

September 28, 2010

Via Hand Delivery and E-mail

Board of Supervisors
County of Monterey
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**Re: 2007 Monterey County General Plan EIR
PLN070525, SCH2007121001**

Dear Chairman Salinas and Members of the Board:

LandWatch Monterey County has actively participated in the development and environmental review of the 2007 Monterey County General Plan (“2007 General Plan”). We reviewed the proposed definitions of “long-term sustainable water supply” and the proposed revisions to Policies PS 3.1 and PS 3.2 in the September 28, 2010 Staff Report and we offer the following comments.

1. Changes require Planning Commission review and recirculation

LandWatch objects to last-minute changes to the 2007 General Plan without sufficient opportunity for public review and comment. The Final EIR makes it clear that the analyses in the EIR relied crucially on the definitions of long-term sustainable water supply. FEIR, p. 2-51. However, the proposed new definitions substantially alter the definition used in the EIR. FEIR, p. 2-50. The EIR also relied on Policies PS 3.1 and 3.2 as mitigation for water supply related impacts, including overdrafting and salt water intrusion. The changes to the definition of long term sustainable water supply and these policies vitiate the previous analyses. For example, it is now entirely unclear whether the last-minute changes to these policies are offered as essential mitigation, and, if so, for what impacts and in what groundwater basins.

Furthermore, the County has *still* not settled on a single definition of “long-term sustainable water supply,” offering instead two different options. Similarly, the County has *still* not settled on the terms of the critical water supply policies PS 3.1 and 3.2, again offering two different options. Conceivably, the Board may choose one of these options, or perhaps an as-yet-undisclosed third option, without even providing a public hearing after the final definition and policy wording has been selected.

Recirculation is required when there is significant new information, including changes to the project under review. The definition of “long-term sustainable water supply” and Policies PS 3.1 and PS 3.2 are critical parts of the project under review. The public has the right to have a reasonable period of time in which to provide comments on the project actually under review here, and it is entitled to have the County provide good-faith reasoned response to these comments. Thus, the County must recirculate the EIR when it has finally settled on a stable project definition.

The County must also send the General Plan back to the Planning Commission when it has finally settled on the project, and the Planning Commission must hold a hearing on the actual project under review.

Although LandWatch has not been afforded sufficient time to review the proposed changes, it offers the following objections.

2. Option A definition of Long-Term Sustainable Water Supply improperly injects social and economic considerations into a physical determination of water supply

As LandWatch has previously explained, sustainability of a long-term water supply is primarily a physical question, not a social or economic question. However, the Option A definition of long-term sustainable water supply improperly injects considerations of social and economic consequences into the determination whether a supply is sustainable.

If the County is going to adopt a definition for long-term, sustainable water supply which considers factors other than the physical projection of supply and demand and physical effects on the environment, then those factors should be clearly defined. No definition exists for “unacceptable” economic, social or environmental consequences. The proposed Option A definition would give the County unbridled discretion with no objective standards to determine that water supply is “sustainable” whenever the County really, really wants to approve a project.

Furthermore, it is not clear why and how the County would evaluate social and economic consequences. If demand from existing urban, agricultural, and environmental users is taken as a given, and would therefore have priority over water use by new projects, then the County does not *need* to weigh the social and economic consequences of taking water away from existing users by approving a competing water use. It should simply refrain from doing so, regardless of the consequences. The unsettling implication of the call to weigh economic and social consequences is that the County would engage in an *ad hoc* evaluation of the social and economic merits of a particular project versus the merits of all competing water uses.

Finally, the introduction of unspecified economic and social consequences into the determination of sustainability vitiates this EIR’s analysis of water supply-related

impacts and confuses the development of statements of overriding considerations for this and future projects. The proper forum to evaluate social and economic consequences of development is a statement of overriding considerations.

If the County cannot determine that there is an adequate sustainable water supply based solely on physical factors (i.e., physical supply and demand, including environmental demand, and physical environmental effects), it should identify the water supply-related impact as significant and unavoidable, and only then proceed to evaluate social and economic factors as potentially overriding considerations.

Here, the conflation of physical, social, and economic factors in the very definition of water supply makes it impossible for the public to separate 1) what the actual physical impacts would be, including impacts to the natural environment and other water users, and 2) what the Supervisors think may be more important than these impacts. For example, it is now impossible to determine if the Supervisors are proposing to find that there are no significant water supply-related physical impacts in the Salinas Valley through 2030, or to find that any such impacts would be subject to overriding considerations.

3. Both proposed revisions to Policy PS 3.1 are inadequate

Both the Option A and Option B revisions to Policy PS 3.1 are inadequate for the following reasons.

IMPROPER TO LIMIT PROOF REQUIREMENT TO DISCRETIONARY PERMITTING: Policy PS 3.1, requiring proof of an adequate long term water supply, is identified in the EIR as key mitigation of water-supply related impacts. The County has the power to regulate groundwater supplies regardless whether there is a discretionary land-use permit at issue. For example, the County could simply require a discretionary permit for any new well or any increase in pumping from an existing well. Thus, there is no adequate reason for the County to abdicate its power to regulate all groundwater extractions.

IMPROPER TO EXCEPT AGRICULTURE IN ZONE 2C: As written, both versions of PS 3.1 would not apply to most agriculture activities in the Salinas Valley, which is responsible for most groundwater pumping. No discretionary permits are contemplated for the following agricultural activities, which may be enormous users of water:

- winery corridor activities;
- so-called “routine and ongoing agricultural activities (which have yet to be defined);
- new cultivation of agricultural land on slopes under 25%;
- intensification of existing irrigation

As written, only non-agricultural water users would have to demonstrate an adequate supply in Zone 2C. Since agriculture accounts for the vast majority of ground-water use, excepting agriculture from the requirement to demonstrate a sustainable long-term supply simply makes no sense. *Because this policy would expressly permit extensive agricultural activities to rely on an unsustainable water supply, it can no longer support, and in fact undermines, the EIR's conclusion that the Zone 2C water supply is sufficient and that Salinas Valley water supply-related impacts are less than significant.*

The Staff Report provides no rationale for the agricultural exception. LandWatch and others have demonstrated that the EIR is incorrect in concluding that there is an adequate water supply in the Salinas Valley through 2030, in particular because the EIR failed to evaluate the increased water demands of new agricultural conversions. Thus, the agricultural exception is entirely without merit.

However, if LandWatch were wrong, as the EIR claims, *then the exception for agriculture is not necessary since agriculture should be able to demonstrate a sufficient water supply.* There could be no harm or inequity in requiring that agricultural water users meet the same requirement that other users in Zone 2C would have to meet – i.e., to demonstrate that there is a sustainable long-term water supply. It makes no sense to require residential, commercial, and industrial development to demonstrate sustainability while ignoring the question of the sustainability of much larger agricultural pumping.

In short, if the EIR's conclusions regarding the sufficiency of the Zone 2C water supply are accurate, this exception is not necessary. If the exception is necessary, then the significance conclusion is wrong.

Since the EIR has repeatedly cited the proof-of-water-supply provisions as evidence that water supply impacts will be less than significant, or will be mitigated as much as is feasible, the decision to exempt the County's largest water users from these provisions vitiates the impact analysis and renders the significance conclusion for the Salinas Valley unfounded.

PROPOSED FIVE-YEAR REVIEWS ARE NOT ADEQUATE AS MITIGATION: Both versions of Policy PS 3.1 call for periodic reviews of water demand and supply, groundwater elevations, and salt water intrusion in Zone 2C through 2030. If the review finds that water supply-related impacts are greater than expected, the future Board of Supervisors should "consider" whether agriculture should continue to be excepted. This provision is not explained in the Staff Report.

The EIR itself firmly rejects the notion that periodic reviews of water use in the Salinas Valley are necessary to ensure that supplies remain adequate. *See, e.g., FEIR, pp. 2-53 (the five-year reviews of water supply adequacy under proposed mitigation WR-2 is not necessary to 2030 significance conclusion). 3-205 (WR-2 is only necessary mitigation post-2030).* Thus, it would be contradictory if the rationale for the five year reviews in the proposed Policy PS 3.1 is to provide additional mitigation for water supply impacts

through 2030. This contradiction is precisely the kind of problem that arises because the County's policies and definitions have not been stable during the CEQA process.

However, if the purpose of this five-year review provision is in fact to provide additional mitigation, then that purpose is not met. Mitigation must be legally enforceable. Here, the provision cannot constitute adequate mitigation because it is not enforceable: the current Board of Supervisors simply cannot bind its successors to end the agricultural exception. Furthermore, having found that it has allowed unsustainable agricultural water use to commence, it is unclear what steps the County could later take to roll back that use.

As Policy PS 3.1 is written, there would be essentially no meaningful opportunity for the public to participate in these five-year reviews, particularly since agricultural interests may argue that the Board's non-action would not trigger CEQA review, whereas any Board decision to act to remove the agricultural exception would. It would make more sense to require agricultural activities to demonstrate that water supplies are sustainable unless and until a future decision is made to except Zone 2C based on an adequate analysis of the Zone 2C water supply based on a future review of actual results of the ongoing efforts to address overdrafting and salt water intrusion.

Furthermore, as written, the policy would violate CEQA's proscription on development bans as an alternative to an adequate water supply analysis. The County must identify the water supply necessary for agriculture and all other users *now*, not wait for a future water supply problem to materialize and then react by prohibiting planned uses. If adequate supplies cannot be identified now, the County must acknowledge that impacts are significant and unavoidable, and must discuss supply alternatives.

4. Option B revision to Policy PS 3.1 is inadequate

The Option B version of Policy PS 3.1 excepts non-agricultural development in Zone 2C within Community Areas and Rural Centers if the basin can supply 75 years of water and if "the benefits of the proposed development clearly outweigh any adverse impact to the groundwater basin." This provision has two serious defects.

First, a 75 year supply may not be sustainable. A large aquifer may be mined for a long period even though that use is not replaced with recharge and there is nothing in this policy that would prevent this. No analysis is provided here to suggest that this would be "sustainable" use.

Second, once again the County would improperly inject social and economic considerations into the determination whether a water supply is physically sustainable. Once again, writing the policy this way vitiates any reliance on the policy to support a finding in this EIR that the water supply impacts of the 2007 General Plan are less than significant. As written, this policy would expressly permit development that has an

unsustainable water supply; and, thus, the policy could no longer support the conclusion that water supply is sufficient.

And once again, the proper place to address economic and social considerations is in a statement of overriding considerations – *after* the County acknowledges that water supply-related impacts are significant, after it imposes all feasible mitigation (including agricultural water conservation), and after it finds physical impacts to be unavoidable.

Again, if the EIR’s conclusions regarding the sufficiency of the Zone 2C water supply are accurate, this exception is simply not necessary. If the exception is necessary, then the significance conclusion is wrong.

We understand that this provision may have been added out of concern for housing development in the Castroville area. If the Board determines that this housing is essential but that it will have significant water supply impacts, the proper approach is to acknowledge the significance of the impacts, impose all feasible mitigation, and then determine if there are overriding considerations. The wrong approach is to deny that there will be significant physical impacts simply because housing is important.

5. Both proposed revisions to Policy PS 3.2 are inadequate

Policy PS 3.2 is supposed to provide “criteria” for proof of a long term sustainable water supply. LandWatch has repeatedly objected that vague and unenforceable policies like PS 3.2 do not provide an adequate basis to find impacts are less than significant. Both Option A and Option B lack defer the actual formulation of mitigation but do not provide any substantive or objective performance standards. This violates CEQA. CEQA Guidelines, § 15126.4(a)(1)(b).

Both versions recite a list of “factors” to be “used” or “considered” in developing criteria for proof of a long term sustainable water supply. The difference in Options A and B between factors being “used” and factors being “considered” is a distinction without a difference, because in neither version are there any objective standards. The factors that are recited in PS 3.2 may be parameters for future analyses, but they are parameters without values, and therefore not performance standards. For example, neither policy defines or bans overdrafting. Neither policy sets an objective basis to determine whether impacts to biological resources have been “minimized.” Neither policy identifies “water quality” standards that must be met.

LandWatch continues to object to the County’s failure to set clear standards that the deferred ordinance must ensure will be met.

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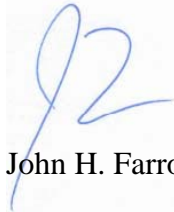
6. Option A revision to Policy PS 3.2 improperly injects social and economic considerations

The Option A revision to Policy 3.2 again improperly includes unspecified “economic or social considerations.” Again, LandWatch objects that injecting these considerations improperly confuses the physical factors relevant to determination of sustainability with the social and economic factors relevant to deciding whether to permit a project even if its water supply is not sustainable.

Thank you for your consideration of these comments.

Yours sincerely,

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

A handwritten signature in blue ink, appearing to read 'JH Farrow', is written over a light blue rectangular background.

John H. Farrow

JHF: am