of the extraordinary reduction of estimated travel time for segment 8 (Pasadera/Laureles Grade segment) in "Existing Plus Project (Scenario 3) PM …" eastbound data "Existing Plus Project (Scenario 3) Sim Traffic Results", Travel Time column (Appendix B), which reads 5.30 min, whereas the "Existing Sim Traffic Results" Travel Time column shows 9.17 min for the same segment. Such a large reduction in travel time relative to other changes in travel times under the same general circumstances calls for specific examination.

(e) Please provide substantial rationale for including as a finding -- as if it might affect judgments of significance of impacts -- the Highway 68 corridor total travel time reduction of 2.3 minutes under scenario 3. For purposes of environmental impact assessment, this is irrelevant and highly misleading on several counts. Among these are that (a) adding travel times along the corridor effectively averages out variability in conditions (including significance criteria) along the corridor and effectively ignores what may be highly significant individual segment impacts, (b) an unknown fraction of travelers actually travel the entire corridor in a single trip (the corridor total applies only to them), (c) the total corridor travel time is associated with no stated significance criterion (there is no criterion of "average significant impact).

(f) Please explain whether the "alternative method of analyzing road segment operations" identified in the DEIR (DEIR 3.12-29) used for two-lane segments (e.g., travel-time/travel-speed) were used in the RDEIR's analysis. Please describe in detail how the RDEIR's (and DEIR's) analyses, to the extent that they were based on an "alternative method of analyzing road segment operations" avoid conflicts with LOS assignments that would result from employing other methods. This is related to the calibration problem indicated above, but is broader. A specific example of a travel-time/travel-speed similar to that used here, can be found in the September 2010 RDEIR for the Villas De Carmelo Project in unincorporated Monterey County. In the Villas De Carmelo RDEIR a

modification of the HCM Urban Street method was used, which shifted the LOS ratings for Highway 1 between Ocean Avenue and Carmel Valley Road from D,E,F,F to C,C,E,E. The project was disapproved, at least in part, apparently, because this shift in method was rejected by the Board of Supervisors. Calibration among service measures, and consequently among impact-significance criteria, is a serious problem that has not been addressed by the County; "shopping" for more favorable service measures should be prohibited. Until that happens, analysis methods should be examined in detail and shown not to yield different impact-significance results from other applicable methods.

AIR QUALITY

7. Air quality data. Table 3.1-2 only provides data for the Salinas air monitoring station. The table should be revised to identify data related to ozone levels throughout the basin since ozone is a regional pollutant, and emissions generated in one area can cause violations in other areas. The table should also be updated to include 2012 and 2013 data.

8. MBUAPCD District Rule 1000. While local toxic air contaminants (TAC) regulations are noted, there is no reference to Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 1000 which regulates TACs within the North Central Coast Air Basin. Rule 1000 should be identified and described. RDEIR at 3.2-6)

9. Construction emissions. The DEIR indicates that ozone precursor emissions from "typical" construction equipment are accommodated in the Air Quality Monitoring Plan. RDEIR at 3.2-13 and 3.2-15. However, it does not indicate that the MBUAPCD should be consulted to determine if proposed equipment falls within the definition of typical. (District Air Quality Guidelines, Section 5.3) The analysis of ozone precursor emissions does not indicate if the District was contacted to determine if proposed equipment falls within the definition. RDEIR at. 3.2-17. The analysis should be updated accordingly.

10. Cumulative impacts (RDEIR at 3.2-14 and 3.2-25). The discussion of the methodology for determining cumulative impacts for ozone is out-of-date. (See Consistency Procedure 4.0 under Planning and CEQA on the MBUAPCD website.) The DEIR indicates that Association of Monterey Bay Area Governments prepared a consistency finding in 2009; however, the revised procedures were adopted in 2011. The DEIR analysis of air quality cumulative impacts should be up-dated accordingly.

Additionally, the MBUPCD Guidelines state the following: "If ambient PM10 levels already exceed the State AAQS [Ambient Air Quality Standards]in the project area, the project would contribute substantially to the violation if it would emit more than 82 pounds per day. This

would be considered a significant individual and cumulative impact on local air quality, since the background concentration reflects the collective contribution of PM10 from nearby sources…" (Section 5.4, p. 5-3). The EIR must provide this information.

11. Exposure to Toxic Air Contaminants must be quantified. Diesel exhaust emissions can cause or contribute to respiratory illnesses in addition to incidences of cancer. The DEIR concludes that the project would not expose sensitive receptors to unhealthful levels of toxic air contaminants including diesel exhaust. RDEIR at 3.2-24. However, the finding is based on a qualitative rather than a quantitative analysis. The DEIR should be revised to provide a quantitative health risk assessment. Methodologies are available for such an assessment, e.g., the California Air Pollution Control Officers Association (CAPCOA) has developed TAC HRA guidelines to provide consistent, statewide procedures for preparing the health risk assessments. See California Air Resources Board's website at http://www.arb.ca.gov/ab2588/riskassess.htm.

It is possible for high concentrations of short-term diesel exhaust emissions (less than 70 years) to cause a violation of the TAC threshold, including TAC emissions from construction activities. Many environmental documents have provided HRAs to disclose health risk from construction activities. And construction HRAs have been performed by state and local agencies responsible for air quality and public health.

For example, the California Air Resources Board recognizes the importance of cancer risk from construction projects. According to an ARB analysis of a hypothetical construction project[2], cancer risk from construction activity can exceed 10 cases in a million for an area of 26 acres surrounding a construction site. In the proposed project, existing sensitive receptors including residences and a school are directly adjacent.

In another example, the Initial Study prepared by the Bay Area Air Quality Management District (BAAQMD) for the Martinez Refining Company project included a screening health risk assessment for construction activity at the refinery. The BAAQMD methodology included the use of air emission estimates and dispersion modeling to estimate maximum ambient air concentrations of TACs, and then using these concentrations to estimate an individual's maximum exposure and health risk based on toxicity values adopted by the Office of Environmental Health Hazard Assessment ("OEHHA")[3]. The assessment found a maximum lifetime cancer risk of 0.77 in one million for every three round trip diesel truck trips per day.

---

[2] California Air Resources Board, Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for In-Use Off-Road Diesel Vehicles, April 2007, p. 12

[3] BAAQMD, Draft CEQA Initial Study, Martinez Refining Company's Request for Authority to Construct and Permit to Operate…for the Proposed MTBE Removal Project, June 6, 2001, p. 14, 15.

Many other environmental documents have included HRAs to help disclose the health risk from construction activities. For example, the Cartmill Crossing North DEIR found that the highest daily levels of diesel particulate matter would be emitted during construction activities due to the use of diesel construction equipment. The DEIR included a separate HRA for project construction and operation. The analysis was based on exposure to construction emissions over a 70-year exposure period.[4]

Finally, although MPUAPCD may use 10 in one million as a threshold for determining whether project-level impacts are significant, there is no foundation in the RDEIR to apply this 10 in one million threshold of significance to determine if the project makes a considerable contribution to cumulative impacts. The relevant threshold for determining whether the project makes a considerable contribution must be set with reference to cumulative conditions, and the worse the existing conditions, the lower that threshold should be. The RDEIR fails to provide any information about cumulative TAC conditions in the project vicinity, e.g., TAC emissions from diesel traffic on SR 68, or to evaluate foreseeable future sources of TAC emissions, e.g., future construction projects and increased SR 68 traffic. This omission must be remedied.

LandWatch recommends mitigation to address possible exposure to diesel exhaust emissions. Only construction equipment with catalytic PM filters should be used for the project.

GREENHOUSE GASES AND CLIMATE CHANGE

12. Long-Term Greenhouse Gas Emissions. Table 3.13-8 shows unmitigated CO2 emissions for Area Sources as 1,011 and mitigated emissions of 1,363. Since mitigated emissions are higher than unmitigated emissions, the estimate appears to be an error.

13. Additional Mitigation Measures. The DEIR finds that the project's impact on greenhouse gas emissions ("GHG") and climate change would be a significant unavoidable cumulative impact, and it identifies several mitigation measures. However, even after mitigation, the RDEIR acknowledges that impacts remain unavoidably significant and that the projects emissions are well above the target for a less that considerable contribution to the significant cumulative GHG impact. Accordingly, all feasible mitigation should be required.

The following addition mitigation measures are feasible and should therefore be incorporated into the project:

a. All builder-installed indoor appliances, including dishwashers, showers, and toilets, shall be low water-use.

[4] City of Tulare, Cartmill Crossing North DEIR, State Clearinghouse #2005081055, December 2008, p. 261

b. Common area men's restrooms shall be required to feature waterless urinals.

c. Smart Controller irrigation systems shall be installed in all public and common area landscaping.

d. Landscape areas shall be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.

e. All landscaping shall be irrigated with recycled water.

f. All landscaping plants shall be drought-tolerant California natives.

g. Lawns shall be prohibited.

h. Cleaning outdoor surfaces with water shall be prohibited.

i. Air conditioning units shall be Freon-free.

j. Recycling facilities consistent with the local waste collection company shall be provided for each residential unit and in all public or common areas that generate trash.

k. Recycling education shall be provided to all homeowners upon purchase and annually thereafter.

l. Building energy use shall exceed the applicable Title 24 Energy efficiency standards applicable at the time the building permit is issued by 20%.

m. Programmable thermostat timers shall be provided.

n. Multimetering "dashboards" shall be provided in each dwelling unit to visualize real-time energy use.

o. On-site energy generation using solar power units shall be provided on each available roof that does not face north.

p. At least 75% of project electrical energy shall be provided through on-site solar power or other on-site electrical generation facilities that do not emit carbon.

q. All residential roofs and other building roofs that have adequate solar orientation (not north-facing) shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

r. All pools and spas shall be heated using solar water heaters unless they use naturally heated water.

s. Pumps and motors for pools and spas shall be energy efficient.

t. Pools and spas that are not naturally heated shall have automatic covers to retain heat.

u. Roofs shall be light colored to minimize cooling requirements.

v. Tree planting double that required to mitigate loss of oak woodlands shall be required in order to sequester additional carbon. Planting may be offsite if on-site planting would compromise grassland or other habitat.

w. Construction equipment shall be powered by clean-burning fuel, bio-diesel fuel, and/or other alternative fuels, or shall use electric or hybrid-electric engines so as to reduce construction emissions by 33% over 2013 "business as usual" construction equipment emissions.

x. Operational vehicles supporting the project shall be electric or other zero emission vehicles.

y. Delivery vehicle idling shall be limited to 3 minutes.

z. Secure bicycle parking shall be provided for each residential unit, visible from the primary entrance and protected from vehicle damage.

aa. Electric vehicle recharging facilities shall be provided for each residential unit parking space.

BIOLOGICAL RESOURCES

14. The biological assessment fails to reflect loss of habitat from required and permitted wildfire fuel modification activities. Although LandWatch provided extensive DEIR comments on this issue, the RDEIR simply ignored it. Indeed, the only previous reference to fuel modification in the DEIR's biology section was removed. DEIR 3.3-37, MM 3.3-1(6). Accordingly, we reiterate our comments and ask that they be addressed in a revised and recirculated biology section.

The DEIR acknowledges that the project site is in a high risk fire zone and that undeveloped habitat surrounding the project site increases the risk for wildland fires. DEIR p. 3.8-16. It is clearly foreseeable that extensive fuel modification activity will be undertaken to address this risk. We are concerned that regulatory requirements and authorizations for defensible space and fuel modification to mitigate fire hazard will have unanticipated effects on biological resources. Mandated clearing, trimming, thinning activity, or such activity that is permitted without additional environmental review, including cumulative review, has the potential to cause impacts to biological resources.

Permitted or authorized fuel modification can result in substantial vegetation clearing resulting in loss of habitat or direct take of special status species. For example, the Monterey County Board of Supervisors adopted the Monterey County Community Wildfire Protection Plan (MCCWPP) on December 17, 2010. The MCCWPP states at page 43, Section 4.1.2, "In general, a WUI [wildland urban interface] is that area where hazardous fuel reduction work should be performed to protect communities, infrastructure and watersheds from wildfire." It continues, "Many communities will extend the WUI to the surrounding watershed ridge breaks (i.e., firesheds) which are usually consistent with historical or anticipated fire suppression control points (e.g., firebreaks and/or fuelbreaks)." The MCCWPP describes all vegetation as fuel and advocates "fire fuel treatment" in a variety of zones within communities in the wildland/urban interface. These zones are: Hazardous Fuel Reduction Zones, Defensible Space, Survivable Space, Mitigation Zones and Threat Zones. According to the MCCWPP at Section 4.3.4, "Threat Zones extend out from Defensible/Survivable Space to major landscape/watershed features such as roads, rivers, or ridges." Table 13, "Prioritization of Need for Fuel Reduction Work, by Community," page 50 of the MCCWPP, identifies Highway 68 in the vicinity of the project as a priority. The area is described as "high risk" in all categories – fuel hazard, risk of wildfire occurrence, structural ignitability and overall priority.

Despite the project site being designated in the MCCWPP as a priority area for fuel reduction work, the DEIR and RDEIR do not map or discuss these fuel reduction zones as they apply to the project. This information should be provided.

The Staub Forest Management Plan, February 5, 2007 states that "all areas proposed for road, driveway and home construction were reviewed in the field at a reconnaissance level in order to estimate tree removal associated with the project." However, as previously pointed out, the applicant failed to submit a "to-scale site plan showing proposed building foot prints and landscaping, streets and roads, water supply, sewage disposal, and stormwater runoff facilities." Monterey County Code Section 19.05.040L3C(3). Without these elements of a site plan, driveway construction and home construction could not have been used to estimate tree removal.

Furthermore, permanent impacts to trees extend far beyond the grading for roads. According to the MCCWPP at page 57, roadside protection includes "a corridor that extends up to 100 feet out from either side of the road." The plan calls for spacing between trees to be at least 20 feet

between crowns. In addition, the "residual trees" are to be limbed up so that there is at least 20 feet between the tree's base and its crown. Any tree tall enough to block the road if it falls "should be removed" or topped to avoid this hazard. Finally, the MCCWPP states that "fuel treatments along roads may need to extend beyond 100 feet given conditions such as terrain, vegetation type and potential weather conditions."

But the MCCWPP calls for protection of infrastructure in general, not just roads. Water supply systems, sewer systems, power and communication transmission lines and storm water facilities all require protection. However, none of these were mapped or considered in the Forest Management Plan or other surveys and analysis of biological resources.

The MCCWPP incorporates the California Department of Forestry and Fire Protection's General Guidelines for Creating Defensible Space at Appendix E. According to those guidelines, defensible space of between 30 and 100 feet must be maintained around all buildings and structures. Because building envelopes were not mapped, including allowances for additional permitted structures, it is impossible to determine the boundaries of defensible space and the impacts of fuel modification requirements for the project.

The "guidelines apply to any person who owns, leases, controls, operates or maintains a building or structure in, upon, or adjoining any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered with flammable material." According to the guidelines, "vegetation surrounding a building or structure is fuel for a fire." Although clearing responsibility is limited to 100 feet away from buildings and other structures, "groups of property owners are encouraged to extend clearances beyond the 100 foot requirement in order to create community-wide defensible spaces." This encouragement to expand clearances beyond the 100-foot requirement was not considered or analyzed in the DEIR. Before one can conclude that impacts of the project on biological resources will be less than significant, the boundaries of this community-wide defensible space need to be determined and analyzed.

The guidelines also state that "Properties with greater fire hazards will require more clearing. Clearing requirements will be greater for those lands with steeper terrain, larger and denser fuels, fuels that are highly volatile, and in locations subject to frequent fires."

The following table, page 6 of the guidelines, provides plant spacing guidelines on various slopes to prevent fire from moving from one plant or group of plants to another. In addition to these guidelines for trees and shrubs, the guidelines recommend that "grass generally should not exceed 4 inches in height."

Plant Spacing Guidelines Guidelines are designed to break the continuity of fuels and be used as a "rule of thumb" for achieving compliance with Regulation 14 CCR 1299.		
Trees	**Minimum horizontal space from edge of one tree canopy to the edge of the next**	
	Slope	Spacing
	0% to 20 %	10 feet
	20% to 40%	20 feet
	Greater than 40%	30 feet
Shrubs	**Minimum horizontal space between edges of shrub**	
	Slope	Spacing
	0% to 20 %	2 times the height of the shrub
	20% to 40%	4 times the height of the shrub
	Greater than 40%	6 times the height of the shrub
Vertical Space	**Minimum vertical space between top of shrub and bottom of lower tree branches:** 3 times the height of the shrub	

Adapted from: Gilmer, M. 1994. California Wildfire LandscapingLandscaping

Depending upon slope, trees must be removed or pruned to allow 10 to 30 feet of space between canopies. If applied to dense oak woodland, these guidelines would transform oak woodland into oak savannah, fundamentally changing the plant community and its dependent flora and fauna. The application of these guidelines was not considered or analyzed in the DEIR or RDEIR.

Depending upon slope, a group of shrubs 4 feet high, manzanita for example, would need to be removed or pruned to allow 8 to 24 feet between shrubs. Again, if applied to continuous coastal scrub or chaparral, these guidelines would fundamentally change the plant community and its dependent flora and fauna. The application of these guidelines was not considered or analyzed in the DEIR or RDEIR.

The understory of oak woodland would also require modification to ensure vertical space between the top of shrubs and the bottom branches of the trees. A shrub standing 4 feet tall would require that trees be limbed up 12 feet. For animals dependent, like the Monterey dusky-footed woodrat, on "forest habitats of moderate canopy and moderate to dense understory," [Appendix C, Biological Resources, page 96, Biological Assessment, Ferrini Ranch Property, WRA Environmental Consultants, 2007] this fuel modification guideline could have significant impacts. The Monterey dusky-footed woodrat is a CDFW Species of Special Concern that feeds mainly on woody plants: live oak, maple, coffeeberry, alder and elderberry. All of the woody plants upon which it depends, except alder, are listed in the table found on pages 116-122 of Appendix C "Native and Naturalized Vascular Plant Species Observed at the Ferrini Ranch 2005

- 2007." The likelihood of its occurrence is high, as suitable habitat is found in the project area. However, there is no analysis of potential impacts to the Monterey dusky-footed woodrat of potential fuel modification work.

Alternatively, if continuous tree canopy is to be preserved while creating defensible space, guidelines direct property owners to "remove all surface fuels greater than 4 inches in height." In addition, guidelines call for trees to be limbed up between 6 feet and 15 feet, depending upon slope. Small trees can be retained if the lower 1/3 of their branches are removed and if they are spaced to avoid spread of fire to other vegetation or to a building or structure. [Page 8, General Guidelines for Creating Defensible Space]

When implemented, the fuel modification guidelines have potential to significantly impact nesting, migratory and foraging/hunting habitats of most special-status species listed as likely to occur on the project site. For example, the Salinas ornate shrew requires brushy areas of valleys, foothills and forests; the Cooper's Hawk inhabits dense tree stands and patchy woodlands; the Western Burrowing Owl needs open grasslands and shrublands with perches and burrows; the Loggerhead Shrike nests above ground in densely-foliaged shrubs and trees and the California tiger salamander depends on annual grass habitat and mammal burrows. Impacts of fuel modification to habitats upon which all special-status species in the area depend have not been analyzed in the DEIR or RDEIR.

The Monterey County Voluntary Oak Woodland Stewardship Guidelines, adopted by the Board of Supervisors September 22, 2009 with Technical information obtained from Dr. Mark Stromberg, Director, Hastings Natural History Reserve (University of California), discusses the benefits of and the threats to oak woodlands.

At page 9, Section 2.3.2, Habitat Fragmentation and Isolation, the Guidelines state, "As human development continues in Monterey County, intact oak woodlands and habitat will become more fragmented and degraded. Smaller oak woodlands that are isolated from other habitats are less able to support certain plants and animal species, which can become extirpated (i.e. locally extinct). For example, many birds and mammals need oak woodland and will not venture out to open areas, or even cross open areas. Thus some oak woodlands become critical corridors for dispersal of young and movement of wide-ranging adults. As an ecosystem is simplified (i.e. has fewer species), it becomes weakened and less resilient." The DEIR and RDEIR fail to analyze impacts to critical corridors by implementing fuel modification guidelines which open up areas in oak woodlands.

The Guidelines continue, "The system further erodes as individual trees become isolated. Oak trees can only cross-pollinate if they are within approximately 1,000 yards of another oak. Declines in acorn production amongst isolated oaks not only reduce oak establishment, thus potentially reducing the oak population, but also decrease food availability for the numerous animal species that forage on acorns." Because the DEIR and RDEIR do not map building

envelopes including associated structures or any infrastructure except roads; and because the DEIR and RDEIR do not consider or analyze impacts of wildfire suppression guidelines, it is impossible to determine the project's potential for isolating individual oaks.

By the County's adopted standards, simply counting the number of oaks removed by construction activities does not adequately account for impacts to oak woodlands and other biological resources.

The DEIR and RDEIR must be revised to clarify the extent and nature of fuel modification and defensible space activity, to identify affected biological resources, and to propose mitigation and/or alternatives for any significant impacts that this activity would cause.

We are also concerned that the DEIR and RDEIR have not provided a coherent description of the project because they have not explained the extent of mandated or permitted fuel modification and defensible space activity. The DEIR and RDEIR must provide a complete description of the project in this regard.

The DEIR finds fire hazard impacts less than significant based on anticipated compliance with Monterey County Code Chapter 18-56, including compliance with "extraordinary fuel modification measures." "Extraordinary fuel modification measures" are referenced, but not defined, at section 18.56.50, as "Categorical Alternative Standards or Measures." It is not clear how or whether extraordinary fuel modification measures would actually apply, or what those standards are. Please clarify this. Please identify the project areas that will be subject to "extraordinary fuel modification" standards.

Monterey County Code Section 18-56.90, captioned "Fuel Modification Standards," does not clearly identify fuel modification standards – either "extraordinary" or otherwise. Section 18-56.90(5) states only: "Fuel Modification Standards – Alternative Standards." Section 18.56.05A appears to define "Alternative Standards" as standards developed through an exception procedure and that have "the same practical effect" as the "State minimum standards." Thus, it appears that the County Code simply does not identify any fuel modification standards, either "extraordinary" or otherwise. Please clarify this and identify both the "regular" and "extraordinary" fuel modifications standards that will be applicable to the project. If the applicable standards are the "State minimum standards," –please explain what those standards are and identify the regulations that set them forth.

Please explain how the 30 and 100 foot defensible space requirements under Public Resources Code section 4291 would be implemented for the project.

Please explain whether the County mandates or permits defensible space creation or fuel modification activities in excess of the section 4291 requirements.

Please explain whether and how the project would comply with or implement the Monterey County Community Wildfire Protection Plan ("MCCWPP").

Please identify specific provisions of the MCCWPP the project would implement, or with which it would comply, including large and small scale fuel modification activities.

Please identify for each residential lot or group of lots the anticipated fuel modification zone that would be required in order to comply with state and local regulations, and identify and explain those regulations. (A group of lots is a set of contiguous lots, e.g., 40-47, 48 to 51, 36-38, etc.) For example, what "defensible space" or fuel modification would be required for each lot or group of lots? What defensible space or fuel modification would be permitted for each lot without additional environmental review? What activities (e.g., clearing, trimming, thinning) would be required or permitted without environmental review? How has this activity been reflected in the assessment of impacts to biological resources in the DEIR?

Please identify the specific state and local regulations that would require or permit fuel modification of defensible space.

Please explain what additional CEQA review would be required for future fuel modification activity, identifying any applicable CEQA exemptions for such activity.

Please explain when and how an environmental review of the cumulative effect of required or permitted fuel modification activity for the project will be undertaken.

According to the current CalFire FHSZ map for Monterey County (available at http://frap.cdf.ca.gov/webdata/maps/monterey/fhszs_map.27.pdf), the project site is in a high to very high fire hazard area, not a moderate to high risk zone as the DEIR states (based on a 1983 map). Please explain how the updated designation would affect hazard protection requirements, including fuel modification requirements.

Please provide an overlay of the project and the proposed lots on the current CalFire FHSZ map.

Please explain the project's implementation of Toro Area Plan Policy 17.4.12, which requires a "zone which can inhibit the spread of wildland fire." Where will a zone or zones be located? The policy requires irrigated greenbelts, streets, fuel modification zones or other "suitable methods?" Which methods will actually be used? If irrigated greenbelts are to be used, has the water for this been included in the DEIR water use calculations? How will the fire prevention zone affect dedications of open space land to the County, if at all?

15. EIR Must Coordinate And Specify Deferred Mitigation Plans (e.g., the Open Space Plans). The RDEIR identifies at least eight various deferred management plans to address biological resources including:

a. the "Rare Plant Restoration and Management Plan as part of the project's Open Space Management Plan" (MM 3.3-1a, 3.3-1b).

b. the "open space area management plan that includes the conservation area design and the conservation area plan" for CTS mitigation (MM 3.3-2b).

c. the "riparian mitigation and monitoring plan" (MM 3.3-4a).

d. the "wetlands mitigation and monitoring plan" (MM3.3-4b).

e. the Forest Management Plan (MM3.3-6a).

f. the "open space management plan (OSMP)" required by MM 3.3-8c, related to wildlife corridors impacts. The OSMP is described as follows:

> "Prior to recordation of the final map, Monterey County RMA-Planning shall require the project applicant to submit for review and approval an open space management plan (OSMP). The OSMP shall identify the area to be placed under the open space easement, scenic corridor easement, B-6 zoning, allowed uses, maintenance management procedures, and timing. The plan shall identify all sensitive areas and specific management requirements for each area. This shall include, but not be limited to, maintaining open space areas located on both sides of the undercrossing and along State Route 68 in the vicinity of the undercrossing so that species moving north–south through the project site have an intact corridor through which to pass. The small portion of the project site located north of State Route 68 shall be reclassified RC-VS-D-S (Resource Conservation with Visual Sensitivity, Design Control, and Site Plan review overlays), with a scenic conservation easement. All maintenance plans shall be made part of the project's OSMP. As part of the OSMP, a Property Analysis Record (PAR) shall be used to calculate the endowment required to fund the OSMP in perpetuity." RDEIR 3.3-67.

g. In addition it appears that some form of plan is required to provide avoidance, minimization, and/or compensation related to impacts to waters of the U.S. (MM 3.3-5).

h. The DEIR identifies a "scenic and conservation easement" in its discussion of aesthetic impacts, which easement requires plans for management of biological and aesthetic resources as follows:

> "MM 3.1-1b Prior to final map approval, the project applicant shall identify all open space parcels (Parcels A, B, and C) as scenic and conservation easements,

> subject to specific uses and conditions as defined by the Monterey County Planning Department. Easements shall be recorded in deed and title upon final map approval. In addition to all provisions and development restrictions set forth by Monterey County for scenic and conservation easements, final maps and recorded easements shall also include specific requirements and allowances for easement maintenance and rural fire protection, continued grazing and grazing operations, protection of habitat and sensitive resource areas specifically set aside as mitigation, fencing and public access, and provision and maintenance of necessary infrastructure improvements (trails, drainage facilities, detention basins, and similar)." DEIR 3.1-21.

INTERRELATION MUST BE EXPLAINED: It is not clear how these various plans are related to each other. For example, it appears that the open space management plan is intended to include some but not all of the plans for mitigation of biological resources, e.g., mitigation for impacts to rare plant and CTS, but not necessarily for impacts to riparian and wetland habitat or oak woodland. It also appears that the OSMP is intended to include provisions for mitigation of impacts to non-biological resources including aesthetic resources.

The EIR must specify the relation of each of these various deferred mitigation plans to each other, including specification of which plans are subsumed within other plans and which plans are distinct.

REASON FOR DEFERRAL MUST BE PROVIDED: These plans are not specified in the EIR and it appears that their formulation has been deferred. EIR fails to provide any reason to defer the formulation of these plans, which are part of the project description and the proposed mitigation. Accordingly, these plans must be set out in the EIR as fully as is possible. If there is in fact a reason why certain aspects of these plans cannot be set out at this time, that reason must be specified in the EIR. If some part of a plan cannot be set out now, the rest of the plan should still be provided. We are concerned that the scope and complexity of the deferred management plans may result in a failure to implement all mitigation because it may eventuate that certain aspects of these deferred plans are inconsistent with each other (e.g., fire protection fuel modification may be inconsistent with prevention of view and biological impacts; maintenance of grassland habitat may be inconsistent with on-site oak tree restoration). Only by setting out these plans in relevant detail, and/or by providing adequate performance standards, can the public and decision makers know that they are feasible and compatible with each other.

PERFORMANCE STANDARDS ARE REQUIRED: In addition, deferred formulation of mitigation requires provision of performance standards. Those standards are required both to determine the success of that mitigation and to guide its design. It is not sufficient to announce a generalized goal for deferred mitigation. For example, it a mitigation measure calls for no net loss of some specific resource, it is necessary to provide standards to guide the determination of

what constitutes a net loss. These standards must be set out for public review and comment in the draft EIR itself.

For example, the EIR fails to specify the actual location of the conservation area or areas without any good reason. As noted, the EIR must provide a stable and accurate project description that identifies lot layouts and improvements consistent with proposed mitigation so that the feasibility of mitigation can be established and secondary impacts considered. The layout of lots and improvements will determine whether a suitable open space that meets the multiple objectives identified of the OSMP can in fact be designed. The EIR should therefore specify the final lot layouts and the remaining open space that is to be managed to mitigate impacts.

Some mitigation measures would permit off-site compensation, e.g. mitigation for rare plants, for CTS, for riparian habitat (but not wetland habitat), and for waters of the US. For example, MM 3.3-2b allows the applicant – apparently at its sole discretion – to dispense entirely with any on-site CTS mitigation, other than preservation of Pond 18 as required by MM 3.3-2a, by using an off-site mitigation bank instead of preserving 147.5 acres of on-site upland habitat. This is problematic for several reasons. First, off-site provision of upland habitat would not support Pond 18 or the existing off-site breeding ponds proximate to the project site. Second, on-site mitigation for CTS and other impacts is preferable for numerous reasons:

- because the site is relatively pristine existing habitat for numerous species,
- because it contains a large open-space area,
- because it is connected to other local CTS breeding sites,
- because the open space supports mitigation of impacts to other species and provides a critical movement corridor,
- because there are no existing local CTS mitigation banks,
- because the availability of other viable local sites for CTS compensation has not been established, and
- because there is substantial potential synergy between an on-site open space for CTS mitigation and the use of this open space to mitigate impacts to other species and habitats.

Accordingly, MM 3.3-2b, and other mitigation measures permitting off-site compensation, should be revised to require on-site mitigation unless the EIR demonstrates that on-site mitigation is financially infeasible.

The possibility of piecemeal future decisions for off-site mitigation leaves the public without any clear notion of the extent and purpose of any proposed on-site conservation area or open space management plan and with no understanding of what on-site mitigation will be integrated and synergistic. The public should be informed now whether mitigation will be on-site or off-site for each affected resource. Furthermore, if mitigation is permitted to be offsite, the public should be advised whether and where suitable off-site mitigation opportunities exist. For example, we are unaware of any off-site mitigation bank or suitable habitat for offsite mitigation of CTS impacts in the vicinity of the project. Without information on available off-site mitigation opportunities, the feasibility and efficacy of off-site mitigation be determined.

The EIR proposes multiple on-site locations for an additional CTS breeding pond without any reason for leaving this critical issue unresolved. A single proposed location for the additional on-site CTS breeding pond should be specified. If there is any reason to have a contingent additional location, that reason should be provided and some objective standard for selecting that location should be provided.

MM 3.3-3a and b for impacts to bats and other special status mammals does not address impacts after the construction phase. It is unclear if any conservation area plan and/or OSMP will be required to make provision for the loss of habitat for these species. This must be clarified.

MM 3.3-4a, 3.3-4, and 3.3-5 for the loss of riparian habitat, wetland habitat, and waters of the U.S. provide no performance specifications other than unspecified references to requirements of the RWQCB and/or the ACOE. For example, MM 3.3-4b(3) expressly defers identification of "performance standards for success that will illustrate that the compensation ratios are met" for wetland mitigation. Performance standards must be provided if formulation of this mitigation is to be deferred.

The following questions about the proposed conservation area plan and/or OSMP are critical to public understanding of the feasibility and efficacy of proposed mitigation, and, of course, the answers will depend in part on whether the impacts are to be mitigated on-site or offsite:

- The EIR acknowledges that fuel modification will occur and proposes that cattle grazing be continued. Because these activities may substantially constrain the success of the conservation area plan and/or the OSMP, they should be specified now. There appears to be no good reason for deferral. How many animal units? What seasons? What provisions for rotation? Where will fencing be required? When will grazing be allowed? What provision will be made for stock water and for removal in drought years? How much vegetative matter will cattle be allowed to remove? How will this be monitored? How will erosion from grazing activity be monitored and controlled?

- What constraints on recreational use will be in place? Will trails be allowed? How will domestic pets be kept away?

- How will introduction of pesticides, herbicides, and other chemicals be controlled? Such chemicals may migrate from settled areas to the open space area.

- How will invasive species be monitored and controlled? What limitation will be imposed on introduction of such species by project residents and visitors?

- What provisions will be made for adaptive management?

- Some of the mitigation measures call for an easement, others do not. It is not clear how that will be coordinated. Furthermore, it is not clear who will hold the easement. Who will have authority, responsibility, and resources for monitoring and enforcing the conservation area plans(s) and/or OSMP?

Additional specific comments on inadequacy or lack of performance standards are set out below.

16. Pacific Grove Clover Mitigation Requires Avoidance, Not Compensation.

Compensation for Pacific Grove clover (PGC) impacts through a Rare Plant Restoration and Management Plan is not a permissible form of mitigation under CEQA because it is legally infeasible. The RDEIR and comments by DEIR CDFW explain that no take of PGC is permitted under the California Endangered Species Act ("CESA"). Accordingly, all PGC must be avoided and mitigation calling for minimization or compensation is not legally feasible.

Avoidance of PGC is currently mandatory under CESA and there is no evidence that CDFW's current consideration of amendments to existing regulations will in fact permit take of clover. The proposed mitigation is legally infeasible to the extent that it permits minimization or compensation rather than avoidance. Contrary to the RDEIR, legally infeasible mitigation is not "a suitable approach to address the potential impact under CEQA." RDEIR at 3.3-41.

Despite CDFW comments on the DEIR, the project was not redesigned to avoid PGC. Clover locations that were determined in the 2007 plant surveys are indicated in maps attached to Duffy 2007, which is Appendix D to the Biological Assessment (WRA 2007) in RDEIR Appendix C. Although those rare plant maps fail to overlay proposed site disturbance activities (roads, building envelopes, landscaping, and fuel modification), it appears that neither the proposed project nor the alternatives would avoid clover take.

The RDEIR must provide lot layouts for the proposed project and for the alternatives that actually avoid clover, and that redesign should be based on surveys using CDFW-recommended survey protocols. . Otherwise there is no evidence that mitigation is feasible.

17. PGC and Tarplant Mitigation Inadequate. MM 3.3-1b calls for relocating improvements "to the extent feasible" to avoid PGC. Even if avoidance of PGC were not mandatory, no criteria for determining the infeasibility of avoidance measures are specified. The feasibility of mitigation must be determined in an accountable public process at the time of CEQA findings. Including a feasibility qualification on this mitigation defers its formulation since the actual extent of avoidance is not to be determined until later.

Accordingly, the EIR must provide a reason for deferring the determination of feasibility of avoiding PGC.

If deferral of the determination of feasibility is justified, the EIR must provide a performance standard so that there will be an objective determination of feasibility. For example, CEQA permits infeasiblity of mitigation to be based on a showing that additional cost would make a project unprofitable based on a showing of overall project costs and revenues. Unless a future infeasibility determination is grounded in some objective standard set out in the EIR for public review and comment, we are concerned that mitigation through PGC avoidance will be abandoned based on trivial concerns that do not reflect a public balancing of costs and benefits of the most appropriate form of mitigation. MM 3.3-1b should be revised to provide that PGC avoidance be required unless it is determined to be financially infeasible, based on objective public data regarding the project costs and revenues.

MM 3.3-1a and 1b for tarplant and clover impacts only apply to a small number of specifically identified lots, apparently based on the 2007 survey for rare plants. CDFW has previously commented that avoidance measures should be based on surveys using CDFW-recommended survey protocols. The mitigation measures should be revised to require that the presence or absence of affected populations be established by new surveys based on CDFW-recommended survey protocols and that avoidance be required by all lots.

Relocation where clover or tarplant conflicts are identified is limited to "improvements." This limitation fails to ensure that future landscaping and fuel modification activity (mandated and permitted by state and local regulations for defensible space), including such activity adjacent to roadways, would not result in tarplant or clover impacts. The mitigation should be modified to require relocation if foreseeable future landscaping and fuel modification, including such activity adjacent to roadways, would result in clover impacts.

The RDEIR fails to provide any reason to defer the formulation of the Rare Plant Restoration and Management Plan. CEQA only permits deferral of the formulation of mitigation when there agency has, and articulates, a good reason for that deferral. The public is entitled to see the details of this plan now, or at least the details based on available information or information that can be obtained with reasonable investigation. For example, there appears to be no reason that RDEIR cannot provide the "location, methods, and plant success criteria" of the Rare Plant Restoration and Management Plan.

The RDEIR fails to provide performance standards for the Rare Plant Restoration and Management Plan. Deferral of the formulation of mitigation, when permissible at all, requires performance specifications. It is not sufficient to provide only a generalized goal for the plan such as the 80% 5-year viability goal. Here, the mitigation expressly defers identification of "location, methods, and plant success criteria that will be utilized to restore and maintain populations' [sic] within the protected opens [sic] or additional preserve sites." RDEIR 3.3-40. This information constitutes essential performance standards for the proposed plan

18. CTS Mitigation Inadequate: Notwithstanding CDFW's objection that the DEIR's proposed 2:1 compensation ratio was inadequate, the RDEIR proposes an even smaller ratio (2:1 for areas within 562 meters and 1:1 for areas between 562 and 2092 meters of breeding habitat). , Mitigation ratios should reflect agreement with CDFW and/or USFWS proposals since these agencies will have to issue take permission. Without their agreement to the compensation ratio, the proposed mitigation is legally infeasible.

The RDEIR fails to provide any reason to defer the formulation of the open space area management plan that includes the conservation area design and conservation area plan. CEQA only permits deferral of the formulation of mitigation when there agency has, and articulates, a good reason for that deferral. The public is entitled to see the details of this plan now, or at least the details based on available information or information that can be obtained with reasonable investigation.

The RDEIR fails to specify the credit that would be applicable if Pond 1 is not found to provide breeding habitat. This information should be specified in the mitigation measure.

On-site mitigation is preferable to off-site mitigation, in part due to the potential for cumulative impacts affecting resources in the project vicinity. For example, the RDEIR states: "It should be noted that there is a 10 acre conservation easement in the adjacent Toro Park specifically established for CTS through CDFW approval for impacts associated with an unrelated roadway project. This easement assumes the presence of quality upland CTS habitat." RDEIR 3.3-21. The RDEIR fails to identify the breeding habitat that is intended to support this conservation easement; in particular, it fails to explain whether this conservation easement relied on breeding habitat in the Ferrini Ranch site. If so, this should be disclosed since it elevates the importance of any impacts to existing breeding habitat and the importance of providing on-site rather than off-site mitigation.

As discussed above, the applicant should not be permitted to substitute off-site mitigation for on-site mitigation unless on-site mitigation is determined to be infeasible, based on substantial evidence of financial infeasibility made available to the public for review and comment. If a determination of infeasibility of on-site mitigation is deferred, then the public is entitled to know how infeasibility will be determined in the future, based on clear performance standards.

Proposed Mitigation Measure 3.3-2c calls for rapidly draining detention basins to mitigate CTS impacts, but this plan is inconsistent with the assumption that the detention basins will recharge local groundwater. DEIR, p. 3.6-37.

MM 3.3-2c calls for detention basin site designs that "minimize" attraction of non-native CTS and CTS predators. Because no reason is given for deferring the formulation of this mitigation, the design of detention basins should be provided in the EIR itself. No specification of what constitutes "minimization" is provided. No exemplary measures are identified that would minimize or avoid attraction of non-native CTS and CTS predators. As written, there are no objective criteria that would enable the public or RMA Environmental Services to make an objective determination of the success of this mitigation. The measure should be revised to require avoidance of attraction of non-native CTS and CTS predators, not merely minimization. If there is any reason to defer its formulation, the mitigation measure should specify the acceptable design methods that would avoid attraction of non-native CTS and CTS predators.

19. Mitigation for Bats and Other Mammals. Mitigation Measure 3.3-3a for bats protects roosting sites in trees "within open space areas" that would be affected by construction. The measure should be modified to bar removal of any trees with roosting sites, whether in open space areas or in areas planned for development. If roosting sites are located in trees within development areas, then that development should not be permitted. Because bat roosting sites outside open space areas are not protected, it is not correct that Mitigation Measure 3.3-3a would reduce the impact to nesting habitat for special status bat to a less than significant level. RDEIR, p. 3.3-58.

The discussion of impacts to special-status mammals acknowledges that loss of grassland habitat would affect the American badger and loss of riparian habitat would affect the dusky-footed woodrat. RDEIR, p. 3.3-57. The discussion also acknowledges other sources of permanent impacts, including domestic pets, increased nighttime lighting, and increased noise and traffic. Proposed Mitigation Measures 3.3-3b addresses only direct take of these species during construction, not the impacts due to permanent loss of habitat and other factors. While Mitigation Measure 3.3-4a protects riparian habitat "where feasible," there is no guarantee that riparian habitat loss will not affect the on-site population of dusky-footed woodrats. There is no requirement to avoid, minimize, or compensate for loss of grassland habitat for the American badger. There are no provisions to avoid, minimize, or compensate for impacts from domestic pets, increased nighttime lighting, and increased noise and traffic. In sum, the RDEIR acknowledges a number of sources of direct and indirect permanent impacts to the American badger and the dusky-footed woodrat, but provides no basis for concluding that these permanent impacts would be less than significant. The RDEIR must be revised to address this omission.

20. Riparian and Wetland Mitigation. Mitigation Measures 3.3-4a requires avoidance and protection of riparian areas "where feasible." Mitigation Measures 3.3-4b requires avoidance

of wetland areas "where feasible." The feasibility of mitigation must be determined in an accountable public process at the time of CEQA findings, and deferred mitigation requires meaningful performance specifications. Please explain how feasibility of site plan modification will be determined and by whom. What factors, including economic factors, will be used to determine feasibility? How exactly will the feasibility determination be informed by the projections of development profitability, e.g., what mitigation costs will the Project be required to accept before the site plan modification is deemed "infeasible?"

Mitigation Measure 3.3-4b requires avoidance of wetland areas "where feasible," but also provides that "[e]xisting wetland areas shall be restored, maintained, and protected within open space areas and placed under conservation easements in perpetuity." (emphasis added.) The mandate to protect existing wetland areas ("shall be restored, maintained, and protected) is inconsistent with the qualification to do so only "as feasible." The feasibility qualification should simply be removed.

Mitigation Measure 3.3-4b requires "no net loss" of wetlands. However, it also provides that "[r]esources within the on-site preserve can be assumed to partially fulfill this requirement when the conservation easement for this area is established." Please clarify the referent of "this requirement." Please clarify that protection of on-site wetlands would not count as compensation for wetlands that are impacted.

Mitigation Measures 3.3-4a and 3.3-4b call for the deferred formulation of riparian and wetland mitigation and management plans. Because the EIR fails to provide any reason to defer formulation of these plans, deferral is improper. The EIR should be revised to provide all information about these plans that is currently available or can be made available with reasonable investigation.

Mitigation Measures 3.3-4a and 3.3-4b call for the deferred formulation of riparian and wetland mitigation and management plans. Both plans contemplate replacement of impacted habitat through restoration or creation activities. However, the EIR fails to provide sufficient performance specifications to enable an objective determination of the success or failure of this mitigation. For example, Mitigation Measure 3.3-4b expressly defers identification of "performance standards for success that will illustrate that the compensation ratios are met." RDEIR 3.3-60. Mitigation Measure 3.3-4b provides no performance specifications whatsoever for riparian habitat restoration activities or adequate mitigation through a mitigation bank credit purchase.

21. Mitigation For Loss Of Waters Of The U.S. Mitigation Measure 3.3-5 defers formulation of mitigation for loss of waters of the United States. Because the EIR fails to provide any reason to defer formulation of these plans, deferral is improper. The EIR should be revised to provide all information about these plans that is currently available or can be made available with reasonable investigation.

Mitigation Measure 3.3-5 defers formulation of mitigation for loss of waters of the United States. The measure adverts to three forms of compensatory mitigation programs, but without providing objective specifications for what would constitute sufficient compensation. The measure must provide objective performance standards, particularly since the applicant "retains responsibility for the implementation and success of the mitigation project." RDEIR 3.3-62.

22. Analysis and Mitigation of Oaks Impacts. First, the analysis of oaks impacts is inadequate**.** The discussion of oak woodland impacts states that the "actual final number of trees to be removed cannot be determined until final site plans for all lots are prepared." RDEIR 3.3-63. As noted above, Monterey County Code Section 19.05.040L3C(3) requires an applicant to submit a "to-scale site plan showing proposed building foot prints and landscaping, streets and roads, water supply, sewage disposal, and stormwater runoff facilities." See also section 19.05.040L1A(1) (substantially the same information requirement).

We note that the EIR consultant objected that the estimate of tree removals was not based on an analysis of proposed building envelopes, and, absent this (required) information, asked that the estimate of tree removals be conservatively based on maximum site coverage. Rochelle Amrhein, PMC, Ferrini Ranch Peer Review of Forest Management Plan, Dec. 5, 2006. The EIR consultant also objected that the removal estimate was not based on an actual survey but on extrapolation from sampled sites. Thus, "it cannot be determined if mitigation is adequate or approximate." *Id.* The EIR consultant asked for a map that would identify the location of tree removals and protection zones.

None of this information was provided in the EIR.

Based on compliance with the subdivision map submission requirements in effect when the application was deemed complete, which requires submission of building foot prints and landscaping plans, and following the EIR consultant's recommendation for an actual survey of affected trees rather than an estimate, the applicant should be in a position to determine the actual number of trees to be removed. Please provide this information based on the applicant's submission for the subdivision map. If the applicant has not made the required submission, the RDEIR should be revised and recirculated when the required data are available.

The Supplemental Forester's Report confirms that the tree removal estimates are "the maximum foreseeable level considered approvable under applicable County regulations and review" and are a "high estimate." Stephen Staub, letter to Luis Osorio, March 17, 2010. There is no evidence that the County has an estimate of actual or likely tree removals. The County will not be able to make the required finding for a use permit under Monterey County Code Section 21.64.260D(5) that the tree removals are the "minimum required under the circumstances of the case" unless the actual circumstances are described, i.e., unless an adequate project description is provided that includes the information mandated by both the Subdivision Ordinance and CEQA.

Finally, the analysis of impacts to oak woodlands does not take into account the potential loss of oak woodland habitat due to fuel modification activities, including both oak removal and oak trimming. An estimate of the effects of this activity must be included in a revised and recirulated analysis.

Second, the mitigation of oaks impacts is inadequate. Mitigation Measure 3.3-6a for oak woodland impacts calls for modifying plans "as feasible" to preserve trees. As discussed, it should be possible to determine necessary tree removal now, not later, based on required submissions. Furthermore, the feasibility of mitigation must be determined in an accountable public process at the time of CEQA findings, and deferred mitigation requires meaningful performance specifications. Please explain how feasibility of site plan modification will be determined and by whom. What factors, including economic factors, will be used to determine feasibility? How exactly will the feasibility determination be informed by the projections of development profitability, e.g., what mitigation costs will the Project be required to accept before the site plan modification is deemed "infeasible?"

Mitigation Measure 3.3-6a acknowledges that some amount of overplanting (i.e., a replacement ration of greater than 1:1) is required to ensure full mitigation of oak woodlands. However, instead of ensuring this, the measure note that this would result in the loss of on-site grassland habitat, "which is considered to be at least as ecologically valuable as the oak woodland habitats." Thus, the measure acknowledges that the on-site oak mitigation will in fact cause a permanent loss of valuable grassland habitat, for which no mitigation is proposed. The loss of grassland habitat should be mitigated or the EIR should acknowledge that it is a significant unmitigated impact. The measure also acknowledges that the oak woodland mitigation at a 1:1 replanting ratio does not in fact attain full mitigation. In light of this, additional off-site mitigation for oak woodland loss should be required, based on the best science available as to the effect of replanting at only a 1:1 ratio.

The project is subject to Senate Bill 1334 (SB 1334) – Oak Woodlands Conservation Act. Under the provisions of SB 1334, projects with significant oak woodland impacts must conform both to the state's mandated program that established habitat mitigation standards and to local conservation measures adopted by the county (in the case of the proposed project, Monterey County). The EIR should discuss whether the County has adopted conservation measures that meet requirements of SB 1334.

23. Burrowing Owl Mitigation. The RDEIR should be revised to implement the recommendations made by CDFWW regarding burrowing own mitigation:

- MM 3.3-7 provides only a 300-foot construction buffer, not the CDFW- recommended 200-meter buffer.

- MM 3.3-7 does not require use of recommended CBOC methodology for surveys recommended by CDFW.

- The RDEIR does not describe methods and monitoring plan to ensure evicted birds are using relocation site.

MM 3.3-7 provides that "for active nests that cannot be avoided, the USFWS and/or CDFW (as appropriate) shall be notified regarding the status of the nests and agency recommendations regarding nest avoidance measures implemented." RDEIR 3.3-66. This provision is not coherent: it appears to require that the applicant seek advice on how to accomplish avoidance where avoidance is not possible (i.e., for "active nests that cannot be avoided"). It also appears to suggest that relocation would be permissible for active nests, contrary to the CDFW recommendation that relocation occur during non-breeding season. It should be revised to clarify that active nests must be avoided and that relocation only be permitted during non-breeding season.

The implication that some nests "cannot be avoided" is that avoidance will only be required where "feasible." The feasibility of mitigation must be determined in an accountable public process at the time of CEQA findings, and deferral of this determination of feasibility requires an objective performance standard. Please explain how feasibility of site plan modification will be determined and by whom. What factors, including economic factors, will be used to determine feasibility? How exactly will the feasibility determination be informed by the projections of development profitability, e.g., what mitigation costs will the Project be required to accept before the site plan modification is deemed "infeasible?

24. Migratory Bird Mitigation. MM 3.3-7 should be revised to implement the buffer distances recommended by CDFW: 250 feet for passerines and 500 feet for raptors.

25. Use Of Biodegradable Erosion Control. The project should use natural fiber, biodegradable meshes and coir rolls, not plastic, as recommended by CDFW.

26. Cumulative Biological Impacts. The discussion of cumulative biological impacts fails to provide a description of the geographical scope of the cumulative biological analysis or to justify any limitation to that geographical scope. The EIR fails to identify the geographic scope of the "reasonably foreseeable development in the vicinity of the project site." RDEIR 3.3-68. The EIR must be revised and recirculated to identify, and justify, the geographic scope of cumulative analysis for each affected biological resource. The proper scope of analysis would not necessarily be the same for each resource. For example, the proper scope for analysis of the impacts on wildlife corridors should include the critical linkages of which the project is a part. The consequence of one project weakening this overall link could be critical, but this possibility is not disclosed or discussed in a cumulative analysis.

The RDEIR fails to discuss or assess the cumulative impacts of existing of foreseeable future development in the project vicinity on special status plant or animal species. It fails to discuss or assess cumulative impacts to grassland, oak, riparian, or wetland habitats. It fails to discuss or assess cumulative impacts to avian species and habitat. While the discussion of wildlife corridors mentions the offsite habitat areas that are linked to the project site, it provides no discussion of the cumulative impacts of other development on wildlife corridors.

Some of the omissions may be particularly consequential. For example, there is no discussion of the cumulative effect of the pending application for the adjacent Harper Canyon project. There is no discussion of the proposed development of the Toro Park for higher intensity active recreational uses. There is no discussion of the potential connection of CTS mitigation parcel in Toro Park to breeding ponds in Ferrini site. There is no discussion of the effect of the project on the adjacent Marks Ranch.

The cumulative analysis also assumes without evidence that mitigation of project-specific impacts would ensure that the project does not make a considerable contribution to cumulatively significant biological impacts, contrary to CEQA's recognition that even individually minor impacts may be a considerable contribution. The EIR simply fails to present relevant cumulative information.

The woeful inadequacy of the cumulative analysis cannot be remedied in a final EIR because the public has been denied an opportunity for meaningful comment and response on a cumulative analysis, which must be provided in a draft EIR. An adequate cumulative analysis must be included in a recirculated draft EIR.

Sincerely,

Amy L. White
Executive Director