

December 13, 2019

Via E-mail

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Re: Draft Fort Ord Habitat Conservation Plan and  
Draft Environmental Impact Statement/Environmental Impact Report

Dear Messrs. Henry and Houlemard and Members of the FORA Board:

We offer the following comments on the Draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) for the Fort Ord Multispecies Habitat Conservation Plan (“HCP” or “proposed HCP”). These comments are in addition to separate comments we submitted on December 10, 2019 regarding the funding for, and alternatives to, the HCP.

The HCP EIS/EIR fail to provide an adequate discussion of groundwater impacts associated with the HCP and the development that it enables. In light of changes to the Base Reuse Plan, significant new information, and changed circumstances, the Fort Ord Reuse Authority (“FORA”) and the United States Fish and Wildlife Agency (“USFWS”) must prepare a subsequent EIR and subsequent EIS before approving the HCP.

- A. The EIS/EIR discussion of water supply impacts fails to provide an adequate discussion of the groundwater setting or of the impacts to the aquifer from the groundwater pumping that will occur to support the Fort Ord development enabled by the HCP.**

The EIS/EIR references but does not tier from the Army’s 1993 EIS and FORA’s 1996 EIR. The EIS/EIR acknowledges that the HCP would result in more development and development at a faster pace than if the HCP is not adopted. In particular, the EIS/EIR discussion of environmental consequences to hydrology and water quality acknowledges that “the extent and pace of future development activities” would be

greater under the HCP alternative than under the no-action alternative.” (EIS/EIR, p. 4.10-1.)

**1. The EIS/EIR Utilities discussion does not address the effects of the project on aquifer depletion or seawater intrusion.**

The EIS/EIR setting description for utilities states that that the Base Reuse Plan limits development based on the suballocation of the 6,600 AFY “retained” by the Army for its use. It references the 1993 Annexation Agreement between the Army and Monterey County Water Resources Agency (“MCWRA”), but does not discuss its terms, including its temporary nature, its provisions for a replacement potable water supply, and its requirement for the cessation of all pumping on Fort Ord. (EIS/EIR, p. 3.16-1.)

The EIS/EIR’s discussion of environmental consequences of utility systems considers only the availability of a water *supply*. The discussion assumes that there will be a 6,600 AFY supply of groundwater to support the development made possible by the HCP. (EIS/EIR, p. 4.16-3.) Neither the thresholds of significance nor the discussion itself consider the impacts to the groundwater resource of *using* that purported supply, such as aquifer depletion and seawater intrusion.

Furthermore, the discussion of supply availability is itself inadequate, because there is no consideration that the supplier’s wells may become inoperable due to seawater intrusion, even though seawater intrusion has advanced very close to the Marina Coast Water District (“MCWD”) wells supplying Fort Ord. Nor is there any discussion of the uncertainty of the supply in light of the temporary nature of the permission to pump groundwater under the 1993 Annexation Agreement. Nor is there any discussion of the uncertainty of the supply in light of the pending dissolution of FORA and the lack of any agreement that would entitled land use jurisdictions to a water supply from MCWD.

**2. Nor does the EIS/EIR Hydrology and Water Supply discussion address the effects of the project on aquifer depletion or seawater intrusion.**

The EIS/EIR setting description for hydrology and water supply states that that the discussion is based in part on the 1996 Reuse Plan EIR, and references the Army’s 1993 FEIS and 1996 FSEIS “for more information.” (EIS/EIR, p. 3.10-1) The discussion acknowledges the seawater intrusion of the 180-foot and 400-foot aquifers and states that “the 900-foot Aquifer, has experienced little development except near the coast where it is pumped to provide a replacement source of groundwater for the seawater intruded areas of the 180- and 400-Foot Aquifers.” (EIS/EIR, p. 3.10-7; see also EIS/EIR, p. 3.10-9 [acknowledging overdraft causing seawater intrusion in the upper aquifers].) The discussion is inaccurate because pumping from the 900-Foot Aquifer, now known as the Deep Aquifers, has in fact experienced *rapid* development, with pumping increasing since 1991 from 2,500 AFY to over 8,000 AFY; and this increase in

pumping is now understood to aggravate seawater intrusion in the upper aquifers. Indeed, the County has recently enacted a moratorium on new wells in the Deep Aquifer.

The EIS/EIR discussion of environmental consequences to hydrology and water quality states that it is “based on currently available information.” (EIS/EIR, p. 4.10-1.) As discussed below, the EIR/EIS does not in fact consider currently available information that indicates that seawater intrusion in the upper aquifers is worsening; that the Deep Aquifers do not provide a sustainable supply source; and that pumping the Deep Aquifers aggravates seawater intrusion.

Although the hydrology and water quality discussion identifies the degradation of groundwater quality as a significance criterion, there is no consideration of aquifer depletion or seawater intrusion caused by groundwater pumping for the Fort Ord development. (EIS/EIR, pp. 4.10-1 to 4.10-5.)

**B. A subsequent EIS and Subsequent EIR are required due to changed circumstances, new information, and changes to the Base Reuse Plan.**

Both the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”) require subsequent environmental review when the project is changed or there is significant new information or changed circumstances.

NEPA requires that an agency “shall prepare supplements to either draft or final environmental impact statements if (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 CFR § 1502.9(c).)

CEQA requires a subsequent EIR if “(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.” (Public Resources Code, § 21166.)

The EIS/EIR’s discussions of water supply, hydrology, and water quality fail to disclose that existing and planned groundwater pumping to support Fort Ord development exceeds the levels assumed and evaluated in the prior environmental reviews; that the overdraft and seawater intrusion impacts are substantially worse than assumed in prior reviews; that the expected replacement water supply has not been implemented; that policies and programs of the Base Reuse Plan intended to avoid or minimize overdraft and seawater intrusion have not been implemented; and that new

information about the Deep Aquifers indicates that they do not provide a sustainable water supply and that pumping the Deep Aquifers also causes seawater intrusion.

As discussed below, and as documented in previous comments by LandWatch and hydrologist Timothy Parker on other Fort Ord projects, changed circumstances, new information, and changes to the Base Reuse Plan require an SEIS and an SEIR before lead agencies make discretionary approvals regarding Fort Ord development that may affect groundwater pumping.

#### **1. Incorporation of previous comments on Fort Ord projects by LandWatch and by hydrologist Timothy Parker.**

LandWatch and hydrologist Timothy Parker have repeatedly commented to land use agencies, Marina Coast Water District, and the US Army that the environmental reviews of groundwater impacts from pumping to support Fort Ord projects has been flawed and that subsequent environmental review is required. A recurring theme in these previous comments is that the environmental reviews for Fort Ord projects have uncritically and incorrectly assumed that there would be no significant impacts to the Salinas Valley Groundwater Basin as long as pumping to support Fort Ord development does not exceed the 6,600 AFY that, in the 1993 Annexation Agreement, the Monterey County Water Resources Agency temporarily permitted the Army to pump pending implementation of a 6,600 AFY replacement water supply, at which point all Fort Ord groundwater pumping was to cease. Twenty six years later, that replacement supply has not been implemented, overdrafting continues, and seawater intrusion advances, destroying the aquifers, now as far as seven miles inland.

The HCP EIS/EIR makes the same error as the reviews to which LandWatch and hydrologist Parker have objected. It uncritically assumes that as long as pumping does not exceed 6,600 AFY, there would be no significant impact or considerable contribution to a significant cumulative impact caused by the groundwater pumping for the development projects enabled by the HCP. This is incorrect. FORA and USFWS as lead agencies must prepare a subsequent environmental review that actually evaluates the groundwater impacts in light of changes to the Base Reuse Plan project, changed circumstances, and new information.

LandWatch incorporates its comments and Timothy Parker's comments by reference and provides copies with this letter. These comments include the following letters:

- John Farrow, letter to Kim Carvahlo, City of Del Rey Oaks, Nov. 14, 2019, re Initial Study/Negative Declaration – Del Rey Oaks Housing Element.

- Timothy Parker, letter to John Farrow, Nov. 14, 2019, re Groundwater impacts from increased pumping to support Del Rey Oaks housing development in the Ord Community.
- John Farrow, letter to Kurt Overmeyer, City of Seaside, August 21, 2019, re Campus Town Specific Plan Draft EIR.
- John Farrow, letter to Colonel Gregory Ford, February 26, 2019, re Subsequent Environmental Impact Statement Required for Disposal of Army Interest in Fort Ord Groundwater.
- John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).
- Timothy K. Parker, letter to John H. Farrow, February 15, 2018, re Groundwater Impacts from Increased Pumping to Support Ord Community Development.
- Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).
- John H. Farrow, letter to City of Seaside City Council, October 12, 2016, re Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056).
- Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016, re Technical Review of Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR) and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR).

As discussed in these letters, and in the additional comments below, both CEQA and NEPA require a subsequent environmental review of the impacts of groundwater pumping associated with projects requiring discretionary review.

- 2. Baseline pumping for Fort Ord from the upper aquifers at the time of the base closure decision was not 6,600 AFY, and it did not include any pumping from the Deep Aquifers. Any existing or projected pumping from the Deep Aquifers for Fort Ord development may cause significant impacts; and any pumping in excess of the Army pumping from the upper aquifers in the year it decided to close Fort Ord base may cause significant impacts.**

Previous environmental reviews of projects in the former Fort Ord have argued that baseline pumping when the Army decided to close the Fort Ord base was 6,600 AFY and that as long as pumping does not exceed 6,600 AFY there are no new impacts. This is not true.

Because the existing and projected groundwater pumping for the base reuse exceeds the baseline Fort Ord pumping, the base reuse causes new significant impacts in the form of aquifer depletion and seawater intrusion; and it makes a considerable contribution to significant cumulative impacts in the form of aquifer depletion and seawater intrusion.

In particular, the 1993 Army EIS and the 1996 BRP EIR identify baseline pumping to support Fort Ord from the 180-foot and 400-foot aquifers of at most 5,200 AFY, not the 6,600 AFY that the HCP EIS/EIR assumes to be available, and that the Fort Ord water supplier MCWD and land use jurisdictions assume that the planned future development will require.

Furthermore, the 1993 Army EIS and the 1996 BRP EIR identify *no* baseline pumping to support Fort Ord from the Deep Aquifers, and identify only 2,500 AFY of cumulative pumping from the Deep Aquifers. That Deep Aquifer pumping was for the City of Marina, not Fort Ord.

This baseline information is evident from LandWatch's previous comments on other Fort Ord projects and also from the following:

- The 1992 USACE baseline document for the Army EIS states that baseline groundwater pumping from the Deep Aquifers was only 2,500 AFY, pumped to support the City of Marina, and there were no plans by any jurisdiction to take additional water from this aquifer.<sup>1</sup>

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<sup>1</sup> US Army Corps of Engineers, Other Physical Attributes Baseline Study of Fort Ord, California, April 1992, pp. 1-3, 1-15, available at [http://docs.fortordcleanup.com/ar\\_pdfs/AR-BW-2202//Section\\_1.pdf](http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202//Section_1.pdf).)

- Annual potable pumping to support Fort Ord from 1986-1989 was 5,083 AFY and the average from 1986-1990 was 5,126 AFY.<sup>2</sup> Water use declined from 1980 to 1990, except for the single year 1984.<sup>3</sup>
- As of 1991, MCWD had drilled 14 wells since 1956 but abandoned most of them due to seawater intrusion. MCWD addressed seawater intrusion in the short term by tapping the Deep Aquifer for Marina supply, but planned to secure a long-term alternative water supply via the Salinas Valley Seawater Intrusion Project.<sup>4</sup>
- The EIR/EIS for the Salinas Valley Seawater Intrusion Project proposed to deliver 6,600 AFY of potable water to Fort Ord, an amount based on the single year historic peak demand that occurred in 1984, years before the Army decided to close Fort Ord.<sup>5</sup>
- The 1993 Army EIS states that pumping for Fort Ord declined from a one-year peak of 6,600 AFY in 1984 to an average of 5,100 AFY during 1986-1989. (Army 1993 EIS, p. 4-57.)
- The 1996 Base Reuse Plan EIR references the Army baseline documents that purport to describe baseline conditions as of 1991. (BRP EIR, p. 4-46.)
- The 1996 Base Reuse Plan EIR acknowledges that water demand in 1991 was 4,700 AFY. (BRP EIR, p. 4-53.)

In sum, the 6,600 AFY figure is not the baseline pumping when the Army decided to close the base that should be used to measure physical impacts of water supply pumping.

The 6,600 AFY figure is merely a reference to the amount of pumping that the Monterey County Water Resources Agency agreed to permit the Army to pump without penalty on a temporary basis, pending the expected implementation of a 6,600 AFY replacement water supply project to serve Fort Ord, and provided that this pumping did not aggravate seawater intrusion.<sup>6</sup> And indeed, the 1996 Base Reuse Plan EIR states that

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<sup>2</sup> *Id.* at 1-6.

<sup>3</sup> *Id.* at 1-6, 1-14.

<sup>4</sup> *Id.* at 1-15

<sup>5</sup> *Id.* at 1-7 to 1-8.

<sup>6</sup> Agreement Between the United States of America and the Monterey County Water Resources Agency Concerning Annexation of Fort Ord Into Zones 2 and

“[t]hrough an agreement between the Army and MCWRA, 6,600 acre feet per year (afy) of water is available from the Salinas Valley groundwater basin for former Fort Ord land uses, provided that such provisions do not aggravate or accelerate the existing seawater intrusion.” (BRP EIR, p. 4-49.)

- 3. The Army EIS and the BRP EIR were predicated on the assumption that existing pumping from the 180-foot aquifer and the 400-foot aquifer could continue temporarily, but not if that pumping aggravated seawater intrusion and only until MCWRA provided the expected replacement water supply to support reuse of Fort Ord. Because the replacement water supply project has not been implemented 26 years after the 1993 Agreement, and because existing and proposed groundwater pumping for Fort Ord aggravates seawater intrusion, there has been a change in circumstances, a change in the Base Reuse Plan, and new information that warrant an SEIS and SEIR.**

Groundwater pumping for Fort Ord was to cease when an expected replacement water supply was implemented.<sup>7</sup> And there was never any expectation that Fort Ord development would be supported by pumping from the Deep Aquifer.

Despite the expectation that the impacts of the Base Reuse Plan would be mitigated by a new water supply project that would replace groundwater pumping for Fort Ord, this never occurred. This is evident from previous comments by LandWatch and hydrologist Timothy Parker on other Fort Ord projects. Consider the following:

- The 1993 Annexation Agreement between the Army and MCWRA assumed that MCWRA would provide a 6,600 AFY replacement potable water supply project for Fort Ord, at which point all groundwater pumping for Fort Ord would cease.
- The 1993 Army EIS and the 1996 BRP EIR acknowledge that the existing pumping is not sustainable because it is causing seawater intrusion. The 1993 Army EIS states that MCWD plans to obtain a potable water supply from the Salinas Valley Seawater Intrusion Project. The 1996 BRP EIR conditions continued pumping for Fort Ord development on not causing further seawater intrusion and identifies policies and programs that are intended to identify sustainable yield, to ensure that pumping does not exceed sustainable yield, to ensure that development does not exceed available supply, and that an alternative water supply is obtained.

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2A of the Monterey County Water Resource Agency, Sept 21, 1993.  
(Agreement No. A-06404).

<sup>7</sup> See e.g., John Farrow, letter to Colonel Gregory Ford, Feb. 26, 2019, pp. 3-7.

- The 1996 Base Reuse Plan EIR states that by the terms of the 1993 Army/MCWRA agreement “a potable water supply of 6,600 afy is assumed to be assured from well water *until a replacement is made available by the MCWRA (provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer).*” (BRP EIR, p. 4-53, emphasis added.)
- The 1996 Base Reuse Plan EIR states that “given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to ‘assure’ even 6,600 afy.” (*Id.*) It then identifies policies and programs that must be adopted by cities and the County “to ensure the water supply issue is resolved and the proposed project does not aggravate or increase the seawater intrusion problem.” (*Id.*, p. 4-54.) These are the Hydrology and Water Quality Policies and Programs that mandate ensuring additional water supply, conditioning development on assures water supply, cooperation to mitigate further seawater intrusion.
- The 1996 Base Reuse Plan EIR identifies the options for obtaining additional water supplies.
- In 1998, MCWRA released an EIR for the Salinas Valley Water Project, which recounts the history of planning through the 1990s for a project that would halt seawater intrusion and provide potable water supplies to various urban users including Fort Ord, consistent with the 1993 Annexation Agreement, the discussion in the Army’s EIS, and the discussion in the Base Reuse Plan EIR.<sup>8</sup>
- However, by 2001, in response to public concerns about cost and other issues, the Salinas Valley Water Project was revised to exclude urban deliveries.<sup>9</sup> No replacement potable water supply project has been provided for Fort Ord.

Because the expected replacement water supply project has not been implemented 26 years after the 1993 Agreement, and because existing and proposed groundwater pumping for Fort Ord aggravates seawater intrusion, there has been a change in circumstances, a change in the Base Reuse Plan, and new information that warrant an SEIS and SEIR.

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<sup>8</sup> MCWRA, Salinas Valley Water Project Draft Master EIR, SCH# 97-121020, Oct. 1998, pp. 1-3 to 1-5 [history], 3-36 [project description includes delivery of water supplies to Fort Ord].

<sup>9</sup> MCWRA and USACE, Salinas Valley Water Project Draft EIR/EIS, SCH# 200034007, June 2001, p. 1-9.

**4. The agencies have not implemented the Base Reuse Plan policies to mitigate seawater intrusion. This too is a change in the project, new information, and changed circumstances that warrant subsequent environmental review.**

The agencies have not honored the Base Reuse Plan's requirements that continued pumping be contingent on not aggravating seawater intrusion, that the agencies determine safe yield, that pumping not exceed safe yield, that the agencies ensure provision of an additional water supply, and that development not be approved without an assured long-term water supply.

For example, as Timothy Parker explained:

The BRP PEIR provides specific policy requirements to ensure adequate, timely mitigation of seawater intrusion, mitigation that may need to be implemented before 6,600 afy is committed or pumped for new development. Policy B-1 requires that the FORA members “shall ensure additional water supply.” Policy B-2 requires conditioning project approval on verification of an “assured long-term water supply.” Policy C-3 requires the member agencies cooperate with MCWRA and MPWMD “to mitigate further seawater intrusion based on the Salinas Valley Basin Management Plan.” Program C-3.1 requires the member agencies to work with the water agencies “to estimate current safe yields within the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside groundwater basins, to determine available water supplies.” MCWRA has now determined that the safe yield of the Pressure Subarea is about 110,000 to 117,000 afy and that existing pumping exceeds this safe yield by about 12,000 to 19,000 afy.<sup>10</sup> Indeed, the BRP PEIR acknowledges that pumping in the 180-foot and 400-foot aquifers had “exceeded safe yield, as indicated by seawater intrusion and water levels below sea level.” (BRP PEIR p. 4-63.) The BRP PEIR states that the “conditions of the 900-foot aquifer are uncertain”, including the safe yield and whether the aquifer is in overdraft. *Id.*

The BRP PEIR explains that Policies B-1, B-2, and C-3 are intended to “affirm the local jurisdictions’ commitment to preventing further harm to the local aquifers . . . by limiting development in accordance with the availability of secure supplies.” (BRP PEIR, p. 4-55.) The explicit provisions for determination of safe yield and for acceleration of water supply projects if 6,600 afy cannot be supplied without further seawater intrusion clearly demonstrate the intent that the member agencies not simply defer action until 6,600 afy has been allocated to

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<sup>10</sup> MCWRA, State of the Salinas River Groundwater Basin, p. 4-25.

development projects if seawater intrusion continues. To the contrary, it seems clear that the BRP PEIR directed the member agencies “to mitigate further seawater intrusion” by, among other things, ensuring that groundwater pumping beyond the determined safe yield is not permitted for new development projects. The BRP PEIR’s cumulative analysis makes it clear that Policy C-3 does not permit uncritical reliance on a 6,600 afy allocation: “existing water allocations of 6,600 afy . . . would allow for development to proceed to the year 2015, provided that seawater intrusion conditions are not exacerbated (Policy C-3).” (BRP PEIR p. 5-5 (emphasis added).)

(Timothy Parker, letter to John Farrow, Oct. 8, 2016, pp. 8-9.)

The failure of the agencies to implement the Base Reuse Plan policies to mitigate seawater intrusion constitutes a change in the project, new information, and changed circumstances that warrant subsequent environmental review.

**5. Overdraft and seawater intrusion into the 180-foot and 400-foot aquifers have continued and accelerated due to cumulative groundwater pumping in excess of sustainable yield, especially in coastal areas such as Fort Ord. This, too, is a change in circumstances and new information that warrant an SEIS and SEIR.**

LandWatch’s and hydrologist Timothy Parker’s previous comments on other Fort Ord projects document the continued and increasing cumulative pumping of the 180-foot and 400-foot aquifers, including the existing and planned pumping to support the Fort Ord Base reuse. This pumping causes and will cause significant cumulative impacts in the form of continued overdraft and advancing seawater intrusion. The existing and foreseeable future pumping of the 180-foot and 400-foot aquifers to support Fort Ord reuse makes a considerable contribution to these cumulative impacts.

The continuing and accelerating advance of seawater intrusion since the 1996 Base Reuse Plan EIR is a substantially more severe significant effect than shown in the Base Reuse Plan EIR. (See CEQA Guidelines § 15162(a)(3)(B) [SEIR required if “significant effects previously examined will be substantially more severe than shown in the previous EIR”].) The continuing and more severe seawater intrusion is new information and changed circumstances that warrant subsequent environmental review.

**6. Cumulative pumping in the Deep Aquifers has rapidly increased and Deep Aquifer pumping is now being used to support Fort Ord reuse. Deep Aquifer pumping at current rates induces seawater intrusion into the upper aquifers and depletes the Deep Aquifers. This, too, is a change in circumstances and new information that warrant an SEIS and SEIR.**

LandWatch's and hydrologist Timothy Parker's previous comments on other Fort Ord projects document the increased pumping of the Deep Aquifers to support Fort Ord reuse and the increased cumulative pumping of the Deep Aquifers.

Fort Ord development is now relying on pumping from the Deep Aquifers, which were only being pumped to support the City of Marina at the rate of 2,500 AFY in 1991. New analysis and data reveal that the Deep Aquifers are not being recharged except through incidental percolation from the 180-foot and 400-foot aquifers; that cumulative pumping, including pumping to support Fort Ord development, has increased from around 2,500 AFY in 1991 to in excess of 8,000 AFY; and that pumping in excess of 8,000 AFY will induce additional seawater intrusion into those upper aquifers.

This cumulative pumping causes significant impacts in the form of depletion of the Deep Aquifers and inducement of seawater intrusion into the overlying 180-foot and 400-foot aquifers. The existing and foreseeable future pumping of the Deep Aquifers to support Fort Ord makes a considerable contribution to these cumulative impacts.

The substantial increase in cumulative pumping from the Deep Aquifers, the use of Deep Aquifer pumping to support Fort Ord development, and the consequent aquifer depletion and seawater intrusion constitute a change in the project, new information, and changes to circumstances that warrants subsequent environmental review.

**7. The availability of a water supply for Fort Ord development and the HCP can no longer be assured. This too is a change in circumstances and new information that warrant an SEIS and SEIR.**

The HCP EIS/EIR assumes that a 6,600 AFY water supply will be available to support Fort Ord development. While this assumption may have been valid in 1996 based on Monterey County Water Resources Agency's permission for temporary groundwater use pending the expected water supply project, this assumption is no longer valid.

First, the groundwater supply itself is threatened by advancing seawater intrusion. As hydrologist Parker explains:

MCWRA's most recent mapping of the seawater intrusion front in 400-Foot Aquifer shows rapid advance of that front along Reservation Road in the vicinity

of MCWD's only remaining upper aquifer wells, wells number 29, 30, 31 and 35. [footnote omitted] There is no assurance that MCWD's remaining wells in the 400-Foot Aquifer will remain viable in the face of this rapid seawater intrusion.<sup>11</sup>

Second, 6,600 AFY is not a permanent right to pump groundwater regardless of the impacts to the aquifer. Neither the 1993 agreement between the Army and MCWRA, nor any subsequent assignment of the Army's interest in that agreement, created a "water right," much less a permanent right to pump groundwater to support Fort Ord development regardless of impact on the aquifer.<sup>12</sup>

Third, when FORA sunsets in 2020, the land use jurisdictions will no longer have any entitlement to an "allocation" of a portion of the 6,600 AFY. MCWD would have unfettered responsibility and authority to establish rules and regulations for water distribution.<sup>13</sup> (Gov. Code, § 31024.) MCWD would also have unfettered responsibility and authority to restrict water use in accordance with a threatened or existing water shortage. (Gov. Code, §§ 31026, 31029.1, 31035.1; Water Code § 350.) MCWD can and should exercise its authority to deny new groundwater pumping for future development in order to protect existing groundwater users until a replacement supply is implemented.

#### **8. HCP funding analysis fails to evaluate delay and reduced scope of development caused by lack of sustainable water supply.**

Finally, as discussed in LandWatch's December 10, 2019 comments regarding the funding and alternatives to the HCP, the financial viability of the HCP itself is critically dependent on the HCP's assumption that all of the remaining planned development in the Base Reuse plan will be built out by 2030. The HCP's discussion of funding assurances and the EIS/EIR's assumption that funding is assured fails to consider the uncertainty of a water supply to support that development.

As discussed, the agencies should act responsibly, and in accordance with adopted policies, to protect existing groundwater users by refusing to support new development without a sustainable water supply, to prohibit reliance on groundwater for new development, and to finally seek to implement the replacement water supply. This responsible action may postpone full buildout well after 2030 if a replacement supply

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<sup>11</sup> Timothy Parker, letter to John Farrow, Nov. 14, 2019, p. 9.

<sup>12</sup> See John Farrow, letter to Colonel Gregory Ford, Feb. 26, 2019.

<sup>13</sup> See John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018; John Farrow, letter to Kim Carvalho, City of Del Rey Oaks, Nov. 14, 2019.

were not available immediately, even assuming there were market demand for that full buildout.

Yours sincerely,

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



A handwritten signature in blue ink, appearing to read "JF".

John Farrow

JHF:hs

Attachments

1. John Farrow, letter to Kim Carvahlo, City of Del Rey Oaks, Nov. 14, 2019, re Initial Study/Negative Declaration – Del Rey Oaks Housing Element.
2. Timothy Parker, letter to John Farrow, Nov. 14, 2019, re Groundwater impacts from increased pumping to support Del Rey Oaks housing development in the Ord Community.
3. John Farrow, letter to Kurt Overmeyer, City of Seaside, August 21, 2019, re Campus Town Specific Plan Draft EIR.
4. John Farrow, letter to Colonel Gregory Ford, February 26, 2019, re Subsequent Environmental Impact Statement Required for Disposal of Army Interest in Fort Ord Groundwater.
5. John Farrow, letter to Marina Coast Water District Board of Directors, February 19, 2018, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).
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Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).

8. John H. Farrow, letter to City of Seaside City Council, October 12, 2016, re Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056).
9. Timothy K. Parker, Technical Memorandum to John H. Farrow, October 8, 2016, re Technical Review of Draft Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR) and the Final Subsequent Environmental Impact Report for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (DSEIR).