

April 21, 2019

Local Agency Formation Commission
132 W. Gabilan Street, Suite 102
Salinas CA 93901
lawrenceg@monterey.lafco.ca.gov
McKennaK@monterey.lafco.ca.gov
McBainD@monterey.lafco.ca.gov

Re: Marina Coast Water District's (MCWD's) Ord Community Sphere
Amendment and Annexation Proposal, LAFCO File No. 18-03 (April 22,
2019 LAFCO Meeting Agenda Item No. 9)

Dear Members of the Commission:

I write on behalf of LandWatch Monterey County to support LAFCO staff's recommendation in its April 22, 2019 Supplemental Memorandum that the Commission approve MCWD's Ord Community Sphere Amendment and Annexation Proposal in its current form, without adding additional parcels that have not been reviewed under CEQA.

LandWatch agrees with LAFCO staff that the Commission should not modify the current MCWD annexation proposal to include additional parcels, as the Seaside County Sanitation District and the Seaside Public Works department requested in last-minute letters submitted on April 18 and 19, 2019. Inclusion of those parcels in the pending annexation would require new CEQA review and would conflict with the intent of the 2018 Settlement Agreement between MCWD, LandWatch, and Keep Fort Ord Wild.

The current form of MCWD's annexation proposal represents the settlement of litigation in which LandWatch and Keep Fort Ord Wild challenged MCWD's failure to conduct an adequate CEQA review for its initial annexation proposal, which MCWD approved for LAFCO submission in its February 20, 2018 Resolution No. 2018-09. That litigation challenged the adequacy of the December 2017 Initial Study and Negative Declaration as well as the applicability of CEQA exemptions cited in MCWD's Resolution No. 2018-09. A fundamental claim in that litigation was that some agency must prepare an adequate CEQA review of the effect of increased groundwater pumping before MCWD is permitted to annex parcels intended for future development that are not currently being served with groundwater or for which there has been no CEQA review since the 1997 Fort Ord Reuse Plan EIR.

MCWD took two actions to settle this litigation. First, MCWD modified its proposed annexation area into its current form by excluding the currently unserved parcels planned for future development for which there has been no final land use approvals, i.e., those for which there has been no post-1997 project-level CEQA analysis. Second, in its September 17, 2018 Resolution No. 2018-56, MCWD rescinded its CEQA findings in its earlier Resolution No. 2018-09 as they related to the excluded parcels. **Because MCWD rescinded its CEQA findings for the excluded parcels, there is no CEQA review on which LAFCO may now rely to support the annexation of the excluded parcels.** Accordingly, if LAFCO were to add back the excluded parcels as Seaside requests, LAFCO itself would have to undertake CEQA review of this change to the current annexation proposal.

For all of the reasons set out in comments and objections made by LandWatch and Keep Fort Ord Wild to MCWD's initial annexation proposal, LandWatch objects to any proposal to include additional parcels in the currently proposed MCWD annexation without preparation of an environmental impact report. These comments and objections, as well as the litigation and its settlement, are part of the administrative record of LAFCO's annexation proceeding, and LandWatch incorporates these documents here by reference. We would particularly direct the Commission's attention to the following key documents:

- Michael DeLapa, letter to MCWD Board of Directors, January 18, 2019, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD) (available at http://www.landwatch.org/pages/issuesactions/fortord/011718-LW_Letter_to_MCWD.pdf with supporting documents at http://www.landwatch.org/pages/issuesactions/fortord/011718-MCWD_attachments.pdf.)
- John Farrow, letter to MCWD Board of Directors, February 19, 2019, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD) (available at <http://www.landwatch.org/pages/issuesactions/fortord/032118-LW-to-MCWD-BOD-re-annexation-negative-declaration.pdf>.)
- Timothy Parker, Parker GroundWater, letter to John Farrow, February 15, 2018, re Groundwater Impacts from Increased Pumping to Support Ord Community Development (available at <http://www.landwatch.org/pages/issuesactions/fortord/032118-LW-to-MCWD-BOD-re-annexation-negative-declaration.pdf>.)
- Settlement Agreement, MCWD, LandWatch and Keep Fort Ord Wild, September 17, 2018 (available at

<http://www.landwatch.org/pages/issuesactions/fortord/091918-MCWD-Settlement-Agreement.pdf>.)

- MCWD Resolution No. 2018-56, Modifying Resolution 2018-09 by Excluding Certain Parcels and Portions of Parcels from the Ord Community Sphere of Influence Amendment and Annexation Application, September 17, 2018, (available at <http://www.landwatch.org/pages/issuesactions/fortord/091918-MCWD-Settlement-Agreement.pdf>.)

In sum, if LAFCO were to add back the excluded parcels to the annexation without new CEQA review in the form of an environmental impact report, it would be violating CEQA in the same way that LandWatch and Keep Fort Ord Wild successfully challenged in 2018. We urge the Commission not to take this course.

As LAFCO's staff explain, the areas MCWD excluded may be considered for annexation in the future if and when there is future development. LandWatch expects that the local land use agencies will undertake CEQA review of any proposed development of the excluded parcels, and LandWatch expects to participate in that CEQA review as necessary. Accordingly, LandWatch agreed in the September 17, 2018 Settlement Agreement with MCWD that it would not challenge the future annexation of the excluded parcels as long as the local land use agencies have issued final land use approvals adopted in reliance on a post-1997 CEQA document prepared for that project. Thus, LAFCO can leave future CEQA compliance to the local land use agencies.

Finally, LandWatch concurs in LAFCO staff's explanation that re-inclusion of the excluded parcels is not needed to enhance ratepayer representation or voting rights, because the excluded parcels are uninhabited.

In conclusion, LandWatch asks that LAFCO reject the Seaside proposal to re-include the excluded parcels.

Yours sincerely,

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



John Farrow