

December 1, 2014

Via E-mail and hand delivery

Monterey County Board of Supervisors
County of Monterey
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Re: Ferrini Ranch Subdivision

Dear Members of the Board:

I write on behalf of LandWatch Monterey County to comment on the proposed Ferrini Ranch Subdivision project. The County cannot legally approve this project because it has not conducted an adequate environmental review and because the project is inconsistent with the 1982 General Plan, under which it is reviewed.

The environmental review and proposed findings are defective in numerous respects. For example:

- The EIR fails to provide a complete or stable description of the project or the alternative now proposed for approval, frustrating public participation and informed decision making. For example, the public was not presented with a site plan that purports to address visual impacts until after the Planning Commission hearing. Numerous conditions of approval still call for future revisions to the site plan to address other resource impacts. These revisions would be made without an accountable public process and may result in unmitigated impacts to other resources.
- Despite requests from the California Department of Fish and Wildlife and LandWatch, the EIR fails to provide an analysis of fuel modification activities that will be permitted or mandated when new development is placed in this high-risk fire area. The fuel modification may cause significant visual and biological impacts.
- Only one legally feasible alternative was examined because all other alternatives, and the proposed project itself, contain more units than allowed under the slope-density formula, which permits only 193 units. This violates CEQA's requirement to evaluate a reasonable range of feasible alternatives.

- The EIR failed to evaluate stable alternatives or to explain how and whether the alternatives would make mitigation measures unnecessary.
- The analysis of visual impacts to scenic roadways was fundamentally flawed. The EIR analysis was not based on a stable site plan. Even though County code requires identification of building sites and flagging and staking for subdivision project approval, neither was done here. The EIR relied on an applicant-supplied map of the critical viewshed, which staff admitted was erroneous –after the FEIR was released. The EIR relied on applicant-supplied photo-simulations, which staff admitted were based on different assumptions and taken from different viewpoints – again after the FEIR was released. No adequate specifications or analysis of secondary impacts are provided for the proposed berms that are supposed to hide development from scenic roadways. Despite the EIR’s claims to the contrary, the proposed affordable housing will be visible from SR 68 and from the Toro Park day use area.
- The EIR relies on future zoning overlays to mitigate visual impacts, but these future zoning overlays are not enforceable against the project. If enforceable zoning overlays are in fact part of the project, then the EIR has misled the public and piecemealed the environmental analysis.
- The visual analysis of impact to Toro Regional Park and the Fort Ord National Monument inconsistently claims 1) these parks are not “common public viewing areas” so the visual impacts of almost 200 new houses on scenic vistas sought by hikers will not matter, and 2) zoning classifications intended to protect common public viewing areas will nonetheless somehow mitigate visual impact to these parks. These parks are obviously common public viewing areas under the County code definition, which expressly includes parks, and they serve tens of thousands of recreational hikers annually – many more than the EIR itself admits. The visual simulations in the EIR demonstrate obvious visual impacts to hikers, but the EIR dismisses these as unimportant because the views are purportedly not from common public viewing areas.
- Despite objections from the California Department of Fish and Wildlife, which has stated it will not issue the necessary permits, the EIR relies on infeasible mitigation for rare plants and special status species. Mitigation for biological impacts is improperly deferred without evidence of feasibility or adequate performance specifications.

- The EIR fails to provide an adequate analysis of cumulative impacts associated with water supply. The EIR relies on the presumed efficacy of the existing Salinas Valley Water Project (“SVWP”) without any analysis of the relation of its water demand assumptions and current demand projections – despite comments requesting just this information and supplying evidence that changes in demand have rendered the SVWP insufficient. It is obvious that additional water supply projects will be required to prevent further overdrafting and seawater intrusion, but the EIR failed to disclose this. Nor did the EIR disclose that additional projects are uncertain because unfunded and that they will result in environmental impacts that have yet to be evaluated. The County cannot remedy the EIR’s informational failure through abbreviated disclosures in last minute testimony or findings unsupported by the EIR itself.
- In light of the evident excess of demand over supply and the uncertainty of future water supply projects, the County cannot find the project consistent with the 1982 General Plan policy requiring an assured long term water supply.
- Because the EIR acknowledges that the project’s contribution to greenhouse gas impacts remains unavoidably significant after the mitigation proposed in the DEIR, CEQA obliges the County to impose all feasible mitigation. Despite comments proposing additional feasible mitigation, the proposed conditions fail to adopt this mitigation. Furthermore, the FEIR fails to respond adequately to these comments.
- The DEIR’s analysis of cumulative traffic fails to analyze cumulative conditions with and without the project and so fails to disclose the project’s effects on cumulative conditions. Despite LandWatch’s request for the missing information, the FEIR failed to provide it.
- The EIR relied on payment of impact fees to conclude that all cumulative impacts would be mitigated, even though the EIR admits that necessary traffic improvements are not part of a committed, funded plan, and are in fact infeasible. For example, it is clear from the EIR itself and from TAMC’s Regional Transportation Plan that widening SR 68 west of Corral de Tierra site is not financially feasible, even by 2035, yet the EIR’s cumulative impact analysis blithely assumes that this widening will occur under mitigated 2030 conditions. The EIR made similar assumptions that future intersection improvements would occur even though these improvements are not included in any funded, committed plan. It is absurd for this EIR to conclude that SR 68 congestion will be resolved by 2030 when all of the other relevant planning documents, including the 2010 General Plan EIR, conclude to the contrary.

- The EIR relies on the project's payment of TAMC's Regional Development Impact Fee to fund the State Route 68 Commuter Improvements project and the Marina-Salinas Corridor project, and, on that basis, concludes that project-specific impacts to the affected segments and intersections in the year 2015 will be less than significant. This conclusion is unsupported because 1) these improvements are not funded or scheduled for construction, 2) they are currently not expected to be built before 2035, and 3) the proposed conditions of approval relieve the project of the obligation to pay the TAMC impact fee. The EIR and staff admit that the improvements to be constructed by the project, a new signalized intersection and widening a segment of SR 68, will not improve conditions at other segments and intersections.
- Although the RDEIR and the applicant have made misleading statements to the contrary, the evidence in the RDEIR itself demonstrates that the project traffic will increase travel time on the SR 68 corridor, even with the proposed widening of a segment of SR 68. The misleading contention that travel time would be reduced was based on crediting the Ferrini project with travel time improvements from TAMC construction projects that are already completed or underway and that are entirely unrelated to approval of this project.
- Approving this project is clearly inconsistent with 1982 General Plan policies, which bar new projects unless their transportation demand is provided for. The EIR admits unavoidably project-specific significant impacts to 10 intersections and segments, for which there are no plans for necessary improvements. And as noted, the EIR's reliance on impact fees as the basis to conclude that other impacts are less than significant is misplaced.

In light of these and other defects, the EIR must be revised and recirculated to permit informed public participation and decision making. Detailed comments in support of these and other points follow.

A. The project description is incomplete and unstable due to potential lot relocations and failure to describe fuel modification.

As LandWatch objected in earlier comments, the DEIR and RDEIR failed to provide an adequate project description because they failed to describe what portions of the site would contain lots, where building sites would be located, and what fuel modification would be permitted or required in the future. The FEIR and subsequent staff reports cannot and have not resolved this failure to disclose an accurate and stable project description in the draft EIR.

1. FEIR failed to provide reasoned comment responses regarding deferral of site plan revisions.

LandWatch requested revision of the site plan in the EIR rather than after project approval in order to address and demonstrate the feasibility of the sixteen mitigation measures calling for future revision of the site plan. The EIR proposes those revisions in order to avoid impacts to various resources (e.g., scenic, biological, and cultural resources) and to accommodate various constraints (e.g., flooding and parkland constraints). LandWatch made this request because it is unclear that revisions are feasible or that they will not result in secondary impacts and because the applicant was required to identify building sites in the map application under the County code. Comments 36-1 through 36-3, RD 14-2. The California Department of Fish and Wildlife (“CDFW”) also requested that the EIR provide the actual site plan because it is not possible to evaluate biological impacts without knowing the location of development in relation to biological resources. Comment RD 2-2. Other comments made the same point. Comment 39-2.

In response, the FEIR refused to provide the post-mitigation site plans or otherwise to demonstrate that the revisions are feasible, consistent with each other, and will not cause secondary impacts. Responses 36-1 to 36-3, RD 14-2, 39-2. The public is thus not informed by the EIR as to which mitigation measures will be feasible, whether relocation of lots to address one type of impact may aggravate other types of impacts, and whether potentially infeasible and less-effective off-site mitigation will be required.

The possibility of a secondary impact from future lot reconfigurations is demonstrated by the alternatives analysis. For example, the FEIR explains that Alternative 5 was intended to address several biological resource issues. Response 14.3. However, Alternative 5, as set out in the RDEIR, runs counter to MM 3.1-1a calling for reconfiguring the lot layout to avoid critical viewshed areas because it increases the number of lots in the area identified as critical viewshed (lots 80-85a) and adds new lots in critical viewshed areas previously left as open space (lots 138, 138a, 139). RDEIR Figures 4.3A and B.¹

This example demonstrates that future lot reconfigurations after project approval may aggravate other impacts. The public can have no assurance that reconfiguration within all of the constraints imposed by mitigation measures calling for lot reconfigurations is feasible or that it will not aggravate other impacts unless the EIR provides the post-mitigation lot configurations and does so on maps that overlay the various resource constraint maps.

The potential infeasibility of reconfiguring lots to meet numerous separate mitigation measures involving multiple resource impacts and constraint is also evident through

¹ As discussed below, after the FEIR was released, the Planning Commission raised concerns about visual impacts and some lots were reconfigured to address visual impacts and staff changed the map of the critical viewed. The point here is that the EIR itself failed to identify and resolve these issues through any systematic demonstration that necessary lot relocations are feasible and will not cause new impacts.

examination of the areas of critical viewshed and slope over 30% in which development is not permitted. See Figures 3.1-1a and b and Figures 3.5-5a and b. It is evident that much of the developable area has already been proposed for lots.

2. Post-FEIR revisions to the site plan are untimely and inadequate.

The County was obliged to provide an adequate project description in the EIR, not in a series of changing, last minute staff reports. Even if the subsequent revisions had been provided timely, they were inadequate.

The requirement, proposed to the Planning Commission after the FEIR was released, that specific lots be relocated in areas proposed for existing lots by compressing previously proposed lots or in other areas sloped under 30% that do not “have sensitive biological resources” was not an adequate resolution. John Ford, Errata Memorandum to Planning Commissioners, Nov. 12, 2014, proposed conditions 78 and 14. It does not actually require lot compression or mandate retention of the previously identified open space because it allows lots to be relocated to any area under 30% without “sensitive biological resources.” And it defers the determination of what counts as sensitive biological resources without any clear criteria, permitting this determination to be made without opportunity for public comment and response. And conditions # 78 and # 14 only address lot reconfigurations that are required to address particular visual impacts, not the lot relocations that may be required to address other conditions.

The Staff Report to the Board for the first time provides a vesting tentative map (“VTM”) with lot locations purporting to address visual impacts. Lots have been relocated, but the public has not had a meaningful opportunity to review and comment on the environmental effects of these changes. CEQA requires that the EIR be recirculated under these circumstances. For example, a number of the revised lots appear to be located in areas that include slopes over 30%. Because the last-minute VTM does not provide a slope overlay, the public cannot easily discern this. The new VTM increases housing density in the area of the San Bernancio Creek crossing, which was identified as a wildlife corridor. This density increase occurs because three lots have now been cut out of a previously proposed single lot, which will increase the number of structures; the amount of noise, light, and pet disturbance; and the amount of non-native landscaping. A number of lots appear not to have any access, e.g., the new lots adjacent to San Bernancio School.

The contention in CEQA finding # 10 that the new lots are placed in locations where the EIR had analyzed lot locations and thus there are no new impacts to analyze is inaccurate and misleading. The relevant question is whether the EIR analyzed lot locations in these areas as part of alternative 5, which is the alternative proposed to be adopted.

Comparison of the new VTM with Alternative 5 shows that the VTM does not conform to Alternative 5 (as it might have done, for example, if the revision had merely doubled up some of the existing lots). Alternative 5’s lot pattern was identified as essential to the EIR’s conclusion that it was the environmentally superior alternative and that it would

adequately address various visual and biological resource impacts. The fact that the new lots may be located in areas in which the rejected alternatives had lots is hardly comforting.

Finally, the VTM now being proposed is still not final. The proposed conditions of approval still contain a number of mitigation measures that call for future revisions to the site plan. See, e.g., BOS Staff Report, Att. C, conditions 80, 81, 89, 90, 95, 91, 99-102, 114. These conditions cannot simply be ignored because they were identified as essential mitigation for significant impacts in the EIR.

However, in some instances, the proposed conditions of approval simply ignore the EIR's mitigation requirements. The DEIR proposed in MM 3.10-3 that the applicant be required to dedicate at least 2 acres of on-site parkland because it specifically found that payment of in lieu fees would not be sufficient for this large project located without any proximity to existing park facilities:

“Because the proposed project consists of more than 50 single-family dwelling units and the potential increase in use of the park by the neighboring residents, the Monterey County Parks Department has stated that at a minimum, the proposed project shall require on-site park dedication pursuant to Section 19.12.010 (D) of Monterey County Title 19 and the payment of in-lieu fees is not an option for the proposed project. The amount of on-site parkland required would be approximately 2 acres (0.003 acres/person x 3.15 persons/dwelling unit x 212 dwelling units = 2.003 acres of parkland). According to the proposed Vesting Tentative Map, no dedication of parkland is proposed, which would be considered a **significant impact**.” DEIR , p. 3.10-12, emphasis in original.

To address this significant impact, MM 3.10-3 requires 2 acres of on-site parkland to serve residents. The currently proposed conditions of approval simply call for payment of an in lieu fee, which the EIR discussion rejected as insufficient. DEIR, p. 3.10-11, BOS Staff Report, Att. C, condition 118. The proposed CEQA findings state that this mitigation measure was changed after the FEIR was released. BOS Staff Report, Att. C, Finding 9. No explanation for the change is provided.

Furthermore, as discussed in section D.5 below, the last-minute site plan revisions and the unaccountable revision to MM 3.3-8a also ignore the EIR requirements for mitigation of impacts to wildlife corridors.

3. The FEIR failed to describe fuel modification or to describe applicable fuel modification regulations and programs.

As discussed in connection with biological impacts below, the FEIR failed to provide critical information about fuel modification for wildfire protection despite comments requesting this information. As explained, the response ignored the clear evidence in the form of applicable regulations and programs that fuel modification may be substantially

more extensive than the cattle grazing and thinning of a 30-foot defensible space perimeter acknowledged by the EIR. This constitutes a failure to describe the project adequately and a failure to provide adequate comment responses.

B. The alternatives analysis is incomplete and inadequate.

1. The range of alternatives is inadequate because only one alternative is legally feasible .

CEQA requires that an agency consider a range of feasible alternatives. The Planning Commission staff report disclosed for the first time that the proposed project and four of the five alternatives considered violate the slope density provisions of the 1982 General Plan and are therefore not legally feasible. Planning Commission Staff Report, Oct. 8, 2014, pp. 9-10. Contrary to the DEIR's inaccurate claim that the slope density formula permits 388 units (DEIR, p. 2-9), the staff report concludes that a maximum of 193 units are allowed, not the 212 units evaluated as the preferred project and in Alternatives 1-4. Thus, the staff report concludes "Alternative 5 (185 lots) is the only project proposal that fits within the allowed number of building sites." *Id.*, p. 10.

In light of this belated disclosure, it is apparent that the EIR has not considered a reasonable range of alternatives – because only a single project proposal, Alternative 5, is in fact legally feasible.

For many of the impacts, the severity is related to the number of units. It is apparent that reducing the number of units would reduce the severity of the impacts. For example, Alternative 5 was identified as environmentally superior largely because it reduces unit counts. At this point, there is no "superior" alternative because the EIR has not in fact evaluated any feasible alternative other than Alternative 5 and because the preferred project is itself not legally feasible. The EIR should be revised and recirculated to consider a reasonable range of alternatives, including a reduced unit count alternative that has substantially fewer units than Alternative 5.

2. EIR fails to evaluate stable and complete alternatives.

LandWatch objected that the RDEIR should have considered an alternative that reduced unit counts and clustered the development, and that the clustering alternative (Alternative 4) had been saddled with an infeasible interchange feature as a poison pill that would ensure that clustering would not be seriously considered. Comments RD 14-4 to 14-6. In response, the FEIR suggested that the County might approve an alternative "comprising components from more than one alternative." Response RD 14-4.

In effect, the FEIR invites the County to redesign an alternative project on the fly without ever evaluating the alternative selected in the EIR itself. The public is entitled to a careful review of the project and alternatives that may be selected – in the EIR itself. Without evaluation and comparison of complete and adequately defined alternatives it is impossible to understand what alternative is environmentally superior and why.

Furthermore, as comments have objected, the EIR must provide the actual lot layouts for the preferred project and alternatives, not just tentative lot layouts that are qualified by numerous mitigation measures calling for possible future reconfigurations.

3. FEIR failed to explain relation of alternatives and mitigation measures.

LandWatch objected that the alternatives analysis in the RDEIR failed to clarify which of the numerous mitigation measures calling for reconfiguration of the site plan would be fully or partially satisfied by the alternative lot layouts. Comment RD 14-3. LandWatch requested this information and again objected that the EIR failed to demonstrate that the reconfigurations apparently still required by the mitigation measures would be feasible, consistent with each other, and without secondary impacts. Comment RD 14-2.

Although the alternatives purport to address some of the resource impacts and constraints, the FEIR declined to systematically identify which impacts would be avoided by the alternatives, contenting itself with a few examples (FEIR Response RD 14-2) and the blanket statement that “the County assumes that all mitigation measures of the final EIR will be applicable to the project or any alternative approved . . .”² FEIR Response RD 14-3. In effect, the FEIR declined to explain in any detail whatsoever whether and how adoption of an alternative might, or might not, render impacts less than significant. As discussed below, the final proposed conditions of approval make unaccountable changes to mitigation measures, changes that should have been explained in the RDEIR or in response to comments.

Furthermore, despite LandWatch’s specific request, the FEIR refused to provide overlays of the alternative site plans with the resource maps for the resources that may be affected by the site layout (e.g., viewshed, biological resources, floodplain, historic and cultural resources, parklands). The FEIR argued that the public could sort this information out for itself – essentially inviting the public to try to compare 5 alternative site plans to 12 separate resource maps in the context of 16 mitigation measures calling for reconfiguration to avoid those specific resources. FEIR Response RD 14-2. This is simply not practical and frustrated informed public participation and decision making.

C. Visual impact analysis and mitigation is inadequate.

1. EIR failed to provide an adequate description of the environmental setting, an adequate project description, or a fact-based analysis in support of its visual impact conclusions.

CEQA requires that an EIR provide an adequate description of the environmental setting and project description together with facts and analysis that support its significance conclusions. This information must be in the EIR itself. The EIR failed to provide this essential information in support of its conclusions that visual impacts would be less than

² And this assumption was incorrect as is evident from the abandonment of MM 3.12-1a, 3.12-1c, and 3.12-5 proposed by the DEIR to mitigate traffic impacts.

significant. These failures affect the conclusions in the EIR with respect to visual impacts from development within critical viewshed and areas of visual sensitivity, effects on scenic views and vistas, impacts to SR 68 Scenic Corridor and Scenic Roads, visual character of site and 30% slope alteration, and ridgeline development (Impacts 3.1-1, 2, 4, 5, and 6). Set forth below are examples of the EIR's failure to meet CEQA's informational requirements.

a. Failure to identify lot locations in DEIR

Visual impacts cannot be assessed without knowing where lots will be placed on the site. In addition, the approval of a subdivision requires identification of lot locations. LandWatch objected that the DEIR had not provided final lot locations because numerous mitigation measures permit or require relocation of lots to avoid impacts to visual, biological, cultural, and other resources and because no lot locations were provided for affordable housing units. Comments 36-1, RD 14-2. The FEIR responded that that mitigation calling for determination of lot locations later was appropriate under CEQA, and, specifically, that lot layouts for affordable housing were not required because they would be attached housing not requiring subdivision. Responses 36-1, RD 14-2. As it turned out, and as had already been proposed in the RDEIR, the affordable housing proposed on site was not in fact "attached housing." As discussed below, the analysis of visual impacts from those lots was inadequate.

As of the release of the FEIR, and even after the Planning Commission's recommendation, a lot layout was still not finalized. Although the Board of Supervisors staff report now proposes a map that purports to address visual impacts, proposed conditions of approval still call for lot relocations to address impacts to other resources. Without an accurate and stable description of the project with respect to lot layouts (the essence of a subdivision project), there can be no adequate visual impact review. For example, lots relocated after project approval in order to address biological or cultural resource impacts or other constraints may result in unmitigated visual impacts.

As LandWatch objected, the DEIR admitted that lots within the critical viewshed must be relocated, but failed to identify the relocated lots. Comment 36-4. LandWatch also objected that without the final lot layouts it would be impossible to determine visual impacts or to determine if there would be a buildable site on the lot. Comment 36-8. The FEIR responded by claiming that Alternative 5 amends the lotting pattern to avoid impacts to the critical viewshed. Response 36-4. However, as staff admitted after the release of the FEIR, Alternative 5 did not in fact avoid impacts to the critical viewshed. In a series of post-EIR staff reports, the County has made numerous and conflicting proposals to revise the Alternative 5 lotting pattern to resolve impacts to the critical viewshed and to avoid ridgeline development. None of this discussion or information was in the EIR itself. The public was denied an opportunity for comment and response on this critical aspect of the project.

b. Failure to provide building pad locations

LandWatch pointed out that the County code requires that a subdivision application designate building pads. Comment 36-3. In response, the FEIR claimed that the County Code permits the Planning Director to modify the submission requirements if he finds that circumstances justify such modifications; but the FEIR but did not identify those circumstances or explain why the omission did not compromise the visual impact analysis. Response 36-3. As became evident after the FEIR was released, determination of whether a building pad location was even feasible on some lots, given the constraints related to critical viewshed, was essential to an adequate visual analysis. This information should have been in the EIR.

c. Failure to provide flagging and staking information

The visual analysis was not based on flagging and staking proposed building sites, even though the EIR repeatedly cites the flagging and staking protections of the Visual Sensitivity (“VS”) combining district as evidence that view impacts will be less than significant. DEIR, pp. 3.1-12, 3.1-20, 3.1-43, 3.1-48. Flagging and staking is required at the subdivision approval level for projects within visually sensitive areas; the zoning ordinance makes flagging and staking applicable to “all development and subdivisions . . .” Monterey County Code (“MCC”) § 21.46.060. The County routinely requires flagging and staking for subdivision approval in visually sensitive areas, e.g., the September Ranch project, the Villas de Carmelo project, and the York Highlands tract. In the York Highlands subdivision approval the County required flagging and staking of specific building envelopes identified for each of the lots visible from SR 68. York Highlands Negative Declaration, PLN100020, Sept. 7, 2011, pp. 18-21. The County also required flagging and staking of all proposed buildings and additions to buildings for the Villas de Carmelo subdivision. Villas de Carmelo Subdivision Committee Staff Report, Jan. 11, 2011, Exhibit B, p. 10. In the September Ranch subdivision, views of the Carmel area were protected through flagging and staking:

“ . . . in an effort to ensure the overall visually quality of the site is maintained, a visual field survey of the site and adjacent areas was conducted to assess the existing visual character of the property from key vantage points. **This included the siting of lots through staking and flagging in an effort to identify the location of final building envelopes to minimize potential viewshed impacts.**” Draft Revised EIR for the September Ranch Subdivision Project, Dec. 2004, p. 4.11-13, available at http://www.co.monterey.ca.us/planning/docs/eirs/september/septRDEIR_1204.pdf

Flagging and staking building sites is particularly critical in the Toro Area. The County’s Staking and/or Flagging Criteria require flagging and staking when a project is in an areas designated Visually Sensitive on an adopted visual sensitivity map, including the Toro Area Plan visual sensitivity map. Monterey County, Staking and/or Flagging

Criteria, Resolution 09-360, 2009, paragraph 1. The County's Criteria expressly prohibit the reliance on photo simulation in lieu of flagging and staking in an area designated as highly sensitive on an adopted visual sensitivity map, specifically including the map for the Toro Area Plan, or an area that is potential ridgeline development. *Id.*, paragraph 4. Notwithstanding these clear requirements, applicable to the project because it is located within areas of visual sensitivity and critical viewshed on the Toro Area Plan visual sensitivity map (Toro Area Plan Figure 9), the EIR visual analysis was based on photo simulation without flagging and staking. No flagging and staking analysis has been provided in connection with the processing of this subdivision application, contrary to both County Code and the County's Staking and/or Flagging Criteria. Members of the Planning Commission and the Toro Land Use and Advisory Committee ("LUAC") expressed surprise that this analysis was not provided. Flagging and staking was clearly essential here to resolve contested issues related to visibility of future development from SR 68 and other common public viewing areas.

Again, flagging and staking are required at the subdivision approval stage. The analysis and avoidance of impacts under the VS overlay protocol in Chapter 21.46 calls for applying standards for lot reconfigurations and changes to access roads. MCC § 21.46.060(C). These standards cannot be deferred to the building permit stage because it will be too late then to alter lots and access roads. CEQA and the County Code require assessment of impacts early enough in the process to permit mitigation. Furthermore, the proposed design criteria provision in conditions of approval (BOS Staff Report, Att. C, conditions # 19 and # 78) cannot correct the failure to flag and stake as part of the subdivision approval process.

Ironically, as LandWatch has objected, the applicant failed even to identify building sites in its application, although that is required by the subdivision ordinance. Thus, it was not even possible to flag and stake this project at the subdivision approval stage.

d. Reliance on map of critical viewshed and areas of visual sensitivity provided by the applicant and later determined to be inaccurate

The DEIR purports to identify lot locations for the preferred project that are within areas designated as critical viewshed in its Figures 3.1-1A and B. DEIR, pp. 3.1-18 to 3.1-9. Note that the RDEIR does not identify which lots are within critical viewshed for Alternative 5. RDEIR, pp. 4.0-57 to 4.0-58. LandWatch objected to this failure (Comment RD-14-2), but the FEIR declined to provide an overlay of the proposed lotting on the visual resources map, arguing that the "alternative site plans can be reasonably compared to the original project concept without providing detailed overlays as suggested."³ Response RD 14 -2.

³ No map was provided within the EIR to show which lots in Alternative 5 are within the critical viewshed, and no map even purporting to show this information was made available to the public until after the October 8 Planning Commission hearing.

However, the mapping of the areas of critical viewshed and visual sensitivity in the EIR was fundamentally flawed. The failure to provide this essential information regarding the environmental setting in the draft EIR violates CEQA.

Not until after the release of the FEIR and after the first Planning Commission hearing, was it disclosed that the maps in the EIR purporting to overlay the VTM lot layout on the Toro Area Plan map of critical viewshed and areas of visually sensitivity (Figures 3.1-1A and B) were actually prepared by the applicant. Planning Commission Staff Report Oct. 29, 2014, Exh. B, p. 7; see also BOS Staff Report, Att. C, finding # 10. This disclosure did not arise until after the applicant complained that its own map placed lots in the critical viewshed that would not be visible from SR 68 and argued that this must be contrary to the intent of Toro Area Plan Policy 40.2.5.⁴ Planning Commission Hearing Oct. 8, 2014, video, hour 1:15. Staff acknowledged that they were unable to locate the County's own map showing the Toro critical viewshed and areas of visual sensitivity (Toro Area Plan Figure 9). Planning Commission Staff Report Oct. 29, 2014, Exh. B, p. 7.

At the October 29 hearing, staff admitted that Figures 3.1-1A and B in the DEIR were just applicant's "best guess" at the critical viewshed but claimed that it was "fairly close" to being accurate. Planning Commission Hearing video, hour 1:26 to 1:28. Staff submitted yet another version of the critical viewshed map based not on the missing Toro Area Plan Figure 9, but based instead on staff's interpretation of the intent of Policy 40.2.4 of the Toro Area Plan. *Id.* at p 7-9. Staff's version of the missing map accepted the shape prepared by the applicant but moved it east so that it covers a meadow area that staff decided that Policies 40.2.4 and 40.2.5 must have been intended to cover. *Id.* at p. 7; see Planning Commission Hearing Oct. 29, 2014 video at hour 3:56. Staff provided an overlay of the Alternative 5 lot layout that showed both the applicant's version of the critical viewshed map and staff's revision of the critical viewshed. *Id.* at 7-9. Under the staff revision, fewer lots were determined to be in the critical viewshed area. *Id.*

The EIR is flawed because it is based on information submitted by the applicant, obviously not a disinterested party, and that information does not represent the independent judgment of the County. Furthermore, the information was subsequently revealed to be inaccurate, and it is clear that the public was unable to participate effectively in the EIR process without accurate information about the actual mapping of the critical viewshed. The FEIR's contention that the public could determine which lots in the Alternatives were in the critical viewshed by reference to the erroneous map supplied by applicant (Response RD14 -2) is just one example of the EIR's failure to provide adequate information or comment responses.

⁴ There is no evidence in the record that the purpose of this policy is solely to protect views from roadways. As discussed below, the EIR's disregard of views from other common public viewing areas, including Toro Park and the Fort Ord National Monument is unjustified.

The determination of which lots are in fact within the critical viewshed should have been set forth in the DEIR, not in staff reports subsequent to the FEIR.⁵ Planning Commission members repeatedly expressed their frustration and confusion about the omission of this essential information from the EIR since it was impossible to determine what lots were in fact developable without it. See, e.g., Planning Commission Hearing, October 29, 2014, hour 3:59 to 4:02 and hour 3:50 to 3:58. The public objected that the analysis should have been in the EIR itself. *Id.* at hour 4:22.

There is still no indication that the critical viewshed map being relied on by staff is accurate. Staff have not reported whether the original Toro Area Plan Figure 9 has been located and, if so, whether it is consistent with staff's post-EIR revision of the applicant's map. The Planning Commission has expressed surprise that the renderings of the Toro Area Plan Figure 9 in the EIR and subsequently revised by staff do not protect iconic views along SR 68, e.g., the lupine field, but do protect areas not visible from SR 68, casting doubt on whether staff's reconstruction of the map based on its "interpretation" of the policy behind the map is even reasonable.

In the absence of the definitive map of the critical viewshed, the County cannot make a finding that this project is consistent with Policy 40.2.5 or with Policy 40.2.4, both of which require definitive mapping of the critical viewshed area. A project cannot be found consistent with an incomplete General Plan. Furthermore, it will also be difficult to make findings with respect to future projects, because it will be unclear which version of the critical viewshed map applies outside the boundaries of the Ferrini Ranch, or whether other projects will be permitted to use their own revisions to the map. Under the circumstances, the County should either locate the actual map or amend the General Plan to re-designate the areas of crucial viewshed and visual sensitivity based on determinations by legislative bodies, not staff guesswork based on a project applicant's guesswork.

The re-designation should be based on an actual analysis of visibility and identification of visually important resources included in a CEQA document, not on the casual and undocumented claim that certain areas designated as critical viewshed are "behind a hill" and that there must have been an intent to protect the lupine field but not the "bull field." And if there is going to be a re-examination of critical viewshed areas, it should be systematic and guided by the goal of maintaining the Scenic Highway designation and protecting view amenities for users of the Fort Ord national Monument and Toro Park. For example, the County should consider adding areas to the critical viewshed based on

⁵ The EIR should also have provided a correct interpretation of the plain language of Policy 40.2.5 of the Toro Area Plan, which unambiguously bans building sites within the critical viewshed. The EIR's assumption that building sites could be within the critical viewshed as long as they were not visible from SR 68 (DEIR 3.1-21, MM 3.1-1a) is clearly inconsistent with the policy. The EIR's misrepresentation of this policy was a failure to provide an adequate description of the environmental setting. The failure diverted public discussion into a sterile and unprofitable debate over whether particular lots were "behind a hill" rather than toward the relevant question of whether the EIR correctly mapped the critical viewshed.

their value to a scenic roadway that is becoming less and less scenic as cumulative development is permitted. It is clear that the lupine field (northwest corner of the western parcel) is in fact a critical view resource that is not designated as a critical viewshed area, based on comments by the public and members of the Planning Commission.⁶

e. Reliance on applicant's simulation of post-mitigation conditions based on different viewpoints and lower structures

The DEIR provides visual simulations of existing conditions and conditions with permitted structures on the various lots as seen from nine designated viewpoints. DEIR, Figure 3.1-2 (map of 9 viewpoints), Figures 3.1-3 to 3.1-11 (existing conditions and photo simulations of conditions with permitted structures). The DEIR discusses the careful photo-simulation process, including modeling, selection of viewpoints, and observance of protocols to ensure accuracy in preparing the visual simulation. DEIR, p. 3.1-17.

The DEIR also presents applicant's simulations purporting to be taken from the same viewpoints and purporting to represent post-mitigation visual conditions with the addition of "more detailed grading information and more extensive rendering of the images." DEIR, pp. 3.1-17, 3.1-54 to 3.1-68 (Figures 3.1-13 to 3.1-19). The DEIR claimed that the applicant's simulations were "consistent with" the EIR's pre-mitigation simulations. DEIR, p. 3.1-54.

After the applicant presented the purported post-mitigation photo simulations to the Planning Commission, members of the Planning Commission objected to the EIR's reliance on the applicant photo-simulations because they were not independently prepared and because they appeared to be inaccurate. October 29 Planning Commission hearing video, hour 2:41 to 2:49, 3:35 to 3:40.

Staff then acknowledged that the applicant's photo simulations were based on different viewpoints and different assumptions regarding the structures to be developed. *Id.* at hour 3:41 to 3:42. For example, staff revealed that whereas the houses in the pre-mitigation photo-simulations prepared by the EIR consultant were assumed to be two stories high, applicant's photo-simulations were based on one-story houses. *Id.* Thus, for example, in the case of Figure 3.1-13c, staff admitted that the reason houses were no longer visible behind the proposed berm was simply because the applicant assumed one-story houses instead of the two-story houses simulated by the EIR preparer.

⁶ If the County fails to maintain the scenic nature of the roadway by permitting cumulative development incompatible with the Scenic Highway designation, it will be failing to meet its obligations under the Scenic Highway program, which may result in a determination by Caltrans to revoke the Scenic Highway designation. See Streets and Highway Code § 260 et seq.; Caltrans, Scenic Highway Guidelines, Oct. 2008, available at http://www.dot.ca.gov/hq/LandArch/scenic/guidelines/scenic_hwy_guidelines_04-12-2012.pdf. Views of buildings, cut and fill associated with roadways, grading, night lighting, entry monuments, fencing, artificial berms, or non-native vegetation may compromise Scenic Highway status. *Id.*; see also Comment RD 1-2.

The EIR's contention that the applicant's purported post-mitigation photos were "consistent" with the EIR's photo simulations was incorrect and materially misleading. As Planning Commissioners objected, the EIR simply failed to present an apples-to-apples comparison of the project that would objectively demonstrate the purported visual benefits of aspects of project design and proposed mitigation. In light of the admitted inconsistencies in some of the applicant's simulations and the simulations prepared by the EIR consultant, there can be no assurance that the other applicant simulations are accurate or that the County has applied its independent judgment in preparing and considering the EIR.

f. Berm in lupine field

The DEIR and FEIR failed to provide any dimensions, landscaping specifications, backup plan, line-of-sight analysis, or fact-based simulation of the proposed 800-foot berm intended to screen lots 20-22 and 24-28, despite Caltrans request for this information. Comments D-2, RD-1-2. More generally, Caltrans requested visual simulation of the revised lot layouts provided in the RDEIR alternatives analysis because the RDEIR's visual impacts opinions lack any factual foundation without such simulations. Comment RD 1-2. However, the FEIR refused to provide overlays or simulations to address the proposed alternatives. Instead it simply modified the proposed mitigation to require that the feasibility analysis of berms to be provided after the project is approved. FEIR, Responses D-2, 36-4, RD 1-2.

The only information provided in the EIR regarding the berm to shield Lots 20-28 is the previously discussed misleading, applicant-provided visual simulation, for which there is no information as to such critical assumptions as berm height, width, and location. The FEIR response to Caltrans was again to reference the applicant-provided photo-simulation and again to defer any specifications or showing of feasibility until after project approval. Response D-2. No information was provided regarding dimensions or landscaping as requested, even though both aspects of the berm will be critical to its effectiveness as a visual screen and to ensure that it does not create secondary visual impacts itself. Obviously the grading and disturbance of natural features to construct an 800-foot berm of sufficient height to screen the prominent housing proposed in this area (see DEIR Figure 3.1-4) could have other significant secondary impacts, e.g., to biological or cultural resources, but there is no evidence that such a large ground disturbance was even considered in the biological resources or cultural resources section. Certainly the extent of ground disturbance could not have been foreseen without information about the width and height of the 800-foot berm.

Indeed, screening via a berm may simply not be feasible without secondary impacts. The FEIR implicitly acknowledges the potential that a berm is not feasible by requiring a demonstration of feasibility before the final map. FEIR, Response D-2. The showing of feasibility belongs in the EIR, particularly in light of the questions that have been raised regarding its feasibility.

Furthermore, the FEIR failed to propose alternative mitigation if the berm cannot be demonstrated to be feasible mitigation, as specifically requested by Caltrans. The absence of information about the proposed berm violates CEQA's requirements for fact-based analysis. The FEIR's comment response violates CEQA's requirement for good-faith, reasoned comment responses providing facts and analysis, not just opinion. Failure to provide relevant performance specifications for the deferred mitigation also violates CEQA (how tall will the berm be? How wide? How much earth will be moved? Where will it be?) And deferral is not permitted at all in the absence of information demonstrating feasibility to the proposed mitigation.

Staff proposed a condition to the Planning Commission calling for the post-approval development of a berm design to retain the natural character; maintaining a gentle slope in the lupine field; completely screening lots 16-28 from SR 68; and successfully revegetating the field with native seedstock based on "success criteria," which are not provided but are to be determined after project approval. John Ford, memo to Planning Commission, Nov. 12, 2014, condition # 139; see also BOS Staff Report, Att. C, condition # 17. Because there is no evidence that a berm meeting all of these conditions is feasible the formulation of this mitigation should not be deferred. A berm design should have been specified in the EIR itself for public review and comment. For example, without visual line of sight analysis there is no evidence that the necessary berm height will retain the natural slope. A gently sloped berm high enough to screen the houses may require a very wide berm and thus massive amounts of fill that would not preserve the existing "natural overall character." There is no requirement that alternative mitigation be provided (e.g., not constructing the homes) if successful revegetation based on the to-be-determined "success criteria" does not occur. And the failure to specify the "success criteria" in the EIR violates CEQA's requirement that mitigation not be deferred without adequate performance specifications.

g. Berm to shield Parcel D development

The DEIR provided a detailed line-of-sight analysis of the proposed winery and development on Parcel D in the preferred project analysis in order to determine whether screening was feasible. DEIR, pp. 3.1-50 to 3.1-51. Mitigation Measure 3.1-6 deferred formulation of a modified site plan under the preferred proposal, but this deferral was predicated on a demonstration that screening would be feasible.

The RDEIR completely reconfigured the proposed development on Parcel D for Alternative 5 but without providing any analysis of the screening necessary for the revised proposal. RDEIR, pp. 4.0-57 to 4.058. Because there was no showing that the revised Parcel D development under Alternative 5 could feasibly be screened by a berm, deferral of the analysis and mitigation of visual impacts of Alternative 5 development on Parcel D was not permissible.

Although staff proposed new conditions after the EIR was finalized to address development on Parcel D, including the berm (John Ford, memo to Planning Commission, Nov. 12, 2014, conditions # 81 and 141; see BOS Staff Report, Att. C, condition # 20), the absence of any actual analysis of the visual impacts in the EIR denied the public and the Planning Commission the opportunity to comment and receive responses on the actual project and mitigation. Again, absent any actual analysis of the feasibility of the berm proposal, the deferral of the formulation of this mitigation was not permissible.

h. Affordable housing

The DEIR claimed that development on Parcel E would be screened from view by an existing masonry wall. This contention was consistent with information in the DEIR that locates that affordable housing development due south of the existing Toro Park Estates development on the south side of SR 68 and its soundwall. DEIR, p. 3.1-46, Figures 2-5D, 2-3B.

However, under Alternative 5, that Parcel E development is no longer screened by the existing wall, especially from east-bound SR 68 traffic, since it is now located at the extreme northwest edge of the Parcel E. RDEIR, Figure 4-3A and Attachment 4 (Parcel E development options), not due south of the existing walled development as proposed in the DEIR. The wall was intended to screen the existing development from SR 68, and it will not screen the northwest corner of Parcel E. This is evident in the photographs of the break in the soundwall, submitted with these comments. As Caltrans objected, the RDEIR should have provided new analysis and simulation for Alternative 5.

Furthermore, it is apparent that the affordable housing proposed on Parcel E under Alternative 5 will be clearly visible from the Buckeye Day Use area in Toro Park. This is evident in photographs of the affordable housing location taken from the Buckeye site, which are submitted with these comments. However, the DEIR claimed that project development would not be visible from the day use areas. DEIR, p. 3.1-43.

Again, the lack of any substantive fact-based analysis of the visual impacts of the alternatives violates CEQA's requirement for fact-based analysis, and it has denied the public the opportunity to comment and receive responses on visual impacts.

i. Non-structural development

The EIR provides no simulation of project features other than buildings, even though it acknowledges that roads on steep slopes may cause significant visual impacts. Providing this information belatedly in a staff report does not suffice. Planning Commission staff Report, Oct. 29, 2014, Exhibit B pp. 3-6. This information bellows in the EIR.

j. Traffic improvements

The EIR contains no discussion of the visual effects of the new intersection proposed as part of Alternative 5 or the proposed widening of SR 68. The RDEIR simply argued that the proposed new intersection in Alternative 5 would have a smaller visual impact than the alternative access for the preferred project, which would have placed an access road within Toro Park. RDEIR, p. 4.0-58; see also Response RD 1-2. Stating that impacts could be worse if the project were hypothetically designed differently does not supply the required analysis of impacts to baseline conditions.

No actual analysis was provided of the visual impacts of the new intersection or of the proposed widening of SR68 along the project frontage, even though this is part of the proposed Alternative 5. Caltrans concluded that the new signalized intersection would increase visual impacts and requested further analysis (Comment RD-1-2), but the FEIR argued that the requested analysis “was more appropriate for a NEPA document (or a Caltrans CEQA clearance document).” Response RD 1-2. In short, the EIR simply deferred any analysis of these features until some future environmental review. This is impermissible piecemealing of analysis and mitigation and, again, a failure to provide fact-based analysis.

2. The EIR and the Planning Commission recommendation impermissibly defer relocation of lots in the critical viewshed and lots that would result in ridgeline development, and the EIR fails to demonstrate that it is feasible.

CEQA requires a stable project description that is sufficient to evaluate impacts. CEQA also requires that mitigation not be deferred unless it is demonstrably feasible. The EIR violates these requirements.

MM 3.1-1a called for reconfiguring the lot layouts to avoid the critical viewshed. LandWatch objected in DEIR comments that the site map should be revised in the EIR because the Toro Area Plan unambiguously bars building sites in the critical viewshed. Comment 36-4, 36-7. The FEIR declined to provide the post-mitigation reconfiguration of the site map, arguing that 1) it would be sufficient that the applicant demonstrate that it could meet the criteria of MM 3.1-1a after project approval, and 2) building sites within the critical viewshed are permissible as long as they are not visible from scenic roadways.⁷ Responses 36-4, 36-7. As recommended by the Planning Commission, conditions called for post-approval relocation of lots in the critical viewshed and post-approval relocation of lots that would result in ridgeline development. Other conditions called (and still call) for relocating lots to avoid other resource impacts.

Deferral of this aspect of project design is impermissible because the EIR must provide an adequate and complete project description and because the EIR provides no evidence

⁷ As discussed, Toro Area Plan Policy 40.2.5 simply prohibits locating building sites within the critical viewshed, regardless of visibility. It appears that the Planning Commission recommendation is, at last, predicated on this understanding.

that it is feasible to build the project within the constraints set by MM3.1-1a and Planning Commission conditions and all other mitigation measures calling for avoidance of impacts to other resources, including biological and cultural resources. Simply specifying that relocated lots should not be placed in areas which have sensitive biological resources (John Ford, Errata Memorandum to Planning Commission, November 12, 2014, revision to condition # 78) was not sufficient because 1) there is no evidence that it is feasible, and 2) it is an evasion of the CEQA requirement that the public be permitted to understand and comment on a finite, stable project description.

As discussed above, the currently proposed VTM and conditions of approval are still not adequate because they are untimely, because they may create additional impacts or violate slope development policies, and because they were not disclosed and evaluated as part of the CEQA process in connection with Alternative 5.

3. Mitigation in the form of zoning overlays is not enforceable; or, if it is made enforceable, the EIR failed to include the whole of the project because the EIR repeatedly states that zoning is not part of the project.

The DEIR repeatedly claims that overlay zoning, including VS, S, D, and B-6 overlays, will serve to mitigate aesthetic impacts. See e.g., DEIR, pp. 3.1-43 (impact 3.1-2), 3.1-46 (impact 3.1-4), 3.1-48 (impact 3.1-5), 3.1-53 (impact 3.1-6). Regardless whether the enactment of overlay zoning is identified as an independent action unrelated to the project approvals, as part of the project description, or as an enforceable mitigation measure, it is clear that the analysis depends on this overlay zoning to conclude that visual impacts are less than significant.

However, the DEIR reports that the project site is not zoned and that zoning is not proposed as part of the project approval but only as part of the anticipated County action to implement of the 2010 General Plan, which is not identified as part of the project under review. DEIR, pp. 2-3 to 2-4, 2-38. Nothing in the 2010 General Plan mandates VS, V, or D overlays for the site; the site is simply designated low density residential. 2010 General Plan, Figure LU10. More fundamentally, the applicant has indicated that, by virtue of its 2005 application, the project will not be subject to subsequent enactments, including the 2010 General Plan. The 2010 General Plan itself provides that subdivisions for which applications were complete in 2007 are not “subject to this General Plan and the ordinances, policies, and standards that are enacted and in effect as a result of this General Plan.” 2010 General Plan Policy LU 9.3.

In short, the EIR analysis of visual impacts is flawed because it assumes compliance with an unenforceable condition, zoning requirements enacted to implement the 2010 General Plan .

We note that subsequent to the Final EIR a new condition was proposed that purports to impose design criteria on the project through a “discretionary permit based upon Visually Sensitive criteria,” which are then enumerated. John Ford, memorandum to Planning

Commission, Nov. 12, 2014, condition # 140; see also BOS Staff Report, Att. C, conditions ## 19, 78. This mitigation is not equivalent to bringing the project within the requirements of the VS, S, and D overlays. For example, as noted, it will be too late to impose the VS overlay requirement that flagging and staking occur as part of the subdivision approval process. Neither the EIR nor the post-FEIR staff reports establish the equivalence of the proposed design criteria condition to the requirements of the zoning overlays identified by the DEIR as necessary mitigation. The staff report claim that “either” the zoning overlays or the design criteria process will protect visual resources is both unfounded and equivocal as to what mitigation is actually to be enforced. BOS Staff Report, Att. A, p. 5.

Finally, if the County does intend to impose a particular zoning of the site as a part of the project approval, the EIR should have disclosed that this action is part of the project approval. LandWatch specifically requested clarification of whether a zoning amendment would be part of the project under review. Comment 36-1. In response, the FEIR stated that the Planning Department intends to process a VS overlay as a subsequent action to the project but that “Board of Supervisors intent is not implied.” Response 36-1. Thus, the public was advised that zoning reclassification was not part of the project or its mitigation. If zoning is part of the project, then the project has been impermissibly piecemealed and the public has been misled and denied the right to comment on a critical aspect of the project actually under review, including the relation of those zoning overlays, a correctly mapped designation of areas of visual sensitivity and critical viewshed, and the identification of common public viewing areas.

4. The analysis and mitigation of aesthetic impacts to Fort Ord and Toro Regional Parks is fundamentally flawed.

Numerous comments objected that the project will significantly impact views from the Fort Ord National Monument and Toro Regional Park. See, e.g., Comments 4-2, 24-2, 27-1, 32-5, RD 13-2, RD 30-1. However, the DEIR concluded that view impacts to Fort Ord National Monument and Toro Regional Park would be less than significant. The DEIR admitted that dozens of new houses will be visible from Fort Ord National Monument. DEIR, p. 3.1-22; see DEIR Figure 3.1-10 and 3.1-11 (simulations).

The DEIR explains that “viewer sensitivity” is a critical factor in assessing impacts, that viewer sensitivity is generally high from “recreation trails and areas,” and that “viewer sensitivity from these public viewing locations [the Fort Ord land] is considered high.” DEIR, p. 3.1-43. Despite this, the DEIR concludes that the visual impact is less than significant because 1) the trails are not considered “common public viewing areas” pursuant to Monterey County Code Title 21, and 2) the lots will be subject to zoning overlays including D, S, and VS overlays.⁸ DEIR, p. 3.1-43.

⁸ Inexplicably, the DEIR states that lots 1-65 are subject to Chapters 21.44 and 21.45 (S and D overlay districts), but that lots 66-144 “may not be specifically designated within a D (Design Control), S (Site Plan Review), or VS (Visually Sensitive) zoning

Both of these statements are incorrect. First, information in the DEIR establishes that the area affected by the project's view impacts is in fact a common public viewing area. The zoning ordinance is clear that parks are common public viewing areas: "Common public viewing area' means a public area such as a public street, road, designated vista point, or public park from which the general public ordinarily views the surrounding viewshed." MCC 21.06.195, emphasis added. The DEIR admits that the general public ordinarily views the viewshed from the trails affected by the project: it admits that Fort Ord National Monument has 75,000 visitors annually, that most visitors are using the trails, that the most popular hiking and riding areas are those near Toro Estates and Portola Road adjacent to SR 68, and that 70 percent of the visitors visit the eastern/southeastern portion of the property. DEIR, p. 3.1-7.

In fact, the Bureau of Land Management analysis of the use of the Fort Ord National Monument, based on trailhead monitoring during 2013, concludes that the park actually receives 325,000 visitors annually. Eric A. Morgan, Fort Ord National Monument Manager, e-mail and attachments, November 14, 2014. This estimate is low because it includes only monitored trailheads.

While the DEIR claims that there are "physical challenges" in reaching "the higher BLM [Fort Ord] trails," the viewpoints used by the DEIR to assess impacts to Fort Ord (Viewpoints 8 and 9) are not in fact located on the higher trails; the viewpoints are directly behind the existing Toro Estates Development, which the DEIR identifies as the "most popular" hiking and riding area. DEIR, Figure 3.1-2 and p. 3.1-7. Furthermore, numerous comments testify to the extensive public use of the BLM trails and the visual importance of the Ferrini lands to park users. See e.g., Comments RD 13-2, RD 30-1, 27-1. As comments from LandWatch documented, the BLM has recently invested in parking facilities on SR 68 in order to accommodate increasing demand for use of the hiking trails above Toro Park Estates.

In sum, the County Code clearly includes parks in common public viewing areas, the DEIR and other public information establishes that thousands of hikers and riders use the trails that are directly affected by the project's view impacts, and that the impacts occur directly behind the Toro Estates Development at relatively lower elevations for which the DEIR documents view impacts.

district." DEIR 3.1-43. Nothing in the EIR explains this conclusion, which is inconsistent with the statement that the site is not zoned at all. DEIR 2-3. The DEIR states that "the County intends to apply these overlays to the entire project site." DEIR 3.1-43. However, as discussed above, this is not proposed as part of the project description or as an enforceable mitigation condition, and the FEIR states that there is in fact no such intent as part of the project under review. Response 36-1.

Second, if the Fort Ord areas affected by the project are not common public viewing areas, then they will not be protected by the VS and D overlay zoning (even assuming that these zoning overlays are in fact enforceable against the project). The stated purpose of the VS overlay is to protect common public viewing areas, and its standards are based on visual impacts to common public viewing areas. Monterey County Code §§21.46.010, 21.46.060. Similarly, the visual protections in the D overlay are afforded only to common public viewing areas. MCC §21.44.040. Ridgeline development standards apply only to common public viewing areas.⁹ MCC § 21.66.010. Indeed, the proposed design guidelines are phrased to apply to common public viewing areas. BOS Staff Report, Att. C, condition # 19. It is disingenuous for the EIR to claim that Fort Ord trails are not common public viewing areas and then claim that ordinances that protect common public viewing areas would protect Fort Ord views.

The visual analysis and mitigation in the EIR is focused on views from the roadways immediately adjacent to the site. These roadways are lower in elevation than the affected parks and generally lower in elevation than the site itself. There is simply no evidence that mitigation that might screen development from roadways will screen development from viewpoints that are at higher elevations.

The EIR's analysis of impacts to Toro Regional Park suffers from the same defects as its analysis of Fort Ord impacts. The DEIR admits that many building sites will be visible from Toro Park trails, but again concludes that the "physical challenges" of reaching higher trails means that they are not common public viewing areas. DEIR, p. 3.1-43. However, again, the viewpoint used for the analysis shows impacts – a clutter of housing on a previously pristine vista. DEIR, Figure 3.1-9. Either the viewpoints used for Toro Park and the Fort Ord National Monument visual impacts are relevant to the analysis – in which case they clearly show significant impacts – or the DEIR simply failed to provide relevant analysis in the form of a relevant viewpoint.

The DEIR relies on a strained and irrational interpretation of "common public viewing area" discount the importance of views to hikers, who come to Toro Park and Fort Ord specifically to enjoy the views, and to assume that the only relevant impacts are to motorists. This defies common sense. These two park facilities serve a very large constituency compared to other County parks.¹⁰ Hikers clearly visit these parks to enjoy unspoiled views from elevations that the EIR claims are not be protected by County zoning ordinances. If the high number of hikers purposefully seeking view amenities at these parks does not warrant the conclusion that the hiking trails in these parks are common public viewing areas, then it is unclear what parks could be protected under the ordinance.

⁹ The S overlay does not address view impacts or provide any view standards. MCC Title 21.45.

¹⁰ The DEIR reports 75,000 annual visitors to Fort Ord, and, as noted BLM reports at least 325,000 visitors to Fort Ord. The Monterey County Parks Department reports fiscal 2013-2014 day use at Toro Park as 147,238 visitors. By comparison, Jacks Peak had only 17,648 visitors and Laguna Seca had only 3,346 visitors exclusive of special event (racing) visitors. Personal contact, Monterey County Parks Department ("Chris"), October 14, 2014.

And even if the zoning ordinance does not recognize the potential for impacts to scenic views for the park users, CEQA does not countenance the uncritical application of a regulatory standard as a threshold of significance so as to preclude recognition of significant impacts. There is ample evidence that the project will in fact cause substantial adverse visual impacts to tens or hundreds of thousands of hikers using these parks.

The FEIR failed to provide reasoned, good faith response to comments objecting to impacts to Fort Ord and Toro Park views. For example, in response to comments challenging the strained interpretation of “common public viewing area,” pointing to the visual simulations as evidence of significant impacts, and objecting that mitigation for scenic roadway impacts would not address impacts at higher elevations, the FEIR repeatedly cited Master Response 1. See, e.g., FEIR Responses 4-2, 27-1, 24-2. In fact, Master Response 1 does not discuss view impacts to Fort Ord and Toro Park. FEIR, pp. 4.0-3 to 4.0-4. Nowhere does the FEIR justify its strained and limited interpretation of “common public viewing area,” or explain how visual simulations of viewpoints within Fort Ord and Toro Park were not evidence of significant impacts.

The FEIR also failed to respond to facially feasible mitigation proposed by comments, which violates CEQA. For example, comments proposed requiring dense native oak tree screening for all buildings in open areas, barring non-native landscaping, and minimizing visible cuts, fills, and side-casting of soils. Comment 4-2. The FEIR failed to respond to this proposal. FEIR, Response 4-2; see also comment RD 13-2 and response.

5. Cumulative visual impact analysis is inadequate.

The EIR’s analysis of cumulative view impacts fails to take into account the cumulative context of existing and proposed development in combination with the substantial increases to visual impacts from the project, including its internal roads, buildings, the new intersection, and the widening of the roadway.

The DEIR contains no identification of the geographic scope of the cumulative visual analysis, which should have included proposed and existing development visible from the Fort Ord National Monument, Toro Regional Park, and the SR68 Scenic Highway corridor. The belated statement in the FEIR that the cumulative impacts were analyzed based on future projects located within the SR 68 corridor in the project vicinity (FEIR, p. 5.0-1) does not acknowledge the requirement to include past and present projects in the determination whether there is a significant cumulative visual impact, not just foreseeable future projects.

In fact, there was no determination whether views in the project vicinity have suffered or will suffer a cumulatively significant impact from existing and foreseeable future development. CEQA requires such a determination as a threshold matter before the agency makes a determination whether the project would make a considerable contribution to such a significant impact. While the analysis admitted that the project

would continue to urbanize the SR 68 corridor, the EIR simply failed to make the required determination as to whether there is or is not an existing significant cumulative impact.

For example, the continuous, dense existing Toro Parks Estates development and its soundwalls are clearly substantial contributors to visual impairment that was not acknowledged in the cumulative analysis. The Toro Park Estates and its soundwalls are the kind of development that are inconsistent with the Scenic Highways program and that substantially impair views from Fort Ord and Toro Regional Park, yet this was not even mentioned in the cumulative analysis. See Streets and Highway Code § 260 et seq.; Caltrans, Scenic Highway Guidelines, Oct. 2008, available at http://www.dot.ca.gov/hq/LandArch/scenic/guidelines/scenic_hwy_guidelines_04-12-2012.pdf.

The EIR assumes without evidence that mitigation of project specific visual impact would be sufficient to ensure that there would be no considerable contribution to a significant cumulative impact. However CEQA expressly recognizes that individually minor impacts may be a considerable contribution. Cumulative analysis requires that an EIR assess a project's contribution in the cumulative context according to the principle that the worse the existing conditions, the less impact it takes to make a considerable contribution. The EIR simply fails to do this.

D. Biological resources analysis and mitigation is inadequate.

1. Mitigation for Pacific Grove clover is inadequate.

Comments pointed out that the CDFW regulations do not permit take of the Pacific Grove clover and that the mitigation must therefore consist only of avoidance. In response, the RDEIR and FEIR contend that these regulations might be changed in the future or that an exception might be made. Regulations permitting take of plants protected by the Native Plant Protection Act have not yet been finally adopted. See Fish and Game Commission rulemaking calendar, available at http://www.fgc.ca.gov/regulations/2014/index.aspx#786_9. Furthermore, the FEIR's contention that rare plant take for this project might be permitted as a "change of land use" under the statute is not accurate. See Fish and Game Code §1913. The FEIR does not present any evidence that the change of land use exception would be applicable to this project.

At minimum, there is substantial uncertainty as to the legal feasibility of the proposed mitigation. Given this uncertainty, the EIR should be revised to recognize that take and compensation may be legally infeasible and to provide for another means of mitigation in that event.

Regardless whether the take regulations are changed or there is an exception under §1913, the project would have to meet CDFW conditions for take. CDFW pointed out

that that compensatory mitigation for Pacific Grove clover is unlikely to be feasible as a practical matter because translocation of these plants “will likely not be successful” and “may be detrimental to the existing population” at translocation sites. FEIR, p. 3.0-16. In response, the FEIR asserts that the measures are consistent with other rare plant transplantation mitigation. However, this contention is not supported by any examples of successful transplantation of Pacific Grove clover, and thus it cannot address the likely success of transplanting Pacific Grove clover. The example cited by the FEIR of an approved rare plant transplantation mitigation measure did not include Pacific Grove Clover or Congdon’s tarplant. Willits Bypass EIS/EIR, available at <http://www.dot.ca.gov/dist1/d1projects/willits/reports/feir.htm>.

In contrast, CDFW provided specific facts supporting its expert opinion that the proposed mitigation is infeasible, including evidence that transplantation success is less than 15% overall, that success with annuals is even lower, and that there are no instances of success with Pacific Grove clover at all. CDFW indicated that a take permit would not be granted for this mitigation given that it is likely infeasible.

An FEIR must respond to proposals for mitigation, but the FEIR simply fails to respond to CDFW’s request for a backup remediation plan should the proposed mitigation prove infeasible as CDFW predicts. One obvious remediation strategy would be to bar any disturbance of Pacific Grove clover unless and until success of the proposed mitigation has been determined.

Finally, the mitigation is improperly deferred since the feasibility is uncertain, the relocation effort remains contingent, the existence and location of suitable replacement habitat has not been identified, and the open space management plan has not been formulated. CEQA does not permit deferral of mitigation that is not demonstrably feasible. Thus, it is impermissible to defer the formulation of Pacific Grove clover mitigation given the evidence of infeasibility and the lack of evidence of feasibility.

2. Mitigation for Congdon’s tar plant is inadequate.

CDFW also objected that there are no data to support the likely success of Congdon’s tarplant relocation and that it too “will likely not be successful.” Again, the FEIR did not adduce any evidence relevant to the potential success of tarplant transplantation. And again, the FEIR failed to respond to the request for a remediation plan if transplantation is not successful. Finally, deferral of this mitigation is improper in light of the lack of evidence that it is feasible as a practical matter.

3. California Tiger Salamander mitigation is inadequate.

Again, the FEIR ignores CDFW’s request for a remediation plan for California Tiger Salamander (“CTS”) mitigation should the proposed mitigation prove infeasible. As CDFW points out, the mitigation may in fact be infeasible due to the lack of any off-site mitigation opportunities. Thus, CDFW objects to the failure to identify the location of

off-site mitigation and to provide the Open Space Management Plan. The FEIR fails to address the lack of off-site mitigation and does not provide any enforceable description or conditions on the Open Space Management Plan. The procedural conditions in MM 3.3-8c regarding submission of the plan and an easement and endowment do not provide adequate and enforceable substantive conditions relevant to mitigation efficacy because, for instance, MM 3.3-8c does not identify the actual area to be managed, identify the management objectives and remediation measures if those objectives are not met, or limit harmful activities. The FEIR simply declined to provide information about the Open Space Management Plan in response to specific requests from LandWatch. See comment and response RD 14-11.

Despite CDFW's indication that the analysis of impacts and proposed mitigation are not adequate, and the fact that the project will require a permit from CDFW, the FEIR fails to revise the analysis and proposed mitigation to make it acceptable to CDFW. Without evidence that the necessary permit would be issued and given the evidence provided by CDFW that it will not be issued, the proposed mitigation is not demonstrably feasible. Again, deferral is impermissible for such mitigation.

4. Special status mammal mitigation is inadequate.

CDFW and LandWatch objected that loss of habitat for these species by replacement of riparian and grassland habitat with development was not mitigated. The FEIR's response is essentially to point out that some habitat remains, i.e., the open space that may be preserved as part of the CTS mitigation. In fact, however, there will be an unmitigated net loss of badger habitat because no mitigation addresses the lost grasslands. Furthermore, if riparian habitat mitigation occurs offsite, as is permitted by MM 3.3-4a, there is no guarantee that the replacement riparian habitat will support dusky footed woodrat populations.

5. Unexplained post-FEIR revisions to mitigation and intensification of uses fail to protect wildlife corridor.

The RDEIR proposed MM 3.3-8a to protect a critical movement corridor. RDEIR, p. 3.3-67. As proposed in the RDEIR, MM 3.3-8a called for relocation of development away from the riparian corridor to allow sufficient wildlife movement and to preserve other biological resources and habitat. The measure specifically provided that "[n]o new development or improvements, including fencing, shall occur within 200 feet of the riparian edge or Hwy 68 undercrossing." RDEIR, p. 3.3-67. This measure was not changed by the FEIR. BOS Staff Report, Att. B, CEQA finding # 9. However, it was unaccountably revised after the FEIR in the proposed conditions of approval to eliminate the ban on new development, improvements, and fencing within 200 feet of the riparian corridor and the Hwy 68 undercrossing. BOS Staff Report, Att. C, condition # 95. The Post-EIR elimination of this protection was not even identified in the CEQA findings, even though those findings purport to identify and explain revisions to mitigation

measures in the FEIR and in the final MMRP. BOS Staff Report, Att. B, CEQA finding # 9.

Although the RDEIR did not propose to require elimination of the existing farmhouse, which is 150 feet from the Hwy 68 undercrossing under Alternative 5, the RDEIR's MM 3.3-8a would have barred any new development, improvements, or fencing for that lot. Staff later did recommend elimination of the farmhouse lot to protect the movement corridor. Planning Commission Staff Report, Oct. 8, 2014, pp 15-16.

The last-minute revision to MM 3.3-8a is apparently intended to permit use of the farmhouse lot for new development, including fencing or other improvements, closer to the critical movement corridor. This change is inconsistent with the RDEIR and with staff's recommendations.

Furthermore, the last-minute revisions to the site plan made after the Planning Commission hearings intensify the uses proximate to the riparian corridor by adding two new lots next to San Bernancio Road. Compare BOS Staff Report, Att. C, VTM to DEIR Figure 3.3-2, Riparian Area. Because the County has not provided an overlay of the resource areas and the proposed lots (either for Alternative 5 or for the changes made to that alternative since the RDEIR was released), it is impossible for the public to tell how close the new lots are to the riparian area, e.g., whether they are within the 200 feet limit proposed by the RDEIR. Even if the new lots are more than 200 feet from the riparian area, the intensification of uses in this area is inconsistent with the stated rationale for Alternative 5, which was to limit development in the area of the riparian corridor and the Hwy 68 undercrossing. See, e.g., Planning Commission Staff Report, Oct. 8, 2014.

The last-minute revisions also increase the number of lots directly east of San Bernancio School. This area is proximate to both the riparian corridor and the wildlife movement corridor.

The last-minute revisions to the site plan without environmental review or opportunity for public comment and response violate CEQA. The County must revise and recirculate the EIR to address these changes. The revisions to the site plan and to MM 3.3-8a also preclude making the proposed CEQA finding that significant impacts to wildlife corridors have been mitigated by mitigation that includes MM 3.3-8a. BOS Staff Report, Att. B, finding 3j.

6. Riparian habitat mitigation is inadequate.

Comments objected that the mitigation for lost riparian habitat permitting off-site replacement lacked performance specifications. In response, the FEIR claimed that the "no net loss" provision in MM 3.3-4a is sufficient and should be understood to mean that replacement riparian habitat will be equivalent in "function and value." Response RD 14-16. While such an interpretation may apply to the mitigation for lost wetlands based on federal and state policies and agency involvement, the EIR provides no evidence that

comparable policies apply to compensatory riparian mitigation or that any agency other than the County of Monterey would necessarily be involved in approving off-site riparian mitigation. Unlike MM 3.3-4b for loss of wetlands, MM 3.3-4a for loss of riparian areas does not require assessment and replacement of biological function and value and does not include performance standards that are based on meeting functional objectives. In short, there is no commitment to replace any lost riparian habitat with habitat of equal function and value.

Furthermore, MM 3.3-4a as proposed in the RDEIR would have barred new development including fencing

7. The EIR failed to describe or to address biological impacts from permitted and mandated fuel modification.

CDFW and LandWatch objected that the RDEIR failed to account for fuel modification activity in assessing biological resource impacts. RD 2-3, RD 14-10, 36-35. It is clear that fuel modification has the potential to cause additional significant impacts to biological resources. For example, fuel modification may result in impacts to rare plants because the Native Plant Protection Act specifically permits take of rare plants for “clearing of land for agricultural practices or fire control measures.” Fish and Game Code §1913(a). This potential impact has not been considered or analyzed in the EIR.

The FEIR contends that fuel modification will consist only of thinning a 30-foot defensible space around structures and cattle grazing in the open space areas. However nothing in the proposed mitigation or project description provides any enforceable commitment to limit fuel modification activities to these areas and methods.

LandWatch comments identified regulations that both authorize and permit fuel modification activity that goes well beyond the thinning of vegetation in a 30-foot defensible space, including “extraordinary” and other fuel modification standards in the Monterey County Code chapter 18-56, the requirements of Public Resource Code section 4291 and its implementing regulations, 1982 General Plan Policy 17.4.12, and the provisions of the Monterey County Community Wildfire Protection Plan (“MCCWPP”). These regulations and the MCCWPP permit, and in some instances may require, large scale fuel modification efforts that go beyond thinning a 30-foot defensible space and cattle grazing. Landwatch specifically requested information on how these requirements and authorizations would be implemented on the site and specifically requested clarification of the County Code standards for fuel modification. The description of the existing regulatory environment and applicable plans is an essential part of the description of the environmental setting.

Despite the obligation to describe the setting and despite LandWatch’s request, the FEIR did not clarify the County Code fuel modification standards as they may be applied to the project. The FEIR did not address the provisions of the MCCWPP that call for fuel modification around roads and infrastructure, not just residential units. The FEIR did not

explain whether and how residents would be barred from creation and maintenance of defensible space areas larger than 30 feet from individual residences or from creation of large scale “community-wide” fuel breaks to protect areas of development, even though these measures are authorized, and in some instances required, by regulations and the MCCWPP. In the absence of this information and the absence of any enforceable limitations on future fuel modification activity for this residential project in a high-risk fire zone, it is unreasonable to ask the public simply to accept an unenforceable assurance that only limited fuel modification activity (e.g., only the continuation of grazing) may occur.

There are alternatives to fuel modification to protect residential structures, e.g., going beyond building code requirements to harden structures to resist fire. The EIR fails to consider these alternatives, which could limit demand for future fuel modification. If developers are allowed to create fire-vulnerable housing in this high-risk area, there will be pressure for more extensive fuel modification than the FEIR suggests. The EIR should be revised and recirculated to provide an accurate description of applicable plans and regulations, to describe foreseeable future fuel modification, to assess visual and biological impacts that may come from fuel modification, to respond to the specific issues raised in comments, and to provide an enforceable commitment that fuel modification will be as limited as the FEIR suggests, or to discuss the impacts of wider scale fuel modification and to propose necessary mitigation.

8. The EIR fails to provide criterion for determining the infeasibility of avoidance measures.

CDFW and LandWatch both requested an explanation of how the County will determine whether particular mitigation efforts, e.g., avoidance of resource impacts, would be determined to be infeasible. See comments RD 2-4 (public cannot assess what mitigation will actually occur because there is no criterion for feasibility; uncertainty may affect issuance of ITP and SAA), RD 2-6 (infeasibility of avoidance of rare plants), RD 2-19 (infeasibility of avoidance of special status mammals), RD 2-21 (infeasibility of wetland avoidance), RD 14-16 (infeasibility of riparian avoidance), 14-14 (infeasibility of on-site CTS mitigation). The FEIR failed to respond to this inquiry.

It is not a sufficient response to assert that off-site compensation may be feasible because that does not address the gist of the comment, which was to request criterion for determining infeasibility of on-site avoidance measures. Without a clear standard for what constitutes infeasibility of on-site avoidance (e.g., demonstrated economic infeasibility of site plan revision), there can be no assurance that mere minor inconvenience will not be used as the basis to determine that avoidance is infeasible.

Limiting the use of off-site compensation by providing clear criteria for determining infeasibility of avoidance measures is important for two reasons. First, as a general matter, avoidance is preferable because it ensures continuing dispersal of the biological resource and continuity of a local gene pool and because it is usually more likely to be

successful. Second, in some instances off-site compensation may not in fact be legally or practically feasible, e.g., for Pacific Grove clover (no evidence that it will be permissible or practical) and for CTS (no local off-site mitigation opportunities).

9. Cumulative biological impact analysis is inadequate.

CDFW objected that the EIR lacks any analysis of cumulative impacts to listed species from habitat fragmentation from existing and proposed future development in the project vicinity. RD 2-25. Big Sur Land Trust (“BSLT”) objected to the lack of a meaningful cumulative analysis of wildlife corridors. RD-12. LandWatch objected that the EIR failed to define a relevant geographic scope of review for cumulative biological resource impacts; that it failed to separately evaluate cumulative impacts; and that it assumed without evidence that less than significant project-specific impacts would necessarily constitute a less than considerable contribution to significant cumulative impacts. RD 14-22.

Scope of analysis: In response, the FEIR referenced the scope of cumulative review, a list of future regional projects generating traffic that was selected for the analysis of cumulative traffic impacts, and which is simply not relevant to biological impacts. Response RD 14-22, referencing response 39-1. There is no reason to suppose that widely dispersed future projects that create traffic impacts are relevant to cumulative biological impacts in the project vicinity, which are determined by existing and future development in the project vicinity. The FEIR contends that the scope of cumulative analysis included existing development in the project vicinity (Response RD 14-22), but the DEIR’s cumulative impact analysis actually referenced only the project and future development, i.e., “reasonably foreseeable development in the vicinity of the project site.” DEIR, p. 3.3-58. There is no evidence that the DEIR’s four-sentence cumulative analysis considered the effects of existing development. At any rate, the EIR entirely failed to define or justify any limitations on the cumulative scope of analysis relevant to biological impacts as CEQA requires.

Determination whether there is a significant cumulative impact: The FEIR repeated the RDEIR’s contention that mitigation of project-specific impacts would necessarily ensure that there would be no “significant or cumulatively considerable effect” on biological resources. Response 14-22. This response betrays a fundamental misunderstanding of the purpose and requirements of cumulative analysis and mitigation. Cumulative analysis requires two separate determinations. The determination whether there is a significant cumulative impact from the combined effects of the project together with relevant past, present and foreseeable future projects is a distinct threshold inquiry that an EIR must make first, before it makes the second and separate determination whether a project makes a considerable contribution to any such cumulative impact. Here, the EIR simply did not address this critical threshold determination, and the public is not informed whether there is a significant cumulative impact to any of the biological resources at issue.

CDFW specifically requested an analysis of the effects on listed species of the cumulative habitat fragmentation due to past and future development in the vicinity of the project. This request was clearly based on the expectation that this analysis may reveal that this fragmentation has caused or will cause a significant cumulative impact. The FEIR did not respond to this request.

Based on the comments by BSLT, CDFW, and the information provided in the EIR, it appears likely that there are significant cumulative impacts to at least some resources at issue. For example, there appears to be a significant cumulative impact to CTS based on the possibility of local extirpation, loss of genetic diversity, and the lack of other suitable local habitat, but the four sentences the DEIR devoted to cumulative analysis of all biological resources does not address this question. This possibility must be disclosed – even if the EIR then concludes that the project’s impact is less than a considerable contribution or that it can be mitigated to this level.

This initial determination whether there is or will be a significant cumulative impact is not an idle or academic inquiry. Under CEQA, the more severe the existing cumulative impact, the more likely it is that a given increment will be a considerable contribution. It is therefore critical that an EIR accurately disclose the cumulative context so that the project’s incremental effects can be evaluated within this context. The EIR did not provide this cumulative context.

Considerable contribution: If there is a significant cumulative impact, and EIR must then consider whether the project’s effects are a considerable contribution. As LandWatch pointed out, even an individually minor impact may be a considerable contribution depending on the context. Thus, it is simply not the case that mitigation of project-specific impacts to a less than significant level will necessarily ensure that the project’s effects are not a considerable contribution. Yet this is precisely what the EIR assumed and stated without any further analysis.

Again, there is reason to conclude that the project’s effects may be a considerable contribution to some resources in this context, even if they might be less than significant or even be deemed to be less than considerable in other contexts. For example, the FEIR makes much of the claim that proposed CTS mitigation ratios were found to be acceptable in other contexts. However, the EIR has not demonstrated that the ratio is sufficient in this cumulative context, where there is a significant threat of local extirpation and genetic isolation. Similarly, the FEIR does not evaluate the project’s effect on wildlife corridors with due attention to the fact that the project site represents essentially the only viable remaining connection between two otherwise disconnected areas – the Fort Ord lands and the Santa Lucia/Sierra de Salinas ranges. This is a quintessentially cumulative problem. As such, the EIR’s formulaic recitation of survey literature conclusions regarding the minimum width of corridors in other contexts fails to recognize that any interference with the corridor functions may constitute a considerable contribution in this context.

In sum, the EIR fails to disclose and assess the cumulative context or to evaluate the project's effects with reference to this context. The EIR should be revised and recirculated to provide this analysis.

E. The EIR fails to provide an adequate water supply analysis.

The project will increase groundwater demand on the Salinas Valley Groundwater Basin by 95 afy. DEIR, pp. 3-6-353-6-39. The DEIR finds both project-specific and cumulative impacts to groundwater resources to be less than significant based on the contentions that the Salinas Valley Water Project (SVWP) "provides the surface water supply necessary to attain a hydrologically balanced groundwater basin" (DEIR, p. 3.6-39) and that "[s]ince the SVWP went into operation in 2010, the entire basin appears to be becoming more hydrologically balanced, as a noticeable change in depth to groundwater levels has been observed in most subbasins" (DEIR, p. 3.6-42).

1. The EIR fails to provide adequate form of cumulative analysis because it does not make the required determinations.

As a preliminary matter, the EIR fails as an informational document, and the County has failed to proceed as required by CEQA, because the EIR fails to provide a cumulative analysis of impacts to groundwater resources that complies with CEQA's requirements. CEQA requires an agency to make two distinct determinations in a cumulative analysis. First, the agency must determine whether there is a significant cumulative impact from all past, present, and foreseeable future projects including the project under review. Second, if there is a significant cumulative impact, the agency must determine whether the project makes a considerable contribution to it. Here, the EIR conflates these distinct questions by offering a single equivocal conclusion: "the cumulative effect of the project on water demand is considered less than significant." DEIR, p. 3.6-42. It is impossible to determine whether this conclusion represents the first or second determination. Thus, the EIR fails to state clearly whether it even recognizes a significant cumulative impact to the Salinas Valley Groundwater Basin.

2. The DEIR fails to provide facts and analysis to support the contention that SVWP will balance the Salinas Valley Groundwater Basin under cumulative conditions.

The EIR fails to provide substantial evidence to support the contention that the SVWP will provide "the surface water supply necessary to attain a hydrologically balanced groundwater basin." DEIR, p. 3.6-39.

The analysis in the DEIR simply asserts that the SVWP will balance the SVGB. Although it cites the SVWP EIR in the reference section, the DEIR does not provide any discussion or factual basis for this assertion. This bare conclusion does not meet CEQA's requirement for disclosure of facts and analysis. In particular, the DEIR fails to provide

any quantitative information for the SVGB about baseline demand, cumulative future demand, or safe yield or to relate that data to the water supply provided by the SVWP.

The omission of any factual analysis is prejudicial. As discussed below, it is clear that past, present, and foreseeable future projects will cause significant cumulative impacts to the Salinas Valley Groundwater Basin (“SVGB”), including the Pressure subbasin from which the project would be supplied, because cumulative demand will exceed the safe yield of the basin. The safe yield was identified by the SVWP EIR as the 443,000 afy, the pumping level consistent with halting seawater intrusion and stabilizing groundwater levels (at least in the near term). SVWP EIR, Table 1-1; see also 2010 General Plan FEIR, Oct. Supplement, p. 133.

3. The FEIR also fails to provide facts and analysis to support the contention that SVWP will balance the Salinas Valley Groundwater Basin under cumulative conditions or to provide adequate comment responses.

Comments objected to the lack of information and requested data for historical groundwater pumping, baseline demand, future demand, and safe yield. However, the FEIR failed to provide adequate responses, as discussed below.

a. 2010 General Plan discussion

The FEIR disclaims any reliance on the 2010 General Plan, arguing that the Ferrini project is to be reviewed under the 1982 General Plan. We agree that the project is not entitled to rely on the 2010 General Plan Policy PS-3.1 presumption of a long-term sustainable water supply and must instead be evaluated under the 1982 General Plan, e.g., the Policy 26.1.4.3 requirement for proof of assured long term water supply. For the reasons set forth in this letter and other public comments, the County cannot reasonably find that the applicant has provided or can provide proof of an assured long term water supply.

However, the FEIR missed the point of LandWatch’s discussion of the deficiencies of the 2010 General Plan EIR. That document, the demand data and projections that it provides, and the public comments on it make evident that existing and planned future water demand is greatly in excess of the demand and safe yield assumed in the SVWP EIR, yet the Ferrini EIR relies on the SVWP as the assurance of a long term water supply without impacts to overdrafting and seawater intrusion.

The fact that water demand during the period from 1995 to date substantially exceeded the post-1995 demand projected by the SVWP EIR, and the fact that the projected future demand through 2030 also exceeds the SVWP EIR projections, vitiates reliance on the SVWP as a final mechanism to balance the SVGB. Information that has come to light since the adoption of the 2010 General Plan also demonstrates that the SVWP is not sufficient to balance the SVGB. This information, detailed below, includes

- evidence that groundwater pumping continues to exceed the levels projected by the SVWP EIR and shows no sign of the downward trend predicted by the SVWP EIR; and
- the MCWRA acknowledgement, supported by new technical studies, that an additional 135,000 afy of surface water and another 60,000 afy of groundwater are required in order to halt seawater intrusion.

The EIR fails to address this information or to provide facts and analysis to support its uncritical reliance on the SVWP.

b. Failure to provide facts and analysis to support cumulative analysis

The FEIR contends that the project-level EIR for the Ferrini Ranch is not required to “reanalyze the contested environmental analysis for a General Plan.” FEIR, p. 4.0-6. However, a project-level EIR is required to provide sufficient facts and analysis to support its cumulative analysis. As comments objected, the DEIR provides no information about baseline or future cumulative demand and supply for the Salinas Valley Groundwater Basin.

LandWatch’s comments sought precisely the kind of information that is required to demonstrate the sufficiency of groundwater supplies: historic demand, baseline demand, future cumulative demand, and sustained yield. The FEIR failed to provide information and analysis in response to these comments. For example, the brief discussion of the aquifers in the DEIR, cited by the FEIR in response to comments objecting to the lack of baseline information (FEIR, 4.0-7), does not provide any information about baseline or future demand. The FEIR contends that there are several references to “baseline year” in the data sources used to prepare section 3.6 of the DEIR. FEIR, p. 4.0-7. But the term “baseline year” does not occur in section 3.6 of the DEIR itself, much less any actual data about baseline groundwater demand. The DEIR’s information about seawater intrusion simply documents a continuing significant impact, but it does not provide information about baseline or future demand or sustained yield of the basin. LandWatch’s DEIR comments sought specific relevant information to support the DEIR’s contention that cumulative water resource impacts would be less than significant. The FEIR failed to provide adequate responses.

c. Urban Water Management Plan admits that cumulative impacts to groundwater resources are not under control

Even though the DEIR clearly relies only the SVWP as the basis for its contention that the Salinas Valley Groundwater Basin will be in balance, the FEIR contends that the DEIR also relies on the California Water Service Urban Water Management Plan (“UWMP”) as an independent basis for its conclusion that cumulative impacts are less than significant. FEIR, p. 4.0-7. However, the UWMP is focused on the capacity of Cal Water and its existing pumping and delivery infrastructure to meet customer demand in its service area. To the extent that it addresses overdraft and seawater intrusion, it

actually admits that control of overdraft is uncertain and that control of seawater intrusion is incomplete.

The UWMP does not purport to independently assess the sustainability of the water supply. Instead, the UWMP itself uncritically assumes that the Zone 2C supply will be sufficient to ensure that Cal Water has enough water to meet demand due to the Salinas Valley Water Project:

“Groundwater levels in Cal Water wells have declined during extended drought events but have generally recovered in subsequent wet or normal years. One dry year is not a threat to the reliability of groundwater supply in the Salinas District. MCWRA’s more recent groundwater management efforts such as the SVWP have reduced overdraft and increased the reliability of the supply. Because of this Cal Water expects to be able to meet 100 percent of dry year demands through 2040 with groundwater. Therefore, the assumption that the available water supply will equal the actual demand still applies.” California Water Service, 2010 UWMP, p. 58, available at <https://www.calwater.com/conservation/uwmp/sln/>.

Indeed, in testimony to the Planning Commission, Cal Water’s consultant made clear that he had simply assumed that 50% of the current pumping capacity would be a sustainable yield. Planning Commission video, Oct. 29, 2014, hour 3:15.

Notably, the UWMP does not claim that the SVWP has prevented overdraft or seawater intrusion or that it will do so in the future; it claims only that the SVWP has “reduced” overdraft. California Water Service, 2010 UWMP, p. 58. Indeed, the UWMP acknowledges that “[e]fforts to reduce overdraft and adjudicate the basin could leave Cal Water with a limited supply. If this were to happen Cal Water would need to explore other sources of supply.” California Water Service, 2010 UWMP, p. 58.

The UWMP then admits that seawater intrusion remains uncontrolled and that Cal Water cannot count on the SVWP to provide for future demand:

“Two regional water quality conditions may ultimately impact the availability and use of the Salinas water supply; seawater intrusion and nitrate contamination. The intrusion of seawater into the Salinas Valley has been a problem for many years. A solution was identified as early as 1946 when the State of California proposed a three-part remedy:

- Construct several large reservoirs to capture excess storm flow on the upper reaches of the Salinas River and its tributaries.
- Recharge groundwater in the upper valley and Forebay sub-areas of the Salinas Valley with the captured runoff
- Extract portions of the augmented groundwater and transmit it via a conveyance system to the Eastside and Pressure sub-areas of the basin so that the water users in this northern most region of the valley can reduce their use of groundwater.

The first two parts of this solution have been constructed and are in operation. Nacimiento and San Antonio reservoirs were built and are operated by the MCWRA. The water that they capture is released in a controlled manner to recharge the aquifers in the upper and Forebay areas through the natural riverbed. The final part of the solution however, has never been implemented. As a result, the lack of serious groundwater recharge in the north valley means that the groundwater production in the north valley continues to add to the overdraft of the Pressure and Eastside aquifers, which permits the seawater intrusion to continue. Several years ago, the Castroville Irrigation Project was constructed. This project produces high quality irrigation water for agricultural use out of treated wastewater supplied from the regional wastewater plant in Marina. This recycled water offsets some of the local groundwater production and alleviates a portion of the problem. However, this project does not provide a complete solution.

A conceptual design for Phase II of the Salinas Valley Water Project (SVWP) has been made by MCWRA. Under this plan additional winter flood flows would be diverted from the Salinas River. These diversions, up to 10,000 AFY, could be used for direct use by urban customers. However, there is no timeline for construction of Phase II of the SVWP. The SVWP would also require a voter approved bond measure to pay for its construction. Because of this Cal Water can not count on the SVWP to provide future demand in the Salinas District.

The severity of the ongoing seawater intrusion and the major impact it could have on the regional economic base if not resolved has prompted the State of California Water Resources Control Board to begin the research phase of a potential basin adjudication action. At this time it is unknown how this situation will affect the Salinas District.” *Id.* at 60-61, emphasis added.

In short, contrary to the Ferrini EIR and the Board of Supervisors Staff Report, the UWMP admits that the SVWP has not provided a solution to seawater intrusion and overdrafting.¹¹ The FEIR is simply incorrect in contending that the UWMP provides a distinct basis for the conclusion that cumulative impacts to groundwater resources are less than significant. The proposed findings are incorrect for the same reason with respect to a long term water supply. BOS Staff Report, Att. C, findings 12, 21.

The fact that California Water Service has pumping and infrastructure capacity to serve the project does not demonstrate that the use of this capacity will not aggravate impacts to groundwater resources. The California Water Service UWMP and its will-serve letter

¹¹ As discussed below, the “conceptual design” of a second phase of the SVWP referenced in the 2010 UWMP was discussed in the 2001/2002 SVWP EIR but was not environmentally reviewed or approved. More to the point, that conceptual design is no longer under consideration because MCWRA now recognizes that Salinas River diversions of 135,000 afy and groundwater augmentation of 60,000 afy to be delivered by a much larger and different project will be required to address continuing overdraft and seawater intrusion.

demonstrate nothing more than the willingness of the company to continue to provide water from an overdrafted basin and the expectation that its wells are deep enough to keep pumping regardless of the cumulative consequences.

In this regard, LandWatch also objects that the FEIR failed to respond to LandWatch's comment that the 2008 Kleinfelder report in the DEIR stated that wells in the Spreckles area that are expected to supply water to the project may be adversely affected by seawater intrusion after 2015. Comment 36-68. The FEIR simply ignored LandWatch's request for an explanation of the basis of a long term supply under those circumstances. Should the Spreckles wells become unusable, additional infrastructure may be required to serve the project, particularly since the California Water Services system serving the project is not connected to other portions of its system. The EIR failed to discuss potential impacts from this infrastructure development should it be necessary.

4. The SVWP EIR did not project that the SVWP would halt long-term seawater intrusion.

MCWRA prepared and certified an EIR for the SVWP in 2001 and 2002. MCWRA, SVWP EIR, 2002. Based on specific assumptions about future demand and safe yield (discussed below), the SVWP EIR projected that the proposed SVWP "would reverse the annual reduction in groundwater storage to an approximately 2,500 AFY increase in groundwater storage." SVWP FEIR 3-30. Thus, it projected that seawater intrusion could be halted. However, the SVWP EIR qualified this conclusion in two critical respects.

First, the SVWP EIR cautioned that "any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion." SVWP EIR, p. 7-7. So the conclusion was tied to specific assumptions regarding water use. As documented in LandWatch's DEIR comments, future water use is projected to exceed the levels projected in the SVWP EIR. Indeed, MCWRA's Rob Johnson acknowledged to the Planning Commission that the SVWP EIR demand projections were not accurate and that pumping was more than projected. Planning Commission hearing video, Oct. 29, 2014, hour 2:23 to 2:24.

Second, the SVWP EIR acknowledged that the proposed project would only halt seawater intrusion based on 1995 levels of demand:

"While the SVIGSM indicates that seawater intrusion will be halted by the project (in conjunction with the CSIP deliveries) based on current (1995) demands, with a projected increase in water demands (primarily associated with urban development) in the north valley area in the future, seawater intrusion may not be fully halted based on year 2030 projections. For the year 2030, modeling indicates seawater intrusion may be 2,200 AFY with surface water deliveries only to the CSIP area." SVWP EIR, p. 3-23.

The Department of the Interior pointed out that the SVWP EIR admits that "hydrologic modeling shows that the project may not halt seawater intrusion in the long-term future." SVWP FEIR, p. 2-82, comment 2-12. In response, the SVWP FEIR again acknowledged that its modeling only showed that the SVWP would "halt seawater intrusion in the near term" based on 1995 water demand. SVWP FEIR, p. 2-91. However, with anticipated 2030 demand, that modeling showed that "seawater intrusion with implementation of the proposed project may total 2,200 acre-feet per year (AFY) (10,500 AFY of intrusion is anticipated to occur without the project). For this reason, the Draft EIR/EIS reports that the SVWP may not halt seawater intrusion in the long term." SVWP FEIR, p. 2-91. The 2010 General Plan EIR itself acknowledges that the SVWP may only halt seawater intrusion in the short term. 2010 General Plan EIR, p. 4.3-38.

Questioned about this at the October 29 Planning Commission hearing, MCWRA's Rob Johnson acknowledged that the SVWP would only halt seawater intrusion based on 1995 land use. Planning Commission Hearing video, Oct. 29, 2014, hour 2:23-24. As discussed below, Mr. Johnson also acknowledged that groundwater pumping is higher than anticipated by the SVWP EIR and that an additional 58,000 af/y of groundwater, beyond that provided by the current suite of water supply projects, is still needed to halt seawater intrusion. *Id.* at hour 2:13, 2:23, 2:26.

5. As MCWRA admits, groundwater pumping has exceeded the level assumed in the SVWP EIR, and this vitiates its analysis, which was expressly based on the assumption that groundwater pumping would decline over time.

MCWRA reports show that pumping is much higher than predicted by the SVWP EIR. To determine the extent of overdrafting and seawater intrusion, the SVWP EIR relied on modeling provided by the Salinas Valley Integrated Ground and Surface Water Model ("SVGISM"), which in turn was based on assumptions regarding land use, population, and water use. SVWP EIR, pp. 5-1 (identifying baseline and future conditions), 5.3-10 to 5.3-11 (overview of SVGISM), 7-4 to 7-5 (detailing major assumptions used in the SVGISM regarding population and irrigated acreage).

As set out in the table below, the SVWP EIR reported its assumptions and modeling results for two scenarios: 1995 baseline conditions and 2030 future conditions:

SVWP EIR: population and land use assumptions with baseline and projected water use	1995	2030
Population	188,949 persons	355,829 persons
Urban water pumping	45,000 afy	85,000 afy
Farmland	196,357 acres	194,508 acres
Agricultural water pumping	418,000 afy	358,000 afy

Source: SVWP EIR, pp. 1-7 (Table 1-2, "Estimated Existing and Future Water Conditions"); pp. 5-1, 6-3, 7-3, 7-10 (identifying baseline and future conditions).

The SVWP EIR assumed that agricultural water use would decline by 60,000 afy from 1995 to 2030 due to a 5% increase in water conservation, changes in crop uses, and a 1,849 acre decrease in irrigated agricultural acreage. SVWP EIR pp. 1-7, 7-5, 7-10. The SVWP EIR assumed that urban water use would increase by 40,000 afy between 1995 and 2030 based on population growth and an assumed 5% per capita reduction in water demand due to conservation. SVWP EIR, pp. 1-7, 7-5.

In sum, the SVWP EIR assumed that groundwater pumping in Zone 2C would decline from a total of 463,000 afy in the 35 years from 1995 to 443,000 afy in 2030.

In fact, in the first 19 years since 1995 pumping has greatly exceeded the SVWP EIR projection. Reported groundwater pumping in Zones 2, 2A, and 2B has averaged 500,986 afy. Adjusted to include an estimate for non-reporting wells in these zones, the average is 528,699. These data are based on the annual Ground Water Summary Reports published by MCWRA in 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php. The data are summarized in the table below.

Year	Ag	Urban	Total	Percent of wells not reporting	Total divided by percent of wells reporting to adjust for non-reporting wells
1995	462,268	41,884	504,512	2%	514,808
1996	520,804	42,634	563,438	4%	586,915
1997	551,900	46,238	598,139	7%	643,160
1998	399,521	41,527	441,048	7%	474,245
1999	464,008	40,559	504,567	9%	554,469
2000	442,061	42,293	484,354	11%	544,218
2001	403,583	37,693	441,276	18%	538,141
2002	473,246	46,956	520,202	7%	559,357
2003	450,864	50,472	501,336	3%	516,841
2004	471,052	53,062	524,114	3%	540,324
2005	443,567	50,479	494,046	2%	504,129
2006	421,634	49,606	471,240	4%	490,875
2007	475,155	50,440	525,595	3%	541,851
2008	477,124	50,047	527,171	3%	543,475
2009	465,707	45,517	511,224	3%	527,035
2010	416,421	44,022	460,443	3%	474,684
2011	404,110	44,474	448,584	3%	462,458
2012	446,620	42,621	489,241	3%	504,372
2013	462,873	45,332	508,205	3%	523,923
19 year average			500,986 afy		528,699 afy

Source: Ground Water Summary Reports published by MCWRA, 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php.

The reported pumping data does not include any pumping from the portion of Zone 2C that is located outside of Zones 2, 2A, and 2B. 2010 General Plan FEIR, pp. S-13, S-127. The County estimated that this pumping amounted to at least 4,574 afy in 2005. 2010 General Plan FEIR, p. S-136. Adding this to the adjusted average pumping total for Zones 2, 2A, and 2B, average pumping has been 533,273. This is 70,273 afy higher than the SVWP EIR's 1995 baseline and 90,273 afy higher than its projected 2030 demand.

As noted, the SVWP EIR analysis was based on specific assumptions about future water demand, and it cautioned that “any additional water needs within an intruded groundwater basin would exacerbate seawater intrusion.” SVWP EIR, p. 7-7.

In sum, for more than half of the planning period covered by the SVWP EIR’s 1995-2030 projections, groundwater pumping has greatly exceeded its assumed demand levels. The amount by which actual demand exceeds assumed demand is two to three times greater than the amount of water that the SVWP was expected to provide.¹²

MCWRA’s Rob Johnson acknowledged that actual demand has exceeded the SVWP EIR’s projections. Planning Commission Hearing, Oct. 29, 2014, hour 2:23. Mr. Johnson acknowledged that additional water supply projects delivering at least 58,000 afy will be required to halt seawater intrusion. *Id.* at hour 2:13, 2:23, 2:26.

The growth in pumping is associated with increases in agricultural land use. As noted, the SVWP EIR assumed that irrigated agricultural acreage would decrease from 196,357 acres in 1995 to 194,508 acres in 2030. SVWP EIR, p. 7-10. However, agricultural acreage has actually increased since 1995.

- The SVWP Engineers Report reports that there were 212,003 acres of irrigated farmland in Zone 2C as of 2003. SVWP Engineers Report, pp. 3-10, 3-15 (Tables 3-5 and 3-9 providing acreage totals for “Irrigated Agriculture”), available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/salinas_valley_water_project_I.php. This is substantially more irrigated acreage than the 196,357 acres that the SVWP EIR reported for 1995. SVWP EIR, p. 7-10. The SVWP Engineers Report data were based on “parcel information, including land use, acreage, zone and other data” developed by MCWRA. Engineers Report, p. 3-10.
- The 2010 General Plan EIR reported Department of Conservation farmland mapping data showing an increase of 8,209 acres of habitat converted to new farmland from 1996-2006 but only 2,837 acres of existing agricultural land lost to urban use. 2010 General Plan DEIR, pp. 4.9-46 and 4.2-7 (showing farmland gains and losses 1996-2006 based on FMMP data). This represents a net gain of farmland of 5,372 acres.

Furthermore, there is every reason to believe that the increase in irrigated acreage will continue and that the decrease in irrigated agricultural land between 1995 and 2030 projected in the SVWP EIR will not occur. Based on the past data related to conversion of habitat to farmland, the 2010 General Plan DEIR projected that future agricultural acreage would increase from 2008 to 2030, and the General Plan FEIR admitted that the

¹² The SVWP was intended retain up to an additional 30,000 afy of water in dams and then provide about 9,700 afy of that water to the Castroville Seawater Intrusion Project (“CSIP”) to replace groundwater pumping, about 10,000 afy to increase basin recharge, and another 10,000 afy for instream flow augmentation. 2010 General Plan DEIR, pp. 4.3-36 to 4.3-38; 2010 General Plan FEIR 2-68 to 2-71.

large future net increase in farmland would create additional water demand not anticipated by the SVWP EIR: 17,537 afy of water. 2010 General Plan DEIR, p. 4.9-64 (Table 4.9-8); 2010 General Plan FEIR, pp. 2-38, 4-129 (revised table 4.9-8), S-19 to S-20, S-137 to S-138 (revised Table 4.3-9(c), note 7).

6. MCWRA acknowledges that the existing SVWP will not halt seawater intrusion and that additional water supply projects are required.

The MCWRA has acknowledged that the SVWP will not in fact be sufficient to halt seawater intrusion. In testimony to the Planning Commission, MCWRA's Rob Johnson stated that the SVWP is not be the final water project needed to halt seawater intrusion and that it will in fact be necessary to find additional water supplies totaling at least 58,000 afy to achieve this. Planning Commission hearing, Oct. 29, 2014, hour 2:13, 2:23, 2:26. The 58,000 afy figure is based on modeling performed by MCWRA in connection with its efforts to secure surface water rights on the Salinas River in order to mitigate seawater intrusion.

The MCWRA now seeks, under a settlement agreement with the State Water Resources Control Board, to perfect surface water rights to 135,000 afy of Salinas River water in order to construct yet another Salinas Valley water project to attempt to halt seawater intrusion. See MCWRA, Salinas Valley Water Project Phase II, Overview, Background, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php. MCWRA seeks to retain the right to the surface water entitlement by asserting the need for another project to halt seawater intrusion. Modeling undertaken for the MCWRA in 2013, and referenced by Mr. Johnson in his comments to the Planning Commission on October 29, 2014, establishes that an additional 135,000 afy of surface water flows will be needed in order to supply the additional 60,000 afy of groundwater that is now projected to be required to maintain groundwater elevations and a protective gradient to prevent further seawater intrusion. Geoscience, Protective Elevations to Control Seawater Intrusion, Nov. 13, 2013, p. 11, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php (link to "Technical Memorandum.") The MCWRA has not yet conducted environmental review for a new project to supply the needed water. See MCWRA, Salinas Valley Water Project Phase II, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php. There is no assured funding source for it.

Although the MCWRA website refers to the currently proposed new project as "SVWP Phase II," it is not the same project that was identified as a potential second phase of the SVWP in the 2001/2002 SVWP EIR. The second phase of the SVWP envisioned in the 2001/2002 SVWP EIR would have consisted of only an additional 8,600 afy of Salinas river diversion, increased use of recycled water, supplemental pumping in the CSIP area, and a pipeline and delivery to an area adjacent to the CSIP area. SVWP EIR, p. 3-23 to 3-24. The currently proposed project is much larger in scope and would include different

and more extensive infrastructure: it would divert an additional 135,000 afy at two new diversion facilities and would deliver that water through injection wells, percolation ponds, direct supply of raw water, or a treatment system. MCWRA, SVWP Phase II website, Project Description, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php;

Neither the SVWP Phase II project identified at the conceptual level in the 2001/2002 SVWP EIR nor the newly proposed SVWP Phase II has been planned at any level of detail or environmentally reviewed. The SVWP EIR and the 2010 General Plan EIR both acknowledge that impacts related to the initially conceived second phase project have not been evaluated, and the 2010 General Plan EIR treated these impacts as significant and unavoidable because they remain unknown. SVWP FEIR, pp. 2-92, 2-243; 2010 General Plan, p. 4.3-146. The phase two project now being discussed has not had any environmental review, but it would clearly result in significant environmental impacts, as acknowledged in MCWRA's determination that an EIR is required. MCWRA Notice of Preparation of EIR, Salinas Valley Water Project Phase II, June 2014, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.

In sum, contrary to the Ferrini EIR, the water supply provided by the SVWP is now admitted to be insufficient to prevent cumulative groundwater pumping from further aggravating seawater intrusion. Major additional water supply projects with currently unknown environmental impacts will be required to address this significant cumulative impact, which the Ferrini EIR fails to disclose.¹³ An EIR must not only identify an adequate water supply, but it must discuss the environmental effects associated with obtaining that water supply. In light of significant new information demonstrating that the SVWP will not be sufficient to provide a long term water supply without causing significant environmental impacts, and information demonstrating that alternative supplies with unknown environmental impacts will be required, the EIR must be revised and recirculated.

7. The EIR fails to establish that the project's 95 afy is not a considerable contribution to a significant cumulative impact.

Comments to the Planning Commission suggested that the project's 95 afy demand was a small fraction of the water stored in the Salinas Valley aquifer or a small fraction of the

¹³ The proposed findings of consistency with the General Plan policy requiring assured long term water supply cites the currently proposed SVWP Phase II as well as other water supply project not discussed in the EIR. This belated citation does not provide the disclosure and discussion required in the EIR. Indeed, it confirms that the discussion in the EIR was inadequate because it failed to identify these projects, their lack of environmental review, and their uncertainty.

overall pumping from the basin. The import of such comments was apparently to suggest that the project demand just does not matter compared to other sources of demand. However, the relevant question under CEQA is not whether agricultural demand is greater than urban demand or whether there are larger water users. The relevant question is whether the next marginal impact on the resource from the project under review makes a considerable contribution to a significant cumulative impact.

Under CEQA, an individually minor impact may nonetheless be a considerable contribution. CEQA also establishes that the worse the cumulative impact, the less a project's contribution need be to be deemed a considerable contribution. That is, the worse the conditions, the more consequential any further impact would be. Thus, in order to determine whether a project's impact is a considerable contribution, the EIR must accurately assess the cumulative significance of all impacts. Here, the EIR has denied that there is a significant cumulative impact at all, taking refuge in the SVWP panacea. The EIR does not even get to the second step in cumulative analysis, i.e., determining whether the project contribution is considerable.¹⁴ Finally, CEQA rejects the notion that a relatively small or de minimis impact may be deemed less than considerable out of hand. Under the circumstances, the EIR provides no evidence that the project does not make a considerable contribution.

The purpose of identifying a considerable contribution to the significant cumulative groundwater impact is to propose and adopt mitigation for such cumulative contributions. Resolution of the cumulative problem may require additional water projects, regulation of land use, or regulation of groundwater use. It is not reasonable to assume without adequate analysis that a large lot subdivision project requiring 95 afy does not make a considerable contribution to the problem and that mitigation is not required.

While the DEIR does propose some mitigation for water supply impacts, it does not explain why that mitigation is required. DEIR, p. 3.6-40. Because the mitigation proposal does not follow from any analysis that recognizes a significant impact or a considerable contribution to a significant cumulative impact, the EIR fails to establish the required nexus and proportionality to impose this mitigation. The point is not that the proposed mitigation may well be unenforceable, but that the EIR's failure as an informational document cannot be rectified by unexplained imposition of a few mitigation measures.

8. The project is inconsistent with the 1982 General Plan.

1982 General Plan Policy 26.1.4.3 requires proof of an assured long term water supply as follows:

¹⁴ Payment of assessments for the SVWP is not a sufficient basis to deem the project's contribution less than considerable because there is no evidence that the SVWP will in fact prevent the significant cumulative impact.

“A standard tentative subdivision map and/or vesting tentative and/or Preliminary Project Review Subdivision map application for either a standard or minor subdivision shall not be approved until:

(1) The applicant provides evidence of an assured longterm water supply in terms of yield and quality for all lots which are to be created through subdivision. A recommendation on the water supply shall be made to the decision making body by the County’s Health Officer and the General Manager of the Water Resources Agency, or their respective designees.

(2) The applicant provides proof that the water supply to serve the lots meets both the water quality and quantity standards as set forth in Title 22 of the California Code of Regulations, and Chapters 15.04 and 15.08 of the Monterey County Code subject to the review and recommendation by the County’s Health Officer to the decision making body.” 1982 General Plan Policy 26.1.4.3.

The staff report discussion of General Plan consistency cites four factors, none of which is substantial evidence. BOS Staff Report, Att. A, pp. 3-4. First and second, it claims that the project pumping is a small percent of the aquifer storage and annual pumping. CEQA expressly rejects the notion that a cumulative impact can be rejected out of hand as de minimis. Furthermore, it defies logic to claim that there is an assured long term supply from an admittedly overdrafted aquifer just because the project demand is less than other projects’s demands. Third, it cites the Cal Water UWMP. As discussed above, the UWMP admits that there is no solution in sight for overdrafting and seawater intrusion. Fourth, it cites the SVWP, CSIP, and the Nacimiento and San Antonio Reservoirs. As discussed above, the MCWRA has admitted that these past projects are not sufficient to maintain groundwater levels and prevent seawater intrusion.

The proposed findings regarding consistency with General Plan Policy 26.1.4.3 are based on an November 21, 2014 memo from the MCWRA, which is not part of the EIR. BOS Staff Report, Att. C, findings 12 and 21. This undisclosed memo is not a substitute for an adequate EIR. The memo apparently cites water supply projects not mentioned or discussed in the EIR and again contends that the project pumping would be a small impact on the aquifer. The finding admits that the basin is in overdraft and its contention that set of future projects will ensure an adequate water supply is simply an admission that existing water supply projects are inadequate. The finding does not provide evidence that the future projects are feasible, funded, or environmentally reviewed.

In the absence of evidence that there is an assured long term water supply, and in light of the evidence to the contrary, the County cannot reasonably make a finding of consistency with this policy. Any such finding would amount to acceptance of the proposition that the County should permit large-lot rural sprawl subdivisions to mine the aquifers to the detriment of existing water users and with the prospect that seawater intrusion will shortly foul the supply wells. An assured long term supply must be based on identified, environmentally reviewed, and financially feasible water projects. Finding an adequate long term water supply for this project without having an environmentally reviewed, approved, and financed water supply project would set a very bad precedent.

F. The EIR fails to propose all feasible mitigation for greenhouse gas impacts or to respond to mitigation proposals.

As LandWatch commented, the project is required to implement feasible mitigation for the acknowledged significant and unavoidable greenhouse gas impacts. Comment RD 14-9. LandWatch proposed a number of feasible measures, but the FEIR declined to address these proposals in requisite detail or substance. In particular, the FEIR failed to either propose adoption of the measure, demonstrate that it would be adopted by virtue of other project conditions, or demonstrate that it would be infeasible.

By failing to adopt all feasible mitigation for an admittedly significant impact, the County failed to comply with CEQA's substantive mandate to require feasible mitigation to avoid or less significant impacts, to find that other agencies would do so, or to find that proposed mitigation is infeasible.

By failing to address each of the mitigation measures proposed by the public, the County failed to meet CEQA's disclosure and informational requirements.

Set forth below are the mitigation measures proposed by LandWatch in comment RD 14-9 and a discussion of the County's response.

- a. All builder-installed indoor appliances, including dishwashers, showers, and toilets, shall be low water-use. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. MM 3.13-1 provides that "indoor and outdoor water conservation measures shall be incorporated such as the use of low-flow toilets, shower heads, faucets and water efficient irrigation." This does not require that all appliances be low-water use. FEIR cites the California Building Code and Title 24, but does not demonstrate that either source requires that all appliances be low-water use.*
- b. Common area men's restrooms shall be required to feature waterless urinals. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. Table 3.13-12 provides that urinals may use 1/8 gallon per flush and notes that less maintenance is required for such urinals. However, the EIR provides no showing that waterless urinals are infeasible.*
- c. Smart Controller irrigation systems shall be installed in all public and common area landscaping. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure.*

- d. Landscape areas shall be designed on a “hydrozone” basis to group plants according to their water requirements and sun exposure. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure.*
- e. All landscaping shall be irrigated with recycled water. *FEIR claims that this is infeasible, but provides no evidence to support this contention.*
- f. All landscaping plants shall be drought-tolerant California natives. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. None of these sources require that landscaping be drought-tolerant California natives.*
- g. Lawns shall be prohibited. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without addressing how any of these address this proposed mitigation measure. None of these sources bars lawns. We note that many water districts, including MPWMD, create incentives for customers to remove lawns, which are a particularly water-intensive use.*
- h. Cleaning outdoor surfaces with water shall be prohibited. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. None of these sources bars cleaning outdoor surfaces with water.*
- i. Air conditioning units shall be Freon-free. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. Title 24 Subchapter 8 may address this measure.*
- 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. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure.*
- k. Recycling education shall be provided to all homeowners upon purchase and annually thereafter. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. None of these sources mandates recycling education.*

- l. Building energy use shall exceed the applicable Title 24 Energy efficiency standards applicable at the time the building permit is issued by 20%. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. Title 24 Subchapter 8 requires an energy budget. The measure proposed by LandWatch would require that this budget be reduced 20%. None of the cited sources would require this.*

- m. Programmable thermostat timers shall be provided. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. This measure may be required by Title 24 Subchapter 2 or 8.*

- n. Multimetering “dashboards” shall be provided in each dwelling unit to visualize real-time energy use. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. This measure is not required by any of these sources.*

- o. On-site energy generation using solar power units shall be provided on each available roof that does not face north. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. This measure is not required by any of these sources. The FEIR states that it is “expected” that “a large percentage” of new homes will employ solar panels. FEIR Response RD 14-9. This is not responsive to the proposed measure, which would require solar panels.*

- 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. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. This measure is not required by any of these sources.*

- 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. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. This measure is not required by any of these sources.*

- r. All pools and spas shall be heated using solar water heaters unless they use naturally heated water. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. This measure is not required by any of these sources.*
- s. Pumps and motors for pools and spas shall be energy efficient. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. This measure may be required by Title 24 Subchapter 2.*
- t. Pools and spas that are not naturally heated shall have automatic covers to retain heat. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. Title 24 Subchapter 2 mandates covers, but not automatic covers.*
- u. Roofs shall be light colored to minimize cooling requirements. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. Title 24 Subchapters 2 and 8 may address roofing reflectivity 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. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. None of these sources mandates this measure. The EIR itself proposes only tree planting sufficient to mitigate loss of oak woodlands.*
- 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. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. None of these sources mandates this measure.*

- x. Operational vehicles supporting the project shall be electric or other zero emission vehicles. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. None of these sources mandates this measure.*
- y. Delivery vehicle idling shall be limited to 3 minutes. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. None of these sources mandates this measure.*
- z. Secure bicycle parking shall be provided for each residential unit, visible from the primary entrance and protected from vehicle damage. *FEIR cites generally Title 24, California Building Code, MM 3.13-1, and Table 3.13-12 without explaining how any of these address this proposed mitigation measure. MM 3.13-1 requires bicycle parking at the proposed winery, but not secure bicycle parking at residential units. None of these sources mandates secure bicycle parking at residential units.*
- aa. Electric vehicle recharging facilities shall be provided for each residential unit parking space. *MM 3.13-1 as revised in the FEIR mandates provision of sufficient power supply to garages.*

As indicated, the FEIR fails to address each measure and to explain whether and how it is required pursuant to Title 24, California Building Code, MM 3.13-1, or Table 3.13-12. Each of the proposed measures is facially feasible and the EIR provides no evidence to the contrary. It is apparent that the sources cited by the FEIR do not mandate implementation of a number of the proposed measures. By failing to respond to the proposed measures with reasoned analysis based on facts, by failing to require feasible mitigation, and/or by rejecting measures as infeasible without substantial evidence, the County violates CEQA.

G. The analysis and mitigation of traffic impacts is inadequate.

LandWatch's DEIR comments objected that the traffic analysis failed to provide essential information regarding cumulative impacts. Because the FEIR failed to address the substance of these comments or to provide the requested information, LandWatch engaged traffic engineer Dan Smith to review the EIR's traffic analysis and address the omission. His comments on this issue are attached and summarized below.

LandWatch's DEIR comments also questioned the assumption that payment of impact fees would be sufficient mitigation for impacts under background conditions (2015 conditions) and under cumulative conditions (2030 conditions). As set forth below, the

DEIR, the FEIR, and public documents make it clear that there is no evidence that existing impact fee programs will result in actual construction of improvements that would provide timely mitigation of project impacts under either background or cumulative conditions. To the contrary, it is evident that the improvements relied on in the EIR analysis to conclude that traffic impacts would be mitigated are not funded or scheduled for construction. CEQA permits reliance on impact fees only if there is evidence that they will result in actual construction of needed improvements. Accordingly, the EIR's analysis is unsupported.

The Planning Commission recommendation and the currently proposed conditions of approval abandon the impact fee mitigation proposed in the EIR and substitute applicant-sponsored improvements (a new signalized intersection to provide project access and construction of about a mile of increased lane capacity on SR 68). Remarkably, even though the EIR, the EIR consultant, and the County's planning staff acknowledge that the applicant-sponsored improvements will not mitigate the significant impacts identified in the EIR, the proposed findings conclude that the traffic impacts will be less than significant. Mr. Smith has explained that this finding is simply unjustified and inconsistent with the EIR itself.

Mr. Smith also explains that the contention in the RDEIR that the applicant-sponsored improvements will result in neutral travel time impacts to the SR 68 corridor are not supported by the traffic analysis itself, which shows that the project traffic and the new intersection, even with the extra mile of 4-lane capacity, will increase travel time on the SR 68 corridor.

These points are addressed in the comments below and in Mr. Smith's letter.

1. The EIR's cumulative traffic analysis is incomplete.

Mr. Smith explains that the DEIR analysis of cumulative traffic impacts lacks critical information required by CEQA, and that the FEIR failed to provide it in response to LandWatch's comments. Although the DEIR admits that most of the intersections and segments studied will have unacceptable service under cumulative conditions, the DEIR does not identify to which of these intersections and segments the project will make a considerable contribution. Furthermore, because the EIR fails to assess cumulative conditions with and without the project, it does not even identify the actual contribution the project will make to each affected facility. Without this analysis, the EIR fails to provide any basis for determining whether the project contribution is "considerable," which is CEQA's test for determining whether mitigation for cumulative impacts is required, and for determining whether that mitigation is successful.

Mr. Smith explains that the traffic report does not even provide data for cumulative conditions for 12 of the 17 roadway segments in the traffic study area.

It can be inferred based on the identified thresholds of significance that any traffic contribution to an intersection or segment operating at LOS F is a significant impact (or “considerable contribution” in the cumulative analysis). However, for those facilities operating at LOS D and E, the absence of information regarding the project’s contribution renders it impossible to determine significance. Furthermore, CEQA requires that an EIR disclose how severe impacts are, not just whether they will occur.

The DEIR cumulative analysis was clearly inadequate. LandWatch requested the missing information but the FEIR failed to provide it.

2. The EIR relies on payment of impact fees to conclude that cumulative impacts will be mitigated, but mitigation for eight intersections and at least seven SR 68 segments is uncertain because necessary improvements are not included in a committed, funded plan.

The DEIR relies on fair share payments, that “may include, but are not necessarily limited to” the Transportation Agency of Monterey County (TAMC) Regional Development Impact Fee (RDIF), City of Salinas Traffic Impact Fee, and Monterey County ad hoc mitigation fees, to conclude that all future cumulative impacts would be less than significant. MM 3.12-5, DEIR, p. 3.12-54.

Preliminarily, we note that EIR proposed payment of the TAMC impact fee as mitigation for impacts under both cumulative and background conditions as follows:

- through MM 3.12-5 to mitigate all impacts under cumulative conditions,
- through MM 3.12-5a to mitigate impacts to intersections 8, 9, and 11 and segments 8, 9, and 10 under background conditions, and
- through MM 3.12-5c to mitigate impacts to intersections 20 and 21 and to segment 17 under background conditions.

However, the Planning Commission’s recommended conditions of approval ## 69-73 and the currently proposed conditions ## 60-69 eliminate the EIR’s proposed requirement to pay the TAMC impact fee and instead require the applicant to construct a new intersection on SR 68 to provide project access and to widen a portion of SR 68 to four lanes, i.e., to construct the roadway improvements proposed as part of Alternative 5. The DEIR traffic report did not evaluate the mitigation effectiveness of the substitution of Alternative 5 improvements for the requirement to pay the TAMC impact fee. As discussed in section G.6 below, this substitution effectively abandons mitigation for most impacts under both background and cumulative conditions.

However, even assuming that the project were required to pay the TAMC impact fee, it is evident from the DEIR, the traffic report, and public documents that the improvements necessary to meet target LOS standards are not part of a funded, committed plan of improvements. Thus, the mitigation identified in the EIR is not certain.

- a. DEIR admits that intersection improvements need to mitigate cumulative impacts to eight intersections are not planned or funded.

The DEIR admits that necessary improvements to mitigate cumulative impacts to intersections 3, 4, 13, 14, 15, 16, 17, and 18 “are not included in any fee program.” DEIR, p. 3.12-54. The DEIR lists eight specific needed improvements that are not currently planned and states that “it is recommended that the County of Monterey work toward listing and programming these additional improvements.” DEIR, p. 3.12-55. None of these projects are identified in the TAMC 2014 Monterey County Regional Transportation Plan (RTP) or the Association of Monterey Bay Area Governments (AMBAG) Metropolitan Transportation Plan (MTP).¹⁵

Even though the improvements are not committed or funded, the traffic study’s analysis of mitigated LOS under cumulative conditions in Appendix M assumes that these improvements are in place. To cite just a few examples of the assumption that these eight sets of improvements will be in place under mitigated conditions:

- Appendix M, Cumulative + Project Conditions Mitigated, shows a second eastbound left-turn lane at intersection 4 as recommended in the DEIR at page 3.12-55. This lane is not in Appendix L, Cumulative + Project Conditions.
- Appendix M shows a signal at intersection 13 as recommended in the DEIR, whereas Appendix L shows a stop sign.
- Appendix M shows two through lanes to Spreckles Blvd in both directions as recommended in the DEIR, whereas Appendix L shows a single through lane in both directions.

¹⁵ These plans, and their lists of planned improvements for Monterey County are available as follows:

- TAMC, 2014 RTP, Appendix C, Regionally Significant Projects, available at <http://www.tamcmonterey.org/programs/rtp/>;
- AMBAG, Final Environmental Impact Report, 2035 Metropolitan Transportation Plan/ Sustainable Communities Strategy And Regional Transportation Plans For Monterey, San Benito And Santa Cruz Counties, Table B-2 Monterey County Highway-New, Table B-4 Monterey County Local Streets and Roadways-New, available at http://ambag.org/programs/met_transp_plann/documents/Final_2035_EIR/AMBAG%20MTP-SCS%20and%20RTPs%20FEIR%20with%20Appendices.pdf;
- AMBAG, 2035 Metropolitan Transportation Plan / Sustainable Communities Strategy, Table C-1A Monterey County Regionally Significant Constrained Project List, available at http://www.ambag.org/programs-services/planning/metro-transport-plan_

- b. The DEIR admits that needed improvements to mitigate cumulative impacts to segments 1-7 of SR 68 are not planned or funded.

The DEIR's cumulative impact analysis fails to discuss improvements needed to address cumulative impacts to segments other than to remark that the SR 68 Commuter Improvements "would improve several intersection and roadway segment operations under Cumulative Project Conditions." DEIR, p. 3.12-53. However, the only mitigation identified by the DEIR that could address all of the cumulative impacts to SR 68 segments is the admittedly infeasible improvement of all SR 68 segments to 4 lanes and the Highway 68 Bypass. Consistent with statements in the DEIR, and as discussed below, the 2014 RTP identifies widening SR 68 or constructing a bypass for Fort Ord as an "unconstrained" project, i.e., one that cannot be funded, even by 2035. 2014 RTP, Appendix C.¹⁶

The DEIR acknowledges that SR 68 segments 1-10, the 2-lane SR68 west of the exiting 4-lane freeway, would have unacceptable LOS under cumulative plus project conditions, as indicated by DEIR Table 3.12-14.¹⁷ DEIR, pp. 3.12-52 to 3.12-53. And, based on the announced thresholds of significance (DEIR, p. 3.12-27 to 3.12-28), the project would cause a significant impact and make a considerable contribution to an cumulatively significant impact to the existing two-lane segments of SR 68 (segments 1-10) under cumulative conditions, since the DEIR projects that each segment will be at LOS F for either AM or PM conditions or both, and the project would add trips to these segments.

¹⁶ As discussed below, there is a project called the SR 68 Commuter Improvements that is planned, although neither funded nor committed before 2035, that would widen a 2.3 mile section of SR 68 west of the existing four-lane section to Corral de Tierra Road. DEIR 3.12-15 to 3.12-16. This project is included in the Monterey County Regional Development Impact Fee ("RDIF") Program administered by TAMC. The most recent RDIF update is set out in the TAMC Regional Development Impact Fee Program Nexus Study Update 2013 ("2013 RDIF Update"), available at <http://www.tamcmonterey.org/programs/devimpfee/pdf/2013-TAMC-RDIF-Nexus-Study.pdf>. The 2013 RDIF projects that SR 68 will operate at unacceptable LOS in 2030 along its entire length west of the existing four-lane section. 2013 RDIF Update, p. 18. Even with implementation of the SR 68 Corridor Improvements, the RDIF Update projects that all of the two-lane segments west of Corral de Tierra Road (i.e., segments 1-7) will operate at LOS F. 2013 RDIF Update, p. 24, Table 4. In short, even if the SR 68 Commuter Improvements project were constructed, it would not mitigate impacts to segments 1-7, for which there are no current plans to increase lane capacity.

¹⁷ The DEIR reports LOS for all 17 segments included in the traffic study under "cumulative project conditions." DEIR 3.12-52 to 3.12-53, Table 3.12-14. As discussed, the traffic report unaccountably fails to provide the LOS analysis data for SR 68 segments # 1-8 west of San Bernancio (or for SR 68 segments 11-14, which are the existing 4-lane segments of SR 68) under either unmitigated or mitigated cumulative conditions. See Traffic Report Appendices L and M. Appendices L and M only provide LOS analysis for segments 9-10 and 15-17. However, there is no question that cumulative LOS for segments 1-8 would be unacceptable, because cumulative plus project traffic levels are greater than background plus project conditions and the background conditions analysis shows unacceptable LOS for segments 1-8 under AM conditions, PM conditions, or both. See DEIR 3.12-35 to 3.12-36, Table 3.12-10.

Although the DEIR's cumulative impact discussion does not identify the improvements needed to address cumulative segment impacts, Exhibit 7 to the DEIR's traffic report does identify recommended improvements for all intersections and segments under existing, background, and cumulative conditions. For segments 1-10, Exhibit 7 recommends widening SR 68 to 4 lanes or constructing the Highway 68 Bypass under all conditions.

However, the only planned project that would add any lanes to SR 68 is the SR 68 Commuter Improvements, which would only add an additional 2.3 miles of lanes from the existing freeway segment west to Corral de Tierra (segments 8, 9, and 10).¹⁸ DEIR, p. 3.12-16. Without increased lane capacity to the west of these four-lane segments, segments 1-7 would remain at unacceptable LOS under cumulative plus project conditions, and the project would cause a significant impact (or make a considerable contribution to the significant cumulative impact) under the announced thresholds of significance

There is no basis to conclude that planned, funded improvements will mitigate impacts to segments 1-7 and there is ample evidence to the contrary: the DEIR states that "no funds are available for the implementation of the complete widening of State Route 68 to 4 lanes or the South Fort Ord Bypass, nor have these improvements been included in any Capital Improvement Program (CIP)." DEIR, p. 3.12-23; see also DEIR, pp. 34.12-14 to 15 (no funds available for these alternatives; widening entire corridor is not feasible). As noted below, widening SR 68 for segments 1-7 is not included in the RTP or MTP.

- c. The DEIR admits that improvements on Reservation Road and SR 218 are not planned or funded and these may be needed to address two additional cumulative impacts to roadway segments that the DEIR failed to analyze.

The DEIR admits there is no funding or plan to widen segments 15 and 16, i.e., Reservation Road between SR 68 and Davis Road and SR 218 between SR 68 and General Jim Moore Blvd. DEIR, p. 3.12-23. The DEIR projects those segments to operate at LOS E at the PM peak in 2030 cumulative conditions. DEIR, p. 3.12-53. It is unclear what contribution the project makes to these segments because, as discussed above, the traffic report fails to analyze cumulative conditions with and without the project and fails to provide LOS calculations for these segments. See Traffic Report Appendix L. However, the project may cause a significant impact or make a considerable contribution to a significant cumulative impact at these locations. The DEIR's failure to spell out the cumulative impacts in detail or to include detailed LOS calculations with and without the project makes this impossible to determine. However, if there were project-related impacts, it is apparent that there are no committed funded improvements to address them.

¹⁸ See footnote 16 above. As discussed below, the SR 68 Commuter Improvements is not funded or scheduled for construction before 2035, which is beyond the cumulative impact analysis time horizon.

- d. The conclusion that cumulative impacts will be mitigated by future improvements is inconsistent with the 2010 General Plan EIR.

The 2010 General Plan EIR projects SR68 will operate at LOS F for all segments from Forest Avenue to Portola Drive in the “Existing plus Project Development to the Year 2030 Scenario.” 2010 General Plan DEIR, p. 4.6-36. This scenario considers only existing traffic plus future development in the unincorporated area. The impact is identified as unavoidable and the EIR acknowledges that no mitigation is feasible due to lack of funding. *Id.* at 4.6-44 to 45.

Projected impacts that include cumulative traffic under cumulative 2030 conditions, i.e., existing plus future growth from both unincorporated and incorporated areas, are even worse. Again, the General Plan EIR projects LOS F from Forest Avenue to Corral de Tierra under 2030 conditions, but with even worse volume to capacity ratios. *Id.* at 4.6-65. The cumulative impact under 2030 conditions is unavoidably significant due to financial constraints. *Id.* 4.6-68 to 69.

It is absurd for the Ferrini EIR to contend that cumulative impacts will be addressed by payment of impact fees when the General Plan EIR admits the contrary.

- 3. The EIR relies on payment of the TAMC RDIF toward the SR 68 Commuter Improvements as mitigation for impacts to three intersections and three segments under 2015 background plus project conditions, and apparently relies on these improvements to mitigate 2030 cumulative conditions. However, there is no evidence that SR 68 Commuter Improvements will be scheduled or funded before 2035 and all available evidence is to the contrary.**

The EIR relies on the payment of TAMC’s RDIF toward the SR 68 Commuter Improvements program in MM 3.12-1a as mitigation for impacts under background plus project conditions. The EIR also appears to rely on payment of TAMC’s RDIF toward the SR 68 Commuter Improvements in MM 3.12-5 as mitigation for certain impacts under cumulative conditions.

The SR 68 Commuter Improvements include 2.3 miles of segment widening between the existing 4 lane highway at Toro Park and Corral de Tierra Road that may eventually be constructed. However, because the SR 68 Commuter improvements are not committed or funded within the time horizon of the EIR’s analysis of background conditions or cumulative conditions they do not constitute effective or certain mitigation.

Again, we note as a preliminary matter that the Planning Commission recommendation for conditions of approval would eliminate the requirement to pay the TAMC impact fee. We note again that the EIR’s traffic report did not evaluate the mitigation effectiveness of the substitution of the Alternative 5 improvements. As discussed in section G.6 below,

this substitution effectively abandons mitigation for most impacts under both background and cumulative conditions.

However, even assuming that the project were required to pay the TAMC impact fee, it is evident from the DEIR, the traffic report, and public documents that the improvements necessary to meet target LOS standards are not part of a funded, committed plan of improvements. Thus, the mitigation identified in the EIR is not certain.

Under “background conditions,” the DEIR identifies significant impacts to the SR 68 intersections 8, 9, and 11 (at Corral De Tierra, San Bernancio, and Torero Drive) and to SR 68 segment 8, 9, and 10 (between Corral de Tierra and the Begin/End Freeway). DEIR pp. 3.12-31 to 3.12-37. The DEIR defines background conditions as current traffic conditions plus traffic from projects that are likely to be implemented within five years of the 2010 traffic report, i.e., in the year 2015. DEIR, p. 3.12-16; DEIR Traffic Report, p. 23.

DEIR mitigation measure 3.12-1a relies on payment of a fair share of SR 68 Commuter Improvements through payment of TAMC’s RDIF. DEIR, p. 3.12-37. Based on these improvements, the DEIR concludes that impacts to intersections 8, 9, and 11 and to segments 8, 9, and 10 would be less than significant under background conditions. (In an apparent typographical error, the DEIR mis-identified the SR 68//Torero Drive intersection as Intersection # 12 rather than #11 at page 3.12-37.) DEIR, p. 3.12-37. DEIR Traffic Report Appendix I (LOS Worksheets for Background + Project Conditions Mitigated) does assume a level of improvements (e.g., 4 lanes) consistent with the SR 68 Commuter Improvements for segments 8, 9, and 10 and for the SR 68 intersections 8, 9, and 11. Traffic Report, Appendix I.

Although the DEIR’s cumulative analysis does not identify specific segment improvements that may be needed for mitigation, the SR 68 Commuter Improvements may also be the basis for the EIR’s conclusion that cumulative impacts in 2030 to segments 8, 9, and 10 and to the intersections 8, 9, and 11 would be less than significant, after they are constructed. See Appendix M (showing acceptable LOS under mitigated conditions for intersections 8, 9, and 11 and for segments 9 and 10 assuming 4 lanes at those segments; and unaccountably omitting segment 8).

The DEIR states that the State Route 68 Commuter Improvements program was included in the 2008 Regional Development Impact Fee update and that this project would widen a 2.3 mile segment of SR 68 west of the existing four-lane section to Corral de Tierra Road. DEIR, pp. 3.12-15 to 3.12-16. The DEIR states that TAMC “anticipates programming the fee revenue as part of its periodic Regional Transportation Plan process, which is completed every three to five years.”

However, comments on the DEIR objected that mitigation dependent on the 4-lane widening of SR 68 would not be sufficient unless that construction were timely. Comment 27-2. In response, the FEIR admitted that the timing of improvements is under

control of TAMC. Response 27-2. Elsewhere, the FEIR admits that the State Route 68 Commuter Improvements project “is not currently funded or scheduled for completion.” Response 36-46.

The 2014 Monterey County Regional Transportation Plan (“2014 RTP”) is the most recent RTP prepared by TAMC to update the 2010 RTP. TAMC, 2014 RTP, available at <http://www.tamcmonterey.org/programs/rtp/>. The RTP is focused on regionally significant projects described individually in the plan and included in AMBAGs Regional Travel Demand Model. 2014 RTP, p. 23. The RTP includes the projects that are to be funded by Monterey County Regional Development Impact Fee (“RDIF”) Program administered by TAMC. 2014 RTP p. 23. The RDIF program was updated in concert with development of the 2014 RTP. *Id.* That RDIF update is set out in the TAMC Regional Development Impact Fee Program Nexus Study Update 2013 (“2013 RDIF Update”), available at <http://www.tamcmonterey.org/programs/devimpfee/pdf/2013-TAMC-RDIF-Nexus-Study.pdf>.

The 2014 RTP identifies the SR 68 Commuter Improvements project as widening the roadway to 4 lanes between the existing 4 lane highway at Toro Park and Corral de Tierra Road. 2014 RTP p. 30. The project is included in the Regional Transportation Plan Project List, but its funding is listed in the column for the year 2035 rather than 2020. 2014 RTP Appendix C. In response to an inquiry as to whether there is a construction schedule for the SR 68 Commuter Improvements, TAMC Executive Director Debbie Hale responded, “[n]ot at this time. We don’t have funding but plan to fund it from development impact fees.” Debbie Hale, email to Janet Brennan, Aug. 1, 2014. Ms. Hale explained that the fact that the funding for the SR 68 Commuter Improvements was listed in the 2035 column rather than the 2020 indicates that funding is not projected to be available until 2035. *Id.*

As noted, the DEIR’s background conditions traffic analysis is based on conditions as of 2015 and its cumulative impact analysis considers conditions in the year 2030. DEIR, p. 3.12-16; DEIR Traffic Report, pp. 23, 31. Funding and constructing the SR 68 Commuter Improvements in 2035 will not provide timely mitigation.¹⁹

Furthermore, there is no current evidence that the SR 68 Commuter Improvements will ever be adequately funded because fair share payments from developers can only be used to pay for a portion of the cost and there are no currently identified sources for the balance of the cost. Developer exactions must be based on a nexus between new development and transportation impacts; thus, new development cannot be forced to pay

¹⁹ Proposed CEQA finding # 11 credits the project with overriding considerations for building a portion of the SR 68 Commuter Improvement project “earlier than if the project were to be funded through collection of development impact fees . . .” BOS Staff Report, Att. B, finding 11. The finding constitutes an admission that the SR 68 Commuter Improvements are not in fact expected to be available as timely mitigation. If the SR 68 Commuter Improvements were expected to be timely mitigation, it would make no sense to treat as a benefit the project’s commitment to build a portion of the SR 68 Commuter Improvements timely.

to remedy existing deficiencies. Accordingly, the 2013 RDIF Update explains that revenue from the development impact fee “funding mechanism only represents a portion of the required funding for each of the proposed projects. The share of funding corresponding to existing traffic and out-of-County (and Fort Ord Reuse Authority) traffic is planned to come from other sources.” 2013 RDIF Update, pp 2-3, see also p. 4. New development is responsible only for 16.5% of the cost of the SR 68 Commuter Improvements. 2013 RDIF p. 34.

Thus, TAMC may not fund the remaining 83.5% of the SR 68 Commuter Improvements project’s \$25.5 million cost from development impact fees; it must find the balance of needed funds from other sources. Ms. Hale’s indication that there is no construction schedule and no funding plan at this time is consistent with the statements in the 2014 RTP that revenues available to transportation are decreasing in a period of increasing needs; that local street and road maintenance is underfunded; and that state and federal transportation revenues are decreasing and becoming less consistent. 2014 RTP, p. i. It is also consistent with statements in the 2013 RDIF update that the RDIF cannot “ensure a mechanism for complete funding of all RDIF program projects at this time.” 2013 RDIF Update, p. 35. The RDIF Update lists possible funding sources and then qualifies this list as follows: “Note that the percentage contribution, if any, from the aforementioned public/private funding sources are generally unknown or un-ascertainable at this time on an improvement project-by-project basis.” *Id.*

In sum, given the lack of a commitment to construct the needed improvements at the time they are projected to be required, the fact that they are not currently planned until 2035, and the fact that there is no currently identified plan for 83.5% of the necessary funding, there is no evidence that mitigation will be timely or certain. The DEIR establishes that the project impact will occur as soon as the project is occupied. Although the DEIR states that construction will be phased (DEIR, p. 2-37), there is nothing in the phasing plan that would ensure that the project would not be occupied before the SR 68 Commuter Improvements are constructed.

4. The EIR relies on payment of the TAMC RDIF toward the Marina-Salinas Corridor project as mitigation for impacts under background plus project and under cumulative conditions, but there is no evidence that Marina-Salinas Corridor project will be scheduled or funded before 2035.

The DEIR concludes that the project will cause significant impacts to Davis Road between Reservation Road and Blanco Road (segment 17) and to Intersections at Davis Road and Reservation Road and Blanco Rod (intersections 20 and 21). DEIR, p. 3.12-31 to 3.12-37. The DEIR relies on payment of the TAMC RDIF through MM 3.12-5c to mitigate impacts to these three facilities. DEIR, pp. 3.12-38 to 3.12-39. The DEIR explains that widening of this segment and improvements to these intersections are part of the Marina-Salinas Corridor project, which is included in the RDIF project list. *Id.*

It appears that the DEIR may also assume that the Marina-Salinas Corridor project will mitigate 2030 cumulative impacts to these facilities: Traffic Study Appendix M assumes improvements to these facilities consistent with the Marina-Salinas Corridor project.

Again, we note as a preliminary matter that the Planning Commission recommendation for conditions of approval would eliminate the requirement to pay the TAMC impact fee. We note again that the EIR's traffic report did not evaluate the mitigation effectiveness of the substitution of the Alternative 5 improvements. As discussed in section G.6 below, this substitution effectively abandons mitigation for most impacts under both background and cumulative conditions.

However, even assuming that the project were required to pay the TAMC impact fee, it is evident from the DEIR, the traffic report, and public documents that the improvements necessary to meet target LOS standards are not part of a funded, committed plan of improvements. Thus, the mitigation identified in the EIR is not certain.

As with the SR 68 Commuter Improvements, the EIR provides no evidence that Marina-Salinas Corridor project will be constructed before the Ferrini Ranch subdivision is occupied or even by the 2030 cumulative impact study horizon. Instead, the evidence is that the necessary improvements will not be constructed timely.

The FEIR admits that "no funds are currently available for implementation of the Marina-Salinas Corridor project." Responses 36-48, 36-49. As with the SR 68 Commuter Improvements, the RTP lists funding for the Marina-Salinas Corridor project in the 2035 column, not the 2020 column, indicating that funding is not projected to be available until 2035. 2014 RTP p. 34; see Debbie Hale, TAMC Executive Director, e-mail to Janet Brennan, Aug. 1, 2014. As with the SR 68 Commuter Improvements, the 2013 RDIF Update explains that revenue from the RDIF will only cover a portion of the cost for this project (22.5%) and the balance must come from other sources. 2013 RDIF Update, pp 2-3, 4, 34. And as with the SR 68 Commuter Improvements, the RDIF Update states that these sources are "unknown or un-ascertainable at this time on an improvement project-by-project basis." 2013 RDIF Update, p. 35. Again, there is no evidence that the improvements required to mitigate impacts to Davis Road between Reservation Road and Blanco Road will be timely.

5. The EIR fails to propose mitigation to address project-specific impacts to segments and intersections not addressed by the SR 68 Commuter Improvements or the Marina-Salinas Corridor project, and the EIR provides no evidence that mitigation costs are proportional to impacts.

The DEIR concludes that impacts under background conditions to intersections 2, 5, 6, 7, and 19 and segments 1, 2, 5, 6, and 7 are significant and unavoidable because it concludes that mitigation in certain forms (e.g., widening SR 68) is not feasible due to lack of funding. DEIR, p. 3.12-40. The DEIR concludes that impacts to intersections 8, 9, and 12 and to segments 8, 9, 10, and 17 will be sufficiently mitigated through payment

of impact fees because those fees include fair share payments for improvements that would result in adequate LOS. DEIR, p. 3.12-40.

We again note the Planning Commission recommendation to substitute the Alternative 5 improvements for payment of the AMC impact fee and the EIR's failure to evaluate the mitigation effectiveness of this substitution on the identified significant impacts.

However, even assuming that the project were required to pay the TAMC impact fee, it would not be sufficient. As TAMC pointed out, the mere payment of impact fees intended to address traffic impacts throughout the County, and which are not focused on impacts in the project vicinity, does not adequately address project-specific impacts. TAMC requested payment of additional fair share impact fees that would go toward planned improvements at the impacted facilities. Comment E-1.

In response, the FEIR pointed to (1) the proposed new intersection on SR 68 to provide project access and widening of a portion of SR 68 to be undertaken by the project itself, and (2) the EIR's acknowledgement that impacts to specific segments and intersections would remain significant and unavoidable. Response E-1. The response fails to address the comment.

First, even if payment of impact fees were sufficient mitigation for impacts to segments and intersections that happen to be included in the RDIF improvements, the EIR fails to propose mitigation for the segments and intersections that are not included in the RDIF. In effect, the EIR would allow the project to make no contribution whatsoever to address the impacts that it deems significant and unavoidable. CEQA requires mitigation be proposed for all impacts, even if that mitigation may only lessen and not avoid the impact.

Second, as discussed above, payment of the RDIF would not assure that project-specific impacts are in fact mitigated with respect to those intersections and segments for which traffic improvement projects are included in the RDIF because there is no evidence that these improvements will be constructed timely or at all.

Third, the improvements to be constructed by the project under Alternative 5 will not result in adequate levels of service at those intersections and segments for which the EIR proposed no mitigation and concluded impacts would be significant and unavoidable. The FEIR admits that impacts along the corridor would remain unavoidably significant even with the Alternative 5 traffic improvements. FEIR Response D-1. Nor will the Alternative 5 improvements demonstrably mitigate the project's impacts at intersections and segments for which the EIR claimed payment of TAMC impact fees would provide sufficient mitigation. At most, the Alternative 5 improvements will address LOS impacts to the small segment of SR 68 that is widened to four lanes. As discussed, the EIR does not provide an analysis of the effect of the proposed project-sponsored improvements under Alternative 5 on the significant intersection and segment impacts identified in the DEIR. However, widening a single 1.1 or 1.3 mile stretch of SR 68 and constructing a

new intersection will not improve LOS at the remaining 2-lane segments or at intersections on those segments. Indeed, the EIR admits that even with this proposed construction, all of the mitigation identified in the DEIR would still be required. RDEIR, p. 4.0-62.

Fourth, the Planning Commission recommendation proposes to allow the applicant to substitute the construction of a new intersection and widening of a small portion of SR 68 proposed under Alternative 5 for payment of the RDIF. TBOS Staff Report, Att. C, condition # 69. The EIR presents no evidence that the cost of the Alternative 5 improvement is equivalent to the RDIF. Nor does the EIR present any evidence that the RDIF or the cost of construction of the Alternative 5 improvements would be proportionate mitigation for all of the impacts caused by the project. The County should at minimum determine and impose fair share payments that are proportionate to the projects impacts and do so through this CEQA process. And as discussed below, reducing the traffic mitigation to the Alternative 5 improvements (and the City of Salinas traffic impact fee) would leave essentially all significant segment and intersection impacts identified in the EIR unmitigated.

6. Substitution of the Alternative 5 traffic improvements for the impact fees proposed by the EIR leaves most impacts unmitigated, but the findings conclude otherwise without any evidence.

As Mr. Smith explains, the EIR proposed that payment of the TAMC RDIF would mitigate impacts under both cumulative and background conditions. The EIR assumed that payment of the RDIF would result in the SR 68 Commuter Improvements and the Marina-Salinas Corridor project, which would ensure mitigation of project impacts under background conditions to intersections 8, 9, 11, 20, and 21 and to segments 8, 9, 10, and 17 and to all significantly impacted facilities under cumulative conditions. As discussed above, the EIR's assumption was unjustified because these improvements are unfunded, unscheduled, and uncertain.

However, even if the RDIF improvements were funded, scheduled, certain, and timely, the Planning Commission recommendation eliminated the requirement to pay impact fees in favor of the applicant-sponsored project access intersection and about a mile of SR 68 capacity increase. The EIR, the EIR consultant, staff, and the Planning Commission's proposed CEQA findings all agree that without the SR 68 Commuter Improvements and the Marina-Salinas Corridor project, the segment and intersection impacts identified in the EIR (other than the one intersection and segment to be improved by the applicant) will not be mitigated. Despite this, the Planning Commission's CEQA resolution does not include intersections 8, 9, 11, 20, and 21 and segments 8, 9, 10, and 17 under background conditions or all significantly impacted facilities under cumulative conditions in the list of facilities for which there are unmitigated impacts, i.e., unavoidably significant impacts. As proposed, the CEQA findings demonstrate a failure to comply with CEQA's substantive mandate that an agency ensure that all significant impacts are either mitigated by the agency, found to be mitigated by another agency, or found to be

unavoidably significant for specific reasons. This failing cannot be cured simply by altering the findings to identify the impacts as unavoidably significant, even if there were some basis for concluding that the impacts cannot be mitigated; the EIR would have to be revised and recirculated in light of new information disclosing new significant impacts. Recirculation is also required because the last-minute abandonment of the mitigation proposed in the DEIR and reaffirmed in the FEIR demonstrates that the EIR analysis was so fundamentally inadequate that the public was denied the opportunity for meaningful review and comment.

Finally, we note that the CEQ findings are inconsistent with respect to the project's obligation to provide mitigation costing at least as much as the TAMC RDIF. Several findings state that the cost of the applicant-funded improvements shall be a credit against the TAMC RDIF, implying an obligation to pay the RDIF amounts in excess of that credit. BOS Staff Report, Att. B, findings 3r and 4b. Other findings and conditions state that there is no obligation to pay the TAMC RDIF at all. BOS Staff Report, Att. B, Finding 9; see also BOS Staff Report, Att. C, condition # 69. None of the findings or conditions explain what obligation the project would have for future Monterey County or TAMC impact fees or for ad hoc fees, even though the DEIR expressly found that payment of these fees was essential mitigation for cumulative impacts.

7. The applicant-sponsored traffic improvements will not decrease SR 68 corridor travel time; the project will cause travel time to increase.

Mr. Smith explains that the discussion of corridor travel time in the EIR and at the Planning Commission hearing was essentially irrelevant because corridor travel time is not a criterion for determining significance of project impacts. Despite this, the RDEIR provided an analysis of corridor travel for Alternatives 3 and 5, in which it implied misleadingly that, even with the increased project traffic, the applicant-provided improvements would reduce SR 68 corridor travel time. The contention was misleading because the analysis showed that the combination of project traffic, the new signalized intersection, and the widening of a segment of SR 68 would actually increase SR 68 corridor travel time. Any decrease would be attributable to three sets of traffic improvements entirely unrelated to the Ferrini project, which are already completed or under construction. It is absurd and misleading for the Ferrini project to be credited with corridor travel time improvements that will occur regardless of the project's approval and toward which the project will make no contribution.

As Mr. Smith explains, some members of the Planning Commission discerned that the travel time decrease claim was misleading and asked for an analysis that isolated the project's travel time impact using a baseline that includes the three unrelated traffic improvement projects. Even though Planning staff understood the request and promised that the applicant would provide the requested analysis, the applicant did not provide the requested information. Eventually staff admitted that there was no foundation for the claim that corridor travel time would be decreased, and removed the proposed finding to that effect. However, despite the clear evidence that the project will actually increase SR

68 corridor travel time, staff and some Planning Commission members continued to argue that there would be no effect on travel time.

8. The project is inconsistent with 1982 General Plan transportation policies and the EIR failed to identify these plan inconsistencies.

Approval of the Ferrini project would be inconsistent with several policies on the 1982 General Plan.

Most obviously, the project is inconsistent with the mandatory language of Policy 37.2.1, which provides

“Transportation demands of proposed development shall not exceed an acceptable level of service for existing transportation facilities, unless appropriate increases in capacities are provided for.” (emphasis added.)

The 1982 General Plan and the Ferrini EIR identify LOS C as the acceptable level of service. The General Plan inconsistency is evident from the traffic analysis in the EIR, which admits numerous significant and unmitigated traffic impacts involving unacceptable levels of service. For example, the DEIR admits that project-specific impacts under background (2015) conditions will remain significant and unavoidable even after proposed mitigation and that affected facilities will operate at unacceptable levels of service as follows:

“Intersections and roadway segments impacted by the project that are not currently included in any fee program would continue to exceed standards of significance. These facilities include:

- Intersection 2 – State Route 68/Olmsted Road
- Intersection 5 – State Route 68/York Road
- Intersection 6 – State Route 68/Pasadera Drive-Boots Road
- Intersection 7 – State Route 68/Laureles Grade Road
- Intersection 19 – State Route 68/Blanco Road
- Segment 1 – State Route 68 between Josselyn Canyon Road and Olmsted Road
- Segment 2 – State Route 68 between Olmsted Road and State Route 218
- Segment 5 – State Route 68 between York Road and Pasadera Drive
- Segment 6 – State Route 68 between Pasadera Drive and Laureles Grade
- Segment 7 – State Route 68 between Laureles Grade and Corral de Tierra

With the addition of project traffic, the above facilities would continue to exceed adopted standards of significance for level of service and would conflict with City of Salinas and County of Monterey congestion management programs and policies. Although payment into the TAMC RDIF adopted fee programs is intended to improve conditions along the State Route 68 corridor as a whole, these residual impacts of the project would be considered a **significant and unavoidable impact** of the project based on Monterey County significance criteria.” DEIR, pp. 3.12-40 to 3.12-41, emphasis in original.

These are the admitted impacts involving project transportation demands exceeding acceptable levels of service without any provision for increases in capacity. As discussed above, there are clearly other significant unmitigated impacts that the EIR does not admit: impacts under background or cumulative conditions would not be mitigated because 1) the EIR’s proposed mitigation is reliant on unfunded, unscheduled, and uncertain improvements and 2) the Planning Commission recommendations abandons that mitigation in favor of applicant-sponsored improvements that would mitigate at most one intersection and segment.

Although LandWatch objected to the DEIR’s failure to address this General Plan inconsistency, the FEIR failed to address the issue. Comment and Response 36-50. The FEIR’s response that “[t]he County will be required to consider the project’s residual impacts relative to any overriding considerations and must make findings regarding General Plan consistency,” failed to meet CEQA’s requirement to identify project inconsistencies with applicable plans. FEIR, p. 2.0-209. Furthermore, the Planning Commission failed even to consider project consistency with General plan transportation policies. The current staff report and proposed findings also entirely fail to address the project’s inconsistency with the 1982 General Plan traffic policies.

The project is inconsistent with several other General Plan transportation policies. Policy 39.1.4 mandates that “new development shall be located where there is existing road and highway capacity or where adequate road and highway capacity will be provided.” The project would be located in an area where there is not existing capacity and there is no evidence that capacity will be provided.

Policy 39.1.2 mandates that “the cost of new roads shall be borne as equitably as possible among benefiting property owners and/or users.” Exempting the project from the requirement to pay the TAMC RDIF and other impact fees without any evidence that the cost of the applicant-sponsored improvements would be a fair share payment is not demonstrably equitable cost-sharing. And even if the project were required to pay the existing RDIF, that fee does not contain an equitable fair share for the cost of improvements to address facilities such as segments 1-7 for which no improvements are included in the existing impact fees.

December 1, 2014

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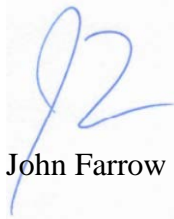
Policy 26.1.4 mandates that “the County shall designate growth areas only where there is provision for an adequate level of services and facilities such as water, sewerage, fire and police protection, transportation, and schools. Phasing of development shall be required as necessary in growth areas in order to provide a basis for long-range services and facilities planning.” Permitting any additional growth in the SR 68 corridor is inconsistent with this policy because there is no provision for adequate level of service for transportation.

H. The County cannot make the required subdivision findings.

Based on the evident inconsistencies with traffic and water policies in the 1982 General Plan and based on the demonstrably inadequate environmental review under CEQA, the County cannot make the required findings to support approval of the subdivision. It is clear that the project will conflict with General Plan policies and will cause substantial environmental harm.

Yours sincerely,

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

A handwritten signature in blue ink, appearing to read 'JF', is placed over a light blue rectangular background.

John Farrow

cc: Amy White
Janet Brennan

Referenced documents, provided on separate DVD or CD:

1. York Highlands Negative Declaration, PLN100020, Sept. 7, 2011, excerpts. Full document available at http://www.co.monterey.ca.us/PLANNING/cca/pc/2011/09-28-11/PLN100020_EXHIBIT_G.pdf
2. Villas de Carmellos Subdivision Committee Staff Report, Jan. 11, 2011, Exhibit B, excerpts.
3. Draft Revised EIR for the September Ranch Subdivision Project, Dec. 2004, excerpts. Full document available at http://www.co.monterey.ca.us/planning/docs/eirs/september/septRDEIR_1204.pdf.
4. Monterey County, Staking and/or Flagging Criteria, Resolution 09-360, 2009.
5. Caltrans, Scenic Highway Guidelines, Oct. 2008, available at http://www.dot.ca.gov/hq/LandArch/scenic/guidelines/scenic_hwy_guidelines_04-12-2012.pdf
6. Photos of break in SR 68 soundwall proximate to affordable housing site, Oct. 27, 2014.
7. Photos of affordable housing site taken Buckeye Day Use area in Toro Park. Oct. 27, 2014.
8. Eric A. Morgan, Fort Ord National Monument Manager, e-mail and attachments, November 14, 2014.
9. Willits Bypass EIS/EIR, excerpts. Full document available at <http://www.dot.ca.gov/dist1/d1projects/willits/reports.feir.htm>
10. Monterey Fire Safe Council, Monterey County Community Wildfire Protection Plan (“MCCWPP”), November 2010.
11. Annual Ground Water Summary Reports published by MCWRA in 1995-2014, available at http://www.mcwra.co.monterey.ca.us/groundwater_extraction_summary/groundwater_extraction_summary.php.
12. MCWRA, SVWP Engineers Report, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/salinas_valley_water_project_I.php
13. MCWRA, Salinas Valley Water Project Phase II, Overview, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php
14. Geoscience, Protective Elevations to Control Seawater Intrusion, Nov. 13, 2013, p. 11, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_overview.php (link to “Technical Memorandum.”)
15. MCWRA, Salinas Valley Water Project Phase II, Status, available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php.
16. MCWRA, Notice of Preparation of EIR, Salinas Valley Water Project Phase II, June 2014, available at

- http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_II/salinas_valley_water_project_II_project_status.php
17. TAMC, 2014 Monterey County Regional Transportation Plan, available at <http://www.tamcmonterey.org/programs/rtp/>.
 18. AMBAG, Final Environmental Impact Report, 2035 Metropolitan Transportation Plan/ Sustainable Communities Strategy And Regional Transportation Plans For Monterey, San Benito And Santa Cruz Counties, Appendix B, 2035 MTP/SCS project List, available at http://ambag.org/programs/met_transp_plann/documents/Final_2035_EIR/AMBA_G%20MTP-SCS%20and%20RTPs%20FEIR%20with%20Appendices.pdf;
 19. AMBAG, 2035 Metropolitan Transportation Plan / Sustainable Communities Strategy, Appendix C, Projects Lists, available at <http://www.ambag.org/programs-services/planning/metro-transport-plan>
 20. TAMC, Regional Development Impact Fee Program Nexus Study Update 2013 (“2013 RDIF Update”) , available at <http://www.tamcmonterey.org/programs/devimpfee/pdf/2013-TAMC-RDIF-Nexus-Study.pdf>
 21. Debbie Hale, Executive Director, TAMC, email to Janet Brennan, Aug 1, 2014.

ATTACHMENT – Letter from Dan Smith to John Farrow, Nov. 20, 2014



November 20, 2014

Mr. John Farrow, Esq.
M. R. Wolfe & Associates
1 Sutter Street, Suite 300
San Francisco, CA 94104

Subject: Ferrini Ranch Subdivision (SCH 2005091055)

Dear Mr. Farrow:

Per your request, I have reviewed the record in the matter of the County of Monterey's review in the matter of the proposed Ferrini Ranch Subdivision (the "project") with specific regard to traffic and transportation issues. The record I have reviewed includes the Project's Draft Environmental Impact Report, the Recirculated Draft Environmental Impact Report, the Final Environmental Impact Report, staff reports to the Planning Commission and their attachments and records of Planning Commission deliberations. My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and 46 years of consulting practice in traffic and transportation engineering. I have both prepared and reviewed the traffic and transportation components of numerous CEQA environmental documents. My professional resume is attached herewith.

My detailed current comments on the subject project follow.

- 1. The EIR failed to provide sufficient detail in the cumulative analysis to inform the public how it concluded that the project would make a considerable contribution to significant future cumulative impacts.**

The DEIR admits that the project will degrade or exacerbate unacceptable cumulative levels of service at 19 intersections and 13 roadway segments. DEIR 3.12-53. However, the EIR's analysis of cumulative impacts lacks critical detail, despite comments requesting this information. Comments on the DEIR objected that the DEIR did not specifically identify those roadway segments and

intersections 1) that would suffer a significant cumulative impact, and 2) to which the project would make a considerable contribution. Comment 36-52. However, the FEIR fails to provide the required analysis. Response 36-52. In particular, neither the DEIR nor the FEIR

- specifically identify the segments and intersections to which the project would make a considerable contribution to a significant cumulative impact;
- evaluate whether the project makes a considerable contribution to significant impacts at intersections and facilities where LOS is degraded but not at LOS F; or
- provide analysis that would quantitatively identify the project's contribution to cumulative conditions.

No data was provided to identify project contribution to cumulative significance because the cumulative analysis does not provide LOS calculations with and without the project. The analysis that determines the significance of cumulative impacts and the post-mitigation significance appears in the DEIR's traffic study, Appendices L and M, which analyze level of Service (LOS) at various intersections and segments. However, this analysis does not enable the public to identify the project's actual contribution to cumulative conditions.

The DEIR traffic study uses the same tests for assessing the significance of the project's impacts for both the "background conditions" analysis and the cumulative conditions analysis.¹ See Traffic Study p. 41; FEIR Response 36-52. Those tests are set out at page 7 of the Traffic Study:

- Degrading intersection or segment LOS by one level to D, E, or F
- Adding 0.01 to critical movement's V/C ratio if intersection at LOS D or E
- Adding one trip if intersection or segment is at LOS F

The traffic study provides LOS calculations for a cumulative plus project scenario and a mitigated cumulative plus project scenario in Appendices L and M. See Traffic Study discussion at pp. 31-36. Generally, it appears that the traffic study concluded that the same SR 68 segments that fail to attain acceptable LOS under existing conditions will fail to do so under cumulative conditions (p. 34) and

¹ CEQA recognizes that an "individually minor" impact may nonetheless make a "considerable contribution" to a significant cumulative impact caused by the project plus all other projects, and this permits an agency to apply a lower threshold for requiring mitigation for a cumulative impact. In practice, most traffic analyses use the same thresholds for so-called "project-level" or "project-specific" impacts and cumulative impacts, as did the EIR here. FEIR Response 36-52. The difference in their project-level and cumulative analyses is typically the temporal scope, as it is here. Here, the temporal scope of the project-specific analysis is the conditions expected five years from existing conditions and the temporal scope of the cumulative analysis is 2030 conditions. DEIR p. 3.12-16; DEIR Traffic Report, pp. 23, 31.

that many of the same intersections will also fail to attain acceptable LOS (p. 31-32).

However, the traffic study does not separately assess whether the project's contribution to these unacceptable conditions is "considerable," which is CEQA's test for whether mitigation is required for cumulative impacts. Traffic Study at 31-36. The DEIR merely states that the trips generated by the proposed project "would result in a significant impact primarily because they would add at least one trip to [intersections and segments] operating at LOS F." DEIR 3.12-52 and 53. While it is clear that the project will add at least one trip to all segments and intersections it analyzed, neither the DEIR nor the traffic study provide data that would enable the public to determine what the projects contribution to significant cumulative impacts actually is. In particular, the DEIR and traffic study fail to provide an analysis of cumulative conditions with and without the project so that the public can understand the project's actual contribution to cumulative impacts.

Thus, the traffic study does not even provide the raw data that might be used to determine the projects contribution to LOS impacts under cumulative conditions because it does not provide separate analyses of cumulative conditions with and without the project. All it provides are cumulative conditions with the project (unmitigated in Appendix L and mitigated in Appendix M).

Data for cumulative impacts to 12 segments is not provided at all. The data in Appendix L and M are incomplete because they omit most of the SR 68 segments. There is simply no analysis in the traffic study to support the cumulative impact analysis of 12 of the 17 segments as reported in the DEIR.

Although all 22 intersections are analyzed, Appendices L and M unaccountably include only two of the 14 SR 68 roadway segments (#9 and #10). (They do also include segments 15, 16, 17, which are not SR 68 segments). SR 68 segments 1-8 and 11-14 are omitted. Since segments # 1-8 are identified as suffering significant cumulative impacts in the DEIR (Table 3.12-14) the omission is critical.

Thus, the traffic study simply fails to provide any foundation for the cumulative analysis of segments 1-8 and 11-14. The public has no source for most of the cumulative impact data in DEIR Table 3.12-14.

As discussed below, the omission of data for segments projected to operate at LOS D and E is particularly problematic. Under the identified thresholds of significance for these intersections, the project contribution would be considerable if it resulted in degrading segment LOS by one level to D, E, or F. However, the EIR failed to provide any data from which the project's effect on these segments under cumulative conditions could be discerned.

The EIR fails to identify the affected traffic facilities. The DEIR concludes that 19 of 22 intersections and 13 of 17 segments would be at unacceptable LOS under cumulative conditions. DEIR at 3.12-52 to 53. Comments specifically requested identification of the intersections suffering a significant cumulative impact to which the project makes a considerable contribution and objected that this information was not contained in Table 3.12-13. Comment 36-52. The FEIR simply again referenced Table 3.12-13, "Intersection Level Of Service For Cumulative Project Conditions," and quoted the DEIR's statement that "the proposed project and other development would degrade the levels of service or exacerbate existing unacceptable levels of service at 19 study intersections" Response 36-52. The response did not explicitly identify the affected intersections or the project's contribution.

Indeed, the DEIR's statement does not distinguish the effect of "the proposed project" and the effect of "other development" on future conditions. This is not acceptable in a cumulative analysis, which is supposed to isolate a project's contribution and determine whether it is a considerable contribution; however, the omission is unsurprising here since the traffic report does not provide this information by separately evaluating cumulative conditions with and without the project.

Furthermore, Table 3.12-13 does not identify to which intersections the project makes a considerable contribution. DEIR pp. 3.12-51 to 3.12-52; see also Traffic Report Exhibit 4A. This table simply reports the level of service and delay under cumulative plus project conditions.

It is possible to infer, based on the identified thresholds of significance (DEIR p. 3.12-28), that the project makes a considerable contribution to each signalized intersection operating at LOS F since the project presumably adds at least one trip to all intersections in the study area. However, the DEIR provides no basis to determine to which other intersections the project makes a considerable contribution. For example, the threshold of significance for intersections that are not signalized treats the project increment as considerable if it causes any traffic movement to operate at LOS F or causes any traffic signal warrant to be met. DEIR p. 3.12-28. Neither the DEIR, the Traffic Report, nor the FEIR identify to which of the unsignalized intersections the project makes a considerable contribution under cumulative conditions.

The EIR provides no explanation of whether contribution is considerable where cumulative service level for segment is not LOS F. The EIR also failed to provide sufficient information to determine the project's contribution to cumulatively significant segment impacts where the level of service was degraded to LOS D or E, but not to LOS F. For segments 15, 16, and 17, cumulative peak hour LOS is at LOS D and E. The DEIR fails to clarify whether the project make a

considerable contribution to these significant cumulative impacts. Although the DEIR concludes that there is no significant project impact under background plus project conditions (see Table 3.12-11 at page 3.12-36), the DEIR fails to demonstrate whether the project's contribution to these intersections is considerable under cumulative conditions (e.g., whether it degrades V/C capacity by a specified amount or causes a drop of in LOS level). This outcome is more likely under cumulative 2030 conditions than under background 2015 conditions because there is more baseline traffic. The DEIR should have explained for each intersection and segment how significance was determined, including segments 15, 16, and 17.

LandWatch asked for this analysis in DEIR comments, but the FEIR did not provide it. Comment and Response 36-52. Again, the FEIR simply referenced a table (Table 3.12-14) that shows cumulative conditions with the project, but which does not evaluate the project's contribution. Response 36-52; see DEIR 3.12-52 to 3.12-53 (Table 3.12-14).

2. The Planning Commission recommendation to substitute the Alternative 5 traffic improvements for the TAMC RDIF would leave essentially all intersection and segment impacts unmitigated

The EIR proposed payment of the Transportation Agency of Monterey County (TAMC) Regional Development Impact Fee (RDIF) as mitigation for impacts under both cumulative and background conditions through MM 3.12-5 (to mitigate impacts under cumulative conditions), MM 3.12-5a (to mitigate impacts to intersections 8, 9, and 11 and segments 8, 9, and 10 under background conditions), and MM 3.12-5c (to mitigate impacts to intersections 20 and 21 and to segment 17 under background conditions). Payment of those fees was supposed to ensure construction of specific improvements (the SR 68 Commuter Improvements and the Marina-Salinas Corridor project) that would ensure mitigation of project impacts.

However, the Planning Commission's recommended conditions of approval # 69-73 eliminate the EIR's proposed requirement to pay the TAMC impact fee and instead require the applicant merely to construct a new intersection on SR 68 to provide project access and to widen a portion of SR 68 to four lanes, i.e., to construct the roadway improvements proposed as part of Alternative 5.²

Project specific impacts are left unmitigated. The EIR concluded that payment of TAMC's RDIF would mitigate, and was necessary to mitigate, identified

² Condition # 73 provides in particular that "instead of paying the TAMC fee, the Owner/applicant shall widen Hwy 68 to 4 lanes from existing 4-lane section to end of Toro Estates."

significant project-specific impacts to intersections 8, 9, 11, 20, and 21 and to segments 8, 9, 10, and 17 under background conditions by making fair share payments to the SR 68 Commuter Improvements and the Marina-Salinas Corridor project.³ DEIR 3.12-37 to 3.12-41. By contrast, the Alternative 5 roadway improvements would provide 4 lanes in segment 10 and part of segment 9. While this might mitigate LOS impacts to for segment 10 and intersection 11, there is no evidence in the EIR that the Alternative 5 traffic improvements would afford sufficient mitigation for segments 9, 10, and 17 or intersections 8, 9, and 21 under background conditions.

In fact, the EIR concludes that the Alternative 5 traffic improvements would not mitigate other impacts because it states that even with this proposed construction, all of the mitigation identified in the DEIR would still be required. RDEIR p. 4.0-62. The EIR did not evaluate the effectiveness of the Alternative 5 improvements at mitigating the project's impacts to intersection and segment LOS (other than to the SR 68/Torero intersection to be signalized by the project). Staff repeatedly acknowledged in the Planning Commission hearing that the Alternative 5 roadway improvements would not resolve LOS impacts at facilities other than those being improved. See e.g., Planning Commission hearing, October 8 hour 1:43 and November 12 hour 3:34. The Planning Commission's CEQA findings conclude that the projects improvements "will not improve the functioning of intersections beyond the boundaries of these improvements." Draft Planning Commission CEQA Findings, p. 6, Finding 5, Evidence b.

There is no reason to suppose that a project that causes significant segment impacts to many segments and intersections in the SR 68 corridor by adding trips to them could mitigate impacts to all segments and intersections simply by widening one segment and adding a signalized intersection. The analysis in the EIR itself is evidence of that improvements to some segments and intersections do not improve LOS at other segments and intersections on the SR 68 corridor.

³ Under "background conditions," the DEIR identifies significant impacts to the SR 68 intersections 8, 9, and 11 (at Corral De Tierra, San Bernancio, and Torero Drive) and to SR 68 segment 8, 9, and 10 (between Corral de Tierra and the Begin/End Freeway). DEIR pp. 3.12-31 to 3.12-37. The DEIR defines background conditions as current traffic conditions plus traffic from projects that are likely to be implemented within five years of the 2010 traffic report, i.e., in the year 2015. DEIR p. 3.12-16; DEIR Traffic Report, p. 23.

DEIR mitigation measure 3.12-1a relies on payment of a fair share of SR 68 Commuter Improvements through payment of TAMC's RDIF. DEIR 3.12-37. Based on these improvements, the DEIR concludes that impacts to intersections 8, 9, and 11 and to segments 8, 9, and 10 would be less than significant under background conditions. DEIR 3.12-37. (In an apparent typographical error, the DEIR mis-identified the SR 68//Torero Drive intersection as Intersection # 12 rather than #11 at page 3.12-37.) The DEIR Traffic Report Appendix I (LOS Worksheets for Background + Project Conditions Mitigated) assumes a level of improvements (e.g., 4 lanes) consistent with the SR 68 Commuter Improvements for segments 8, 9, and 10 and for the SR 68 intersections 8, 9, and 11. Traffic Report, Appendix I.

For example, the DEIR concludes that the SR 68 Commuter Improvements program would mitigate impacts to the facilities that the program improved, but not to other facilities on the SR 68 corridor.

The Planning Commission CEQA findings indicate that the obligations to pay impact fees under DEIR MM 3.12-1a, 3.12-1c, and 3.12-5 have been eliminated. Planning Commission Findings, p. 6, Finding 5, Evidence b. Despite this, the findings do not discuss the resolution of the significant impacts to intersections 8, 9, 11, 20, and 21 and to segments 8, 9, 10, and 17 under background conditions. There is no finding that expressly addresses the resolution of these significant impacts identified in the EIR.⁴

Cumulative impacts are left unmitigated. The EIR concluded that payment of TAMC's RDIF and other impact fees would mitigate all significant cumulative impacts, which included impacts to 19 intersections and 13 segments.⁵ DEIR 3.12-53. Despite the EIR's reliance on the TAMC RDIF, the City of Salinas impact fee, and unspecified ad hoc Monterey County impact fees (DEIR, p. 3.12-54, MM 3.12-5), the Planning Commission CEQA findings rely on just the alternative 5 improvements to one signal and a short segment of SR 68 as the basis to find all cumulative impacts adequately addressed by the project. In particular, the findings cite "installation of Highway 68 commuter improvement project and installation of a traffic signal" as the basis for concluding that "[p]otentially significant impact to cumulative traffic have been mitigated to less than significant level." Planning Commission Draft CEQA Findings, p. 6, Finding 4, Evidence r. Again, however, the project is no longer to be required to make payments toward impact fees and there is no evidence in the EIR that the Alternative 5 improvements would sufficiently mitigate project impacts to any segment other than segment 10, the segment that is to be widened, or to any intersection other than the intersection 11, Torero Drive at SR 68.

Finally, the Draft Planning Commission CEQA are misleading with respect to the obligation to provide mitigation by contending that "[t]he impacts to the intersections are based upon cumulative conditions, which is not the sole

⁴ As noted, the finding that the applicant-constructed widening of SR 68 "will not improve the functioning of intersections beyond the boundaries of these improvements" amounts to an admission that these impacts will not be mitigated to a less than significant level. Planning Commission CEQA findings, p. 6.

⁵ Although the DEIR's cumulative analysis does not identify specific segment improvements that may be needed for mitigation, the SR 68 Commuter Improvements is apparently the basis for the EIR's conclusion that cumulative impacts in 2030 to segments 8, 9, and 10 and to the intersections 8, 9, and 11 would be less than significant, after they are constructed. See Appendix M (showing acceptable LOS under mitigated conditions for intersections 8, 9, and 11 and for segments 9 and 10 assuming 4 lanes at those segments; and unaccountably omitting segment 8).

responsibility of the project.” Planning Commission Findings, p. 6, Finding 5, Evidence b. The relevant question is whether the project itself causes a significant impact under background conditions or makes a considerable contribution to a significant cumulative impact under cumulative conditions; if so, we understand that CEQA requires mitigation from the project for that impact. In fact, the EIR finds the project creates both kinds of impacts. DEIR, pp. 3.12-30 to 3.12-37 (project-specific significant impacts under background plus project conditions) 3.12-49 to 3.12-54 (project exacerbates and contributes to significant cumulative impacts). It is misleading to imply that the project is not obligated to mitigate its own impacts, whether those impacts are deemed project-level significant impacts or deemed considerable contributions to significant cumulative impacts.

- 3. Even if corridor travel time had been identified as a criterion for determining impact significance – and it was not – neither the EIR nor post-EIR reports establish that the Alternative 5 traffic improvements will decrease corridor travel time as implied in the RDEIR. To the contrary, the available analyses establish that the project will increase corridor travel time.**

DEIR significance criteria are not based on corridor travel time. The DEIR traffic analysis expressly based its determination of significance of impacts for both “project plus background conditions” and “project plus cumulative conditions” on LOS thresholds for a set of segments and intersections. LOS thresholds were used to determine if impacts would be mitigated to less than significance under project plus background conditions.⁶

⁶ The County’s exclusive focus on delay metrics to determine significance fails to disclose that the project, a rural subdivision, will result in a large increase in vehicle miles travelled (“VMT”) compared to an alternative urban project, compared to the regional average, or compared to existing conditions. For example, the weighted average residential trip length for rural locations is 30% higher for rural than urban locations in Monterey County. Environ, Inc., California Emissions Estimator Module (“CalEEMod”), Appendix D, Default Data Tables, Table 4.2, Mobile Trip Characteristics Dependent on Locations. Furthermore, the exclusive focus on delay metrics failed to disclose that the proposed improvements to the roadway system will result in induced VMT. Congestion relief projects (i.e., bigger roadways) may only help traffic flow in the short term. In the long term, they attract more and more drivers (i.e., induced demand), leading not only to increased air pollution and greenhouse gas emissions, but also to a return to congested conditions. See Handy and Boarnet, “DRAFT Policy Brief on Highway Capacity and Induced Travel,” (April 2014), available at http://www.arb.ca.gov/cc/sb375/policies/hwycapacity/highway_capacity_brief-4-21-14.pdf

However, because EIR’s transportation analysis focused exclusively on delay metrics, LOS impacts and corridor travel time, we address those metrics in these comments.

Overall travel time on the SR 68 corridor was not identified as a criterion of significance. However, the DEIR discussed corridor travel time effects of various proposed improvements.⁷

We note that even if overall SR 68 corridor travel time were improved, individual segments and intersections will continue to operate at unacceptable levels of service and thus, under the EIR's announced significance criteria, the project will still cause significant impacts at particular intersections and segments. Furthermore, many drivers who reside on the corridor, or who access it via the study intersections, do not travel the particular segments of the corridor for which total travel time was evaluated by the EIR. Those drivers would not experience any reduction in travel time because they would not travel on the improved segment, but they would be burdened by increased Ferrini project traffic in the unimproved segments.

RDEIR presents 2012 Wood Rodgers memorandum's corridor travel time analysis in support of alternatives 3 and 5: As part of the revised alternatives analysis, the RDEIR provided an analysis of the effect of the proposed widening of a portion of SR 68 and provision of a new intersection under Alternatives 3 and 5. RDEIR, pp. 4.0-14 to 4.0-15, 4.0-33 to 4.0-37, 4.0-62 to 4.0-63; RDEIR Volume II, Attachment 1 for Section 4.0, Wood Rodgers Memorandum, Feb. 23, 2012. This analysis replaced the SR 68 corridor travel time analysis in the DEIR Appendices N and O, which was not based on the same assumptions. See RDEIR 4.0-35 to 4.0-36; Wood Rodgers Memorandum, Feb 23, 2012 pp. 8-11 and Appendices A and B. For example, the Wood Rodgers Memorandum evaluated provision of a different four lane extension and considered impacts with reference to existing conditions rather than with reference to the 2015 "background conditions" evaluated in the DEIR.⁸ RDEIR, p. 4.0-36, fn. 8.

⁷ The DEIR mentions that TAMC and Caltrans may be designing corridor improvements based on the goal of reducing corridor travel time instead of attaining acceptable LOS at particular segments and intersections. DEIR 3.12-28 and 3.12-30. The DEIR traffic study contains some analysis of corridor travel time (App. N and O – travel time for background conditions), and it makes the claim that "[t]he four-lane widening of SR 68 along the project frontage will reduce travel time along the entire corridor to more than offset the increase caused by the project." DEIR Traffic Report, p. 41 (claim that 4-laning SR68 frontage would offset project-caused corridor delay); Appendices N, O (travel time analysis for background conditions). No travel time analysis was provided in the DEIR for existing conditions or for cumulative conditions. The delay analysis in Appendices N and O did not alter the EIR's conclusions regarding the significance of the project's impacts to specific segments and intersections, including its conclusions regarding unavoidably significant impacts after mitigation.

⁸ LandWatch objected to the DEIR's exclusive reliance on a future condition baseline, i.e., "background conditions," consisting of existing conditions plus about 50 planned projects and numerous planned roadway improvements and its failure to provide an existing conditions baseline. FEIR, comment 36-45. In response, the FEIR declined to provide an existing plus project analysis and contended that such an analysis would be "misleading and uninformative." FEIR responses 36-45 and RD 14-7. Despite this, the Wood Rodgers Memorandum analysis of

The 2012 Wood Rodgers Memorandum purports to justify the claim 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.”⁹ RDEIR 4.0-35; see 4.0-62 to 63. The RDEIR states that “[a]lthough when compared with Version A [the version without a new intersection], Version B [the version including the new signalized intersection on SR 68 for project access] would create a small increase in overall State Route 68 corridor travel time prior to mitigation measures, the increased mitigation required for Alternative 3B will result in a ‘neutral’ travel time after mitigation.” RDEIR 4.0-35.

The 2012 Wood Rodgers Memorandum concludes that “[t]otal travel time on SR 68 would decrease by 2.3 minutes under existing plus project scenario 3 compared to existing conditions.” 2012 Wood Rodgers Memorandum, p. 11. However, this contention is misleading because the “scenario 3” analysis includes improvements unrelated to the Ferrini project that are already completed or under construction. As discussed below, the analysis in the 2012 Wood Rodgers Memorandum does not support the conclusion that corridor travel time would decrease or even remain the same with the addition of the project traffic, its new intersection, and its proposed widening of a segment of SR 68.

The 2012 Wood Rodgers memorandum shows that the project traffic, the new signalized intersection, and the 4-lane widening will actually increase travel time:
The 2012 Wood Rodgers Memorandum evaluates corridor travel time under three scenarios:

1. Existing conditions plus the new intersection provided by the project
2. Existing conditions plus the new intersection and widening a segment of SR 68 to 4 lanes provided by the project
3. Scenario 2 plus three sets of recently completed or under-construction improvements on SR 68 provided by TAMC, which are unrelated to approval of the Ferrini Ranch project

corridor travel time effects is based on existing conditions, not background conditions. RDEIR, p. 4.0-36, fn. 8.

⁹ Unlike the DEIR, the 2012 Wood Rodgers Memorandum does not determine how the proposed improvements under Alternatives 3 and 5 would affect segment and intersection impacts found to be significant in the DEIR’s analysis. 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. It drew the same conclusion for Alternative 5. RDEIR 4.0-62 to 63.

The 2012 Wood Rodgers Memorandum calculates SR 68 corridor travel times for AM and PM peak hours for the eastbound and westbound directions for existing conditions and for existing conditions plus the project traffic for each of the three scenarios. 2012 Wood Rodgers Memorandum, p. 10, Table 3.

The 2012 Wood Rodgers Memorandum shows that Scenario 1, adding the project traffic and the new intersection but without widening a segment of SR 68, would increase the combined travel time by 5.2 minutes. Scenario 2, adding the project traffic and the new intersection and widening a segment of SR 68 as proposed for Alternatives 3 and 5, would also increase combined travel time – by 1.9 minutes. Only when the 2012 Wood Rodgers Memorandum added the new SR 68 improvements unrelated to the Ferrini project did the travel time decrease compared to existing conditions – by 2.3 minutes. Based on this analysis, the Wood Rodgers Memorandum stated that “[t]otal travel time on SR 68 would decrease by 2.3 minutes under existing plus project scenario 3 compared to existing conditions.” 2012 Wood Rodgers Memorandum, p. 11.

The 2.3 minute travel time decrease conclusion offered by the 2012 Wood Rodgers Memorandum is not related to the effect of the Ferrini project itself, but to the effect of the Ferrini project plus a set of traffic improvements that have already been constructed or commenced and that will be in place whether the Ferrini project is approved or not. It is misleading to suggest that the approval of the Ferrini project will decrease SR 68 corridor travel time based on this analysis, because the improvements responsible for the decrease in travel time are not part of the Ferrini project. The 2012 Wood Rodgers Memorandum shows that the changes due to the Ferrini project itself, i.e., the change from existing conditions represented by Scenario 2 (Ferrini project traffic, new intersection, and segment widening) will actually increase SR 68 corridor travel time by 1.9 minutes.

The Planning Commission was given equivocal and confused information regarding corridor travel time: The contentions made in the RDEIR and the 2012 Wood Rodgers Memorandum resulted in substantial confusion in the Planning Commission deliberations.

At the October 8 Planning Commission hearing, the traffic consultant informed the Planning Commission that the SR 68 travel time would decrease by 2.3 minutes. Planning Commission video, October 8, 2014, at hour 1:39 to 1:40. A member of the Planning Commission objected that this claim was based on Scenario 3, which included improvements not related to the project. *Id.* at hour 1:41 and 3:23. The member asked for the effect of the project alone under Scenario 2. *Id.* at hour 1:41. The

consultant acknowledged that there would be “about a one and a half minute increase” in travel time for the Scenario 2.¹⁰ *Id.* at hour 1:42.

The Planning Commission member asked that the traffic consultant provide additional analysis to address the issue of crediting the project with the benefits of improvements unrelated to its approval at the next hearing. *Id.* at hour 3:23 and 3:36. In particular, he asked for an analysis under future baseline conditions, including the non-project improvements currently underway and assumed in Scenario 3, which would determine travel time 1) with the Ferrini project and its associated traffic improvements and 2) without the Ferrini project and its associated traffic improvements. *Id.* at hour 3:23 and 3:36. This request for further analysis was memorialized in the October 29 staff report, which stated that the Commission had requested an analysis of travel time under four scenarios:

- Existing conditions without the Ferrini project
- Existing conditions with the Ferrini project
- Conditions with commuter improvements [the three planned/constructed improvements being undertaken by TAMC regardless of Ferrini approval] without the Ferrini project
- Conditions with commuter improvements with the Ferrini project.

The staff report stated that “the applicant’s consultants were preparing the additional analysis and the results will be presented to the Planning Commission for consideration during the October 29, 2014 hearing.” Planning Commission Staff Report, Oct. 29, 2014, Exhibit B, p. 3.

At the October 29 Planning Commission hearing, the applicant’s attorney handed out another memo from Wood Rodgers dated October 28, 2014. The 2014 Wood Rodgers Memorandum did not provide the analysis requested at the October 8 Planning Commission hearing and promised in the staff report. Instead it answered two questions that were not asked.

First, the 2014 Wood Rodgers Memorandum analyzed a scenario comparing 1) travel time under existing conditions to 2) travel time assuming the Ferrini project and its Alternative 3 improvements (the new signalized intersection and SR 68 widening), but assuming that these improvements would not eliminate the existing 200 vehicle cut-through from the Toro Park neighborhood. Elimination of this cut-through was identified as a benefit of the new intersection in the 2012 Wood Rodgers Memorandum and by the traffic consultant, who explained that it would be an inevitable consequence and a safety feature of the new intersection.

¹⁰ The consultant also acknowledged that the proposed Alternative 3 and 5 improvements would not improve any level of service impacts. *Id.* at hour 1:43.

See October 8, 2014 Planning Commission hearing video, hour 1:42. However, the 2014 Wood Rodgers Memorandum made the hypothetical assumption that the elimination of this cut through would not occur in order to answer the question as to what portion of the SR 68 travel time impact was attributable to the 200 cut-through vehicles. The answer offered was that the elimination of cut-through makes no difference to corridor travel time. However, this was not the question asked by the October 8 Planning Commission.

Second, the 2014 Wood Rodgers Memorandum purported to answer “[a]nother question that was raised during the hearing . . . how much of the anticipated travel time reduction is attributed to the proposed widening of SR 68 compared to the travel time reduction attributed to the three planned/constructed improvements along the SR 68 corridor.” Wood Rodgers memorandum, Oct. 28, 2014 p. 2. The memo concludes that 45% or 3.3 minutes of the total reduction (i.e., the total reduction from widening SR 68 and the three planned/constructed improvements) is attributed to the SR 68 widening and 55% or 4.2 minutes is attributed to the three planned/constructed improvements along SR 68. *Id.* This too was not the question asked by the October 8 Planning Commission.

The question asked was how the project and all of its traffic improvements, including the SR 68 widening and the new intersection, would affect a future baseline that includes the three planned/constructed SR 68 improvements unrelated to the Ferrini project. The analysis in the new memo, comparing the benefits of part of the Ferrini improvements (the SR 68 widening) to the benefits of three planned/constructed SR 68 improvements unrelated to the Ferrini project, fails to answer the question posed. In particular, 1) it omits the new signalized intersection that provides project access and which dramatically slows traffic, and 2) it does not analyze travel time with and without the Ferrini project against the requested baseline, i.e, one that includes the three planned/constructed SR 68 improvements unrelated to the Ferrini project.¹¹

It is evident that the 2014 Wood Rodgers Memorandum simply reports the previous results in a different, although equally misleading form. The 2014 Wood Rodgers Memorandum acknowledges that the information in it was "contained in the [2012 Wood Rodgers Memorandum] Analysis model results for Scenarios 1, 2, and 3." In short, no new analysis was performed to accommodate the Planning Commission's request for a new analysis using a new baseline (i.e., a baseline assuming the three TAMC projects are in place).

¹¹ The 2014 Wood Rodgers Memorandum states that “[i]t is important to note” that the three planned/constructed SR 68 improvements unrelated to the project were not in place in February 23, 2014. Wood Rodgers memorandum, Oct. 28, 2014, p. 2. However, these improvements were planned and well understood. The DEIR's “background conditions” baseline included these improvements. DEIR, p. 3.12-17. There was no reason that these improvements could not have been included in the baseline for subsequent analysis.

The 2014 Wood Rodgers Memorandum misleadingly focusses only on the traffic improvements that result in decreased travel time – the purported 3.3 minute benefit of the Ferrini project’s SR 68 widening and the 4.2 minute benefit of the three planned/constructed SR 68 improvements unrelated to the Ferrini project. The 2014 Wood Rodgers Memorandum implies that there would be a total travel time reduction of 7.5 minutes from the Ferrini project and the three planned/constructed sets of SR 68 improvements, even though the previous analysis in the 2012 Wood Rodgers Memorandum reported only a 2.3 minute improvement under Scenario 3. The 5.2 minute difference is the delay caused by the new Ferrini intersection. This is confirmed by the fact that Scenario 1, which assumes only one change to existing conditions – the new intersection – reflects a 5.2 minute increase in travel time. 2012 Wood Rodgers Memorandum, p. 10, Table 3.

In sum, the only available analysis of the net corridor travel time effect of all aspects of the now proposed Ferrini project – its traffic, the new intersection, and the widening of SR 68 – is to increase the total travel time by 1.9 minutes compared to an existing conditions baseline, and this is the only baseline under which the improvements proposed under Alternatives 3 and 5 were evaluated.¹² And this is exactly what was shown in the 2012 Wood Rodgers Memorandum under Scenario 2, which includes the Ferrini project traffic, the new signalized intersection, and the SR 68 widening, and shows a resulting 1.9 minute increase in travel time.

Despite this, staff continued to misrepresent the Wood Rodgers analysis to claim that there would be some small reduction in corridor travel time as a result of the Ferrini project. First, the draft Planning Commission’s findings related to overriding considerations claimed that the four lane extension and new intersection “would improve the commute time between Salinas and Monterey by 1.1 minutes.” Draft Planning Commission CEQA Findings, p. 11, Finding 7, Evidence a2. When challenged at the November 12 hearing, staff acknowledged that

- there was “some ambiguity” in the EIR’s analysis (Planning Commission Hearing, Nov. 12, 2014, hour 3:32);

¹² The 2014 Wood Rodgers Memorandum purports to identify additional travel time reduction factors totally 2% to 2.5% related to the reduced unit count in Alternative 5 and the reduction of out of district transfer students. No analysis is provided to support these estimates. However, even if they were accurate, the project would still increase overall travel time.

- that the 2.3 minute improvement claim represents a round trip, so the actual improvement for a one-way trip is only 1.1 minutes¹³ (*id.* at hour 3:36);
- that the claim in the draft findings that the travel time would improve by 1.1 minutes from Salinas to Monterey was not supported by the Wood Rodgers report, because that report does not analyze the entire corridor (*id.* at hour 3:36).

Staff recommended that the finding in the draft CEQA resolution be revised to strike the contention in the Statement of Overriding Considerations that the project would decrease the Salinas-Monterey travel time by 1.1 minutes. *Id.* at hour 4:31. However, staff continued to argue that the Ferrini project would result in some small but real decrease in travel time compared to existing conditions. *Id.* at 3:32, 3:35. As discussed, the analysis simply does not support this claim. The analysis shows that the combination of the project traffic, the new signalized intersection, and the widening of a segment of SR 68 would result in an increase in travel time compared to existing conditions. Wood Rodgers memorandum, February 23, 20-12, p. 10 (scenario 2 – showing 1.9 minute increase in travel time.)

Conclusion

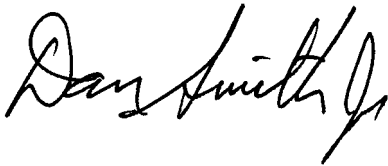
This completes my comments on the Ferrini Ranch Subdivision project. As documented above, the traffic analysis is inadequate and misleading and does not provide a reasonable basis for conclusions regarding the project's environmental impacts and adequacy of mitigation.

Sincerely,

Smith Engineering & Management
A California Corporation

¹³ In fact, the 2.3 minute claim represents the total for eastbound and westbound trips in both AM and PM peak hours, so it actually represents four trips, not two. 2012 Wood Rodgers memorandum, pp. 8-11.

Mr. John Farrow, Esq.
M.R. Wolfe & Associates
November 20, 2014
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Daniel T. Smith Jr., P.E.
President



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EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

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Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface

bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

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Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.