

**ATTORNEY–CLIENT PRIVILEGE**

**MEMORANDUM**

**TO:** Teri Wissler Adam, Contract Planner, City of Seaside  
Lisa Brinton, Community & Economic Development Services Manager

**FROM:** Kevin Ennis, Special Counsel  
Serita Young, Assistant Special Counsel  
Amanda L. Stein, Assistant Special Counsel

**DATE:** July 18, 2014

**SUBJECT:** Water Supply Analysis Requirements for Monterey Downs Specific Plan EIR

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**Questions Presented:**

- 1) May the Water Supply Assessment (WSA) Supplement prepared by the developer be used in preparing the EIR for the project? Should the WSA Supplement be sent to the Water District? What is the District's obligation with respect to the WSA Supplement?
- 2) Must the City include a specific water demand figure in the EIR or can the EIR refer to a range of anticipated water demand based on competing numbers? If so, how should the City treat the different figures from the District's WSA and the WSA Supplement?
- 3) Can the City rely on a generalized mitigation measure for ensuring adequate water supply before construction may commence and what needs to be included in the document to do so?
- 4) How should the City address future allocations of the remaining available water supply?

**Summary Answers:**

1) The City and its environmental consultant may use the WSA Supplement prepared by the developer to support the water supply analysis in the EIR. In addition, the WSA Supplement should be sent to the District so as to provide an opportunity for the District to respond and provide responses or clarification as it deems appropriate. The District should be encouraged to provide a response to the WSA Supplement, but it is not required to prepare a new WSA.

2) The EIR must adequately address the environmental consequences of providing a long-term water supply for the proposed development. Practically speaking, this requires the EIR to include an accurate representation of the project's projected water demand. The absence

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of a demand figure precludes the existence of substantial evidence to conclude sufficient water is likely to be available for the project. Thus, inconsistencies regarding the water supply demand figures for this project must be addressed. The EIR should explain differences in methodologies and conclusions between the UWMP, the 2012 WSA, and the 2014 WSA Supplement. We recommend selecting the most conservative methodology to avoid the risk of underestimating water demand and the environmental impacts of providing water for the project.

3) So long as the EIR discloses the types of activity and environmental effects that are reasonably foreseeable from supplying water to the project, the EIR may restrict development as mitigation for water supply impacts. Future water supplies identified must bear a likelihood of actually proving available, and where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires discussion of reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and of the environmental consequences of those contingencies.

The Monterey Downs Specific Plan EIR must disclose uncertainties with respect to the 539.2 AFY of groundwater relied upon for the project, and the proposed recycled water system and desalination plant. If it is impossible to determine with certainty that these future water sources will be available, the EIR must also include discussion of possible replacement sources. The EIR is unclear whether cumulative demand should be measured by all other customers of MCWD or by the Ord Community. If there is remaining unmet cumulative water demand in the relevant water customer community, then the EIR must disclose that this project is contributing to the cumulative water shortfall. If the project has significant water supply impacts, then a reduced water impact project alternative must be analyzed even if it would not completely avoid the significant impact on water supply.

4) One of the major policy decisions for the City is whether and to what extent it wants to sub-allocate all or some of its limited remaining water supply allocation from the Marina Coast Water District of the Salinas groundwater supply to the Monterey Downs Project. The City should be considering a process for evaluating the future water needs of various developments in Seaside and then how Monterey Downs Project fits into the City's water allocation priorities. At a minimum, the sub-allocation decision should be considered in connection with the approval of entitlement documents for the Monterey Downs Project. This could be addressed in connection with the land uses allowed by the Specific Plan and the phasing of build-out of the Specific Plan, along with conditions of approval for other entitlement decisions regarding the Project.

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### Analysis:

#### 1) Water Supply Assessment Supplement

Water Code Sections 10910 to 10912 require a city considering a project to obtain a water supply assessment from the applicable public water system, which is then included in any CEQA document that the city prepares for the project. Similarly, before a city approves a residential development of more than 500 units, Government Code Section 66473.7 requires the city to obtain a written “verification” that adequate water supplies will be available for the project. Collectively, these statutes require that water supplies be identified with greater specificity as land use planning progresses from general to specific phases.

The court in *California Water Impact Network v. Newhall County Water Dist.*, 161 Cal.App.4<sup>th</sup> 1464 (2008) provide guidance on how the lead agency must treat a water supply assessment and what additional information and alternative conclusions the lead agency may reach with respect to the adequacy of water supplies for a project. Specifically, the court in that case stated that the WSA’s role in the EIR process on page 1486:

“[i]s akin to that of other informational opinions provided by other entities concerning potential environmental impacts – such as traffic, population density or air quality. The fact that the duties of the water provider in preparing the WSA and the responsibility of the lead agency in requesting the WSA are committed to statute does not change the fundamental nature of the WSA itself as an advisory and informational document.”

The court in Newhall went on to also state at page 1487:

“Once the WSA is approved by the water provider's governing board the WSA is submitted to the lead agency. The lead agency may then evaluate the information included in the WSA (*Wat. Code, § 10911, subd. (c).*) The power to "evaluate" the WSA necessarily invests the lead agency with the authority to consider, assess and examine the quality of the information in the WSA and endows the lead agency with the right to pass judgment upon the WSA. While the lead agency must include the WSA in the EIR, the lead agency is not required to accept the WSA's conclusions.

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The lead agency may in evaluating the WSA accept or disagree with the water provider's analysis or may request additional information from the water provider.<sup>21</sup> In any event, the lead agency is required by statute to make the ultimate determination, based on the entire record, whether water supplies are sufficient. (Wat. Code, § 10911, subd. (c).) The lead agency may make a finding that adequate water supplies exist (or do not exist) to meet the project's anticipated demand, even if that finding is inconsistent with the conclusions in the public water system's assessment.”

Based on the analysis by the court, we conclude it would be appropriate for the lead agency to obtain other information about the adequacy of water supplies and that one of the documents that the lead agency could consider in obtaining that information is material from the applicant's experts. Accordingly, we believe it would be appropriate for the City's environmental consultant to obtain a copy of the WSA Supplement as prepared by experts hired by the applicant and to consider the information in that Supplement in preparing the EIR.

### 2) Water Demand Figures

Even before the Legislature created water supply assessment requirements in the Water Code, the courts grappled without how land use and water supply planning should be coordinated. In *Santiago Water District v. County of Orange* (1981) 118 Cal. App. 3d 818, 829, a court upheld a challenge to the approval of an EIR for a proposed sand and gravel mining operation because the EIR contained no information about the delivery of water to the proposed mining site, and did not include any description of the facilities that would need to be constructed to deliver water to the project. The EIR did not include any discussion of the environmental impacts of supplying such a large quantity of water, nor the effect of that delivery on water service elsewhere in the water district's jurisdiction. *Id.* at 830-31.

In *Stanislaus National Heritage Project v. County of Stanislaus* (1996) 48 Cal. App. 4th 182, the court invalidated an EIR for a specific plan because the document had not adequately dealt with the environmental impacts associated with acquiring a long-term water supply for the proposed development. The EIR evaluated the effects of providing water during the first five years of the project, but did not analyze beyond that initial period. Instead, the EIR treated the potential long-term water shortfall as a significant and unavoidable impact and identified as mitigation a commitment that further construction would not occur unless adequate water supplies could be found and environmental review performed. *Id.* at 195. The court observed

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that “the project was going to need water from some source or sources. To defer any analysis whatsoever of the impacts of supplying water to this project until after the adoption of the specific plan calling for the project to be built would appear to be putting the cart before the horse.” *Id.* at 199-200.

As stated previously, Water Code Sections 10910 to 10912 require a city considering a project to obtain a water supply assessment from the applicable public water system, which is then included in any CEQA document that the city prepares for the project. Similarly, before a city approves a residential development of more than 500 units, Government Code Section 66473.7 requires the city to obtain a written “verification” that adequate water supplies will be available for the project. Collectively, these statutes require that water supplies be identified with greater specificity as land use planning progresses from general to specific phases.

Nevertheless, the “ultimate” question under CEQA is whether the EIR “adequately addresses the reasonably foreseeable impacts of supplying water to the project, not whether the EIR establishes a likely source of water.” *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260, 283. As a practical matter, this requires that an EIR include a description of a project’s projected water supply demand. The failure to include an accurate representation of the project’s water demand “precludes the existence of substantial evidence to conclude sufficient water is likely to be available for the project.” *Id.* at 284.

In *Preserve Wild Santee*, the WSA for a residential subdivision project estimated the water demand to be 881 acre feet per year (AFY), while the EIR estimated the demand to be approximately 1,446 AFY. Challengers argued that there was insufficient evidence that an adequate long-term supply existed for the project because the EIR relied on the water district’s determination of adequate supply, which relied on the lower water demand figures. 210 Cal. App. 4th at 282. The city argued that the demand figure in the WSA was more precise and supported the conclusion of less than significant impact. However, the city’s reasons for relying on the WSA did not appear in the EIR, so there was no basis for assuming the WSA’s estimation of water demand was more accurate. *Id.* at 284. Since the WSA only addressed 61 percent of the water demands estimated in the EIR, the court held that the EIR failed to adequately disclose the project’s water supply impacts. *Id.*

In a recent case, the Court of Appeal, Fourth District, upheld an EIR for a zoning amendment even though it did not quantify the total effect on water demands in a project area. *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal. App. 4th 1, 23. The court upheld San Diego County’s approval of an EIR for a Tiered Winery Ordinance which permits

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boutique wineries in agricultural zones by right. *Id.* at 9-10. The zoning amendment did not need to predict the total effect on water demand since the project did not have a defined size and projected water use. *Id.* at 22. For this “conceptual” EIR, it was sufficient to discuss the use of water by existing winery operations, projected declines in agricultural use, available water sources, and note the uncertainties involved since there was no way to know how many by-right wineries might develop. *Id.* at 23.

Here, the Monterey Downs project has a defined size and projected water use, so the EIR must include quantitative water demand figures in accordance with *Preserve Wild Santee*. Various documents and parts of the EIR give conflicting demand figures for this project. The 2010 Urban Water Management Plan (UWMP) anticipated that the project would result in 738.4 AFY of water demand. By contrast, the EIR concludes that the total water demand will be 852.5 AFY based on the 2012 WSA. Finally, the 2014 WSA Supplement estimates demand to be 712.3 AFY. The EIR should explain the different methodologies and assumptions underlying each of the demand figures, such as the estimated number of dwelling units and the effect of conservation measures (e.g. California Green Building Code, District regulations, etc.). **We recommend selecting the most conservative methodology to avoid underestimating water demand and the environmental impacts of providing water for the project.** Arguably, the 2012 WSA is overly conservative in its water demand projection because it assumed 1,500 residential units (2012 WSA, pp. 3), but the number of residential dwelling units has decreased to 1,280. Admin. Draft EIR, pp. 2-31. However, the 2014 WSA Supplement has not been reviewed or approved by the MCWD. Therefore, the more cautious approach is to continue to rely on the 2012 WSA.

It is also **unclear how the supply shortfall is calculated for the project and for the Ord Community.** Actual water production has averaged 4,329 AFY for MCWD. Monterey Downs EIR, pp. 4.14-1. The EIR states that the MCWRA may withdraw up to 6,600 AFY from the Salinas Groundwater Basin. Monterey Downs EIR, pp. 4.14-3. However, the MCWD is listed as only having 382.2 AFY of unallocated supply. EIR, pp. 4.14-20. Without explaining how the shortfall is calculated, the EIR arguably implies that additional groundwater supply could be developed. Information regarding the City of Seaside and County of Monterey sub-allocations should be clarified in the EIR. See 2012 WSA, pp. 22 and Table 5-2.

**The consultant should verify that the EIR has not underestimated cumulative water demand.** The cumulative analysis discussion is unclear whether cumulative demand should be measured by all other customers of MCWD or by the Ord Community. This affects the total cumulative demand figures (11,040 AFY or 6,600 AFY, respectively).

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There are **conflicting figures given for the total Ord Community water demand**. Page 4.14-2 lists the total demand as 6,600 AFY (potable water) plus 1,427 AFY (recycled water). However, page 4.14-30 states that the total demand is 8,172 AFY for Ord Community. Additionally, it appears that the 6,600 AFY demand figure for the Ord Community relies on the 2010 UWMP estimate for the project of 738.4 AFY, rather than the 852.5 AFY estimate used in the EIR. The 2010 UWMP assumed a different project size and different phasing, and did not include the cemetery or one of the hotels. See Monterey Downs EIR, pp. 4.14-15. In that case, then the Ord Community subtotal of water demand used in the EIR would be approximately 114 AFY too low.

In sum, an EIR for a specific plan must include an accurate representation of the project's projected water demand. Inconsistencies regarding the water supply demand figures from the 2012 WSA, the 2010 UWMP, and the 2014 WSA Supplement need to be explained. To the extent that these discrepancies result from a mere difference of professional opinion, the EIR should explain the reason for selecting that methodology. We recommend selecting the most conservative water demand projection to avoid claims that the EIR has underestimated water demand and the environmental impacts of providing water for the project.

### 3) Adequacy of Mitigation Measure PU-1 and Use of Generalized Mitigation

As discussed in Section 2, *Stanislaus Natural Heritage Project* held that CEQA's informational demands may not be met simply by providing that future development will not proceed if the anticipated water supply fails to materialize. 48 Cal. App. 4th at 206. Inherently, the EIR must assume that the entire project will be built. The *Stanislaus* court made the following statements regarding what steps the county would have to take to comply with CEQA:

We are concluding that an EIR for this project must address the impact of supplying water for the project. It is not mitigation of a significant environmental impact on a project to say that if the impact is not addressed then the project will not be built. The decision not to build may well rest upon the absence of a suitable or adequate water source. However, the decision to approve the EIR of this project does require recognition that water must be supplied, that it will come from a specific source or one of several possible sources, of what the impact will be if supplied from a particular source or possible sources and if that impact is adverse how it will be addressed. While it might be argued that not

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building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built.

*Id.* at 205-206. In short, the informational demands of CEQA are not met by simply curtailing development until sufficient water becomes available. A lead agency must attempt in good faith to provide meaningful information regarding the types of activity and environmental effects that are reasonably foreseeable from supplying of water. *Id.*

The California Supreme Court's decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* case (2007) 40 Cal.4th 412, 430-433, provided further guidance for preparing an analysis of water supply with the following observations:

- First, CEQA's informational purposes are not satisfied by an EIR that ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must be presented with sufficient facts to evaluate the pros and cons of supplying the amount of water that the project will need.
- Second, an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years.
- Third, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making under CEQA.
- Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.

*Vineyard* involved an EIR for a community plan and a specific plan for a large, mixed-use development project. The EIR in that case concluded that although the analysis of short term water supply was sufficient, the long term water supply analysis was inadequate. With respect to the short term water supply, the EIR included substantial evidence that competing users would not deprive the project of its planned groundwater because such capacity would be available on a first come, first served basis and the proposed project would be completed prior to the other

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developments. *Vineyard Area Citizens for Responsible Growth, supra*, 40 Cal.4th at 437. However, the EIR did not make clear how the available water supply could be expected to meet total demand over the long term and, accordingly, how sufficient water could reasonably be expected to be available for the proposed project. *Id.* at 440. The EIR contained no analysis of conjunctive use programs or plans for new water supply sources that would show sufficient supplies to meet the project's demand. *Id.* at 446.

*Vineyard* expressly acknowledged that where future water supply is uncertain an EIR may satisfy CEQA if it “acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources *and the option of curtailing the development* if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.” *Id.* at 434. Thus, with the complete disclosure of the environmental impacts resulting from supplying water to the Monterey Downs Specific Plan Area, the City may curtail development in order to mitigate the water supply impacts of the project.

An EIR can address water shortfalls by disclosing uncertainties related to future water supplies and the practical alternatives if the contemplated sources do not materialize. *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal. App. 4th 1277, considered an EIR for a city's supply of water to extraterritorial university development. The EIR acknowledged that the project's water demand would increase the ongoing imbalance between the city's supplies and the demands of its users. Nevertheless, the city projected that this imbalance could be dealt with through conservation and curtailment, and if the city's plans for a desalination facility came to fruition. The desalination facility was the “only practical solution” to long-term water supply issues, although it was admittedly uncertain until design, environmental review and regulatory approvals are completed. *Id.* at 1288. To the extent that the EIR identified the desalination facility and provided a curtailment contingency, the water supply analysis was adequate. *Id.* at 1291-92. Ultimately however, the EIR was held inadequate for failing to discuss any feasible alternative that could avoid or lessen the significant environmental impact to water supply. *Id.* at 1305. In doing so, the court found that a limited water objective would still meet the project's basic objectives in allowing some development. *Id.* at 1304.

Any legal or regulatory uncertainties with respect to a water supply must also be disclosed. *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 104-105 (disapproved on other grounds in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 457). For example, the court in *Madera* held that

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an EIR for a mixed use development project was inadequate for failure to disclose legal uncertainties related to the project's water supply including (a) a letter stating that the Bureau of Reclamation would object to use of the water for municipal supply and that an amendment to the holding contract would be required, and (b) a superior court ruling for different project that reclamation holding contracts do not provide independent diversion rights.

However, an EIR is not required to resolve general water supply issues to which it does not contribute or exacerbate. *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1093-94. In *Watsonville*, the EIR for the city's pro-growth general plan adequately described uncertainties relating to ground water availability and long-term overdraft problems. By detailing how the conversion agricultural land would decrease agricultural water demand, the EIR adequately explained how even modest conservation efforts would offset the project's water demand. Through this offsetting, the project did not contribute to the long-term overdraft problem plaguing the area, so it was unnecessary for the EIR to resolve the overdraft problem. *Id.* at 1094.

Similarly, in *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal. App. 4th 316, 344, a specific plan EIR showed that the project would cause no additional withdrawals of basin groundwater beyond the existing entitlements, and therefore beyond existing baseline conditions. Thus, there was no need in that case to determine whether the WSA, the UWMP, and the EIR consistently or adequately described whether the water district could service the specific plan's needs from sources other than the adjudicated water entitlement in light of the existing overdraft conditions. *Id.* at 347.

The Monterey Downs EIR states that 539.2 AFY are available to serve the project. **Any uncertainties regarding the availability of the 539.2 AFY of groundwater should be clearly disclosed.** There is some discussion of salt water intrusion problems in the Salinas Valley Groundwater Basin under the heading "Plans for Acquiring Additional Water Supplies." Monterey Downs EIR, pp. 4.14-22. However, the EIR fails to explain to what extent the saltwater intrusions issues could jeopardize the 539.2 AFY of water relied upon for the project. If saltwater intrusion makes reliance on this groundwater source uncertain, then the EIR should identify additional alternative sources of water for the project. There is some discussion of this issue in the 2012 WSA on pages 22-23, which may be useful for this analysis.

The discussion of **reclaimed water impacts** (Impact 4.14-3) is also unclear. The EIR states that the infield portion of the REC-2 Planning Area equestrian training track would be designed to serve as a reclaimed water reservoir "with the ability to provide an additional 300

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AFY of recycled water.” Monterey Downs EIR, pp. 4.14-25, lines 986-988. However, the project description only states that the infield portion of the track “may also be designed to serve as a reclaimed water reservoir... this infilled [sic] portion could also be used as an athletic field.” Monterey Downs EIR, pp.2-34, line 586-588. Thus, the reservoir seems to simply be an option for development if needed. **Based on the project description it appears that the reservoir would provide additional recycled water storage capacity, rather than additional water supply.** If the reservoir somehow captures additional reclaimed/recycled water supply this should be clarified and explained. If this infield reservoir represents additional 300 AFY of supply, the EIR should also clarify whether this 300 AFY is included in the total estimated water supply for the project discussed under Impact 4.14-1 (Increased Water Demand). See Table 4.14-7, pp. 4.14-21. Also, the cumulative impact on reclaimed water should be revised consistent with the above.

Aside from these issues, the EIR acknowledges that the project does not have sufficient water supplies to service all phases of the development. **The EIR should include a statement that the project has a potentially significant impact on water supplies without mitigation.** Monterey Downs EIR, pp. 4.14-20.

The EIR identifies a recycled water system and a desalination plant as potential sources of water to meet the projected shortfall in supply. With respect to both facilities, **it is not clear how much water supply is reasonably expected to be available to the project from each source** (as opposed to other projects in former Fort Ord), **what the uncertainties are, or whether there are any contingencies if those facilities do not materialize.** Refer to Monterey Downs EIR, pp. 4.14-22. The EIR states that 2,400 AFY are expected from both facilities, but it is not clear how much will be potable water and how much is recycled water, and thus how these supplies will meet demand. Although the EIR states that the recycled water distribution system is slated for construction within 2 to 5 years, there is no information about the planning of the desalination facility. The EIR references the FORA Capital Improvement Plan (CIP), but there is no explanation of whether these projects have been included in the CIP. Monterey Downs EIR, pp. 4.14-10.

Although Impact 4.14-2 (Water Infrastructure) describes the water connections needed to supply the project with water, **the EIR does not describe the environmental impacts of desalination facility or the new recycled water system.** Monterey Downs EIR, pp. 4.14-23. Even if the desalination facility and the recycled water system projects pre-date the Monterey Downs Specific Plan project, the EIR must still disclose the environmental effects that are reasonably foreseeable from supplying of water to the project. Thus, the EIR should at least

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briefly summarize the environmental effects of those projects and incorporate by reference the environmental review documents prepared by the District. 14 CCR § 15150.

The **2012 WSA**, Section 4 and Appendices B and C, provides a description of the facilities that will be constructed, **but does not summarize the environmental impacts of these improvements**. The 2012 WSA provides greater detail about the recycled water system and the desalination plant and lists the permits and approvals that will be required. However, **there is no discussion of other types of legal, regulatory, or financial uncertainties surrounding these two projects**. Thus, the 2012 WSA provides a useful start to the EIR's water supply analysis; however, additional analysis will be required.

**Nor does the 2012 WSA address the likelihood that water from these new projects will be available to the Monterey Downs Specific Plan.** The recycled water demand in the Ord Community is listed in the WSA, however it is not clear how much of the 1,727 AFY of supply from Phase 1 of the Recycled Water Project would be available to the Monterey Downs Specific Plan. WSA, pp. 20, App. B. Nor does the WSA explain how sub-allocations of the 1,200 AFY of desalinated water will be allocated in the Ord Community. 2012 WSA, App. C.

Although the **2014 WSA Supplement** provides information regarding the status of the recycled water and the desalination plant environmental review process, the Supplement **fails to identify the specific new facilities proposed, the environmental impacts of the new facilities, the uncertainties facing these projects and the likelihood that water from these projects will be available for the Monterey Downs Specific Plan.**

The 2014 WSA Supplement states that FORA has a right to recycled water, however the Supplement does not explain how that right transfers to the City of Seaside for use in the specific plan area. MCWA has a right to recycled water "equal to the volume of MCWD wastewater treated by MRWCPA." 2014 WSA Supp., pp. 14. However, it is not stated whether MRWCPA has capacity to treat additional wastewater from Monterey Downs. Further, it is unclear what is meant by the statement that "MCWD is still contractually obligated to provide an augmented source for the former Ford [sic] Ord as distinct from the Regional Project." 2014 WSA Supp., pp. 16. If additional recycled water projects are contemplated to serve the Monterey Downs Specific Plan, then information about those projects is required.

Regarding desalination, the 2014 WSA Supplement describes a 10 mgd plant to be constructed under the regional Coast Water Project. 2014 WSA Supp., pp. 16. However, it is

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unclear how much capacity is likely to be available for the Monterey Downs project and what are the uncertainties involved in development of this project.

If the City decides it is impossible to determine with certainty that the future recycled water system or desalinization plant will be available to provide water supply to the project, the EIR must include **some discussion of possible replacement sources for the anticipated water, and of the environmental consequences of those contingencies.** The 2014 WSA Supplement provides four potential future water supplies if the anticipated recycled water and desalinization plan do not become available that could potentially be discussed in the EIR. See, 2014 WSA Supp., pp. 17. The court in the *City of Santa Cruz* case upheld mandatory water curtailment as a reasonably foreseeable alternative to supplying water. 213 Cal. App. 4th at 1291. However, water rationing or curtailment might not be appropriate here because the scope of the project does not include all MCWD customers.

As discussed under Section 2, the cumulative analysis discussion is unclear whether cumulative demand should be measured by all other customers of MCWD or by the Ord Community. This affects the total cumulative demand figures (11,040 AFY or 6,600 AFY, respectively). **The EIR should explain the potential scope of cumulative water supply impacts for the project, and clarify the cumulative water demand figure chosen.**

The EIR states that the new recycled water system and desalination facility could supply 2,400 AFY. However, due to the uncertain cumulative water supply impact, it is not clear whether these proposed additional water sources are sufficient to meet total cumulative demand. **If there is remaining unmet cumulative water demand in the relevant water customer community (all MCWD customers or by the Ord Community only), then the EIR must explain whether this project is contributing to the cumulative water shortfall.** If so, the EIR must consider whether the project's contribution to cumulative water supply shortfall is significant, and if so, include any feasible mitigation.

The EIR should develop mitigation assuming that the project will be approved in its entirety and proposed water sources developed. Currently, mitigation measure PU-1 requires evidence of a water service agreement prior to the issuance of a building permit for "each development." To avoid claims that the City has deferred analysis of water supply, mitigation measure PU-1 should be revised to more closely reflect the water supply verification requirement in Government Code § 66473.7. The water supply verification should apply with respect to defined phase of development, rather than at the building permit stage for each "development."

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**(Important:** The City should make sure that this condition is included in any vesting map or development agreement for the project.)

As currently drafted, mitigation measure PU-1 further provides that “[i]f available, the Project may offset needed potable water supply with recycled water to the City of Seaside, such that all recycled water supplied to the City shall apply to the existing potable supply available to the proposed development.” This sentence should be clarified. This provision may be intended to reflect the MCWD suggestion to offset urban irrigation demands within the Seaside portion of the Ord Community and then to apply the existing potable supply towards the Monterey Downs Specific Plan area. 2012 WSA, pp. 24. The EIR could structure the allocation of potable and recycled water supply as a mitigation measure that applies to all phases of the project.

In addition, the EIR should contain all feasible mitigation for the impacts to water supply. Examples of potential mitigation measures could be the installation of rainwater cisterns or grey water systems, or water efficiency requirements that exceed the California Green Building Code and local regulations.

4) Future Allocations Of The Remaining Available Water Supply

The WSA states that the 6,600 acre feet of existing Salinas Valley groundwater supply has been allocated among land use jurisdictions by the Fort Ord Reuse Authority (FORA) and that the City of Seaside sub-allocates its share to supply particular anticipated developments. Of the 6,600 acre feet of water, FORA allocated 1,012 to Seaside, and of that amount, 812.3 acre feet have been allocated to other proposed projects in the Seaside portion of the former Fort Ord. Monterey Downs is not one of those projects. Only 199.7 acre feet remains unallocated by Seaside. (Pages 21 and 22 of the WSA). Future recycled water supplies that may be allocated to Seaside would be approximately 453 acre feet per year.

This limited groundwater supply and its sub-allocation stands in contrast to the anticipated amount of water needed to supply the Monterey Downs Project, which is estimated to need as much as 852.5 acre feet per year. On page 1 of the WSA, the MCWD concludes that if both the County of Monterey and the City of Seaside sub-allocate all of their remaining allocation of groundwater to the Monterey Downs Specific Plan Area, there will be a shortfall of approximately 470.3 acre feet per year.

As the Monterey Downs Project continues to move forward, the City should begin to consider how much of its sub-allocation it wants to provide to this Project, which phases or

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components of the Project should be approved under that sub-allocation and how the specific plan and conditions of approval should address these issues.

### Conclusions:

The main issues with the water supply analysis in the Monterey Downs EIR result from not having a clear water demand projection, not having enough information about the planned future sources of water, and not providing for any contingencies if the water recycling system and desalinization plant do not come online or cannot serve the project. Therefore, the EIR should be revised to:

- Clarify the water demands of full project build out. If demand projections differ in the 2010 UWMP, 2012 WSA and the 2012 WSA Supplement due to conflicting data from different agencies (e.g. number of residential units) or different assumptions (e.g. impact of water conservation), then the lead agency should explain those differences, and we recommend selecting the most conservative demand figure.
- The EIR must evaluate environmental impacts of developing future sources of water.
  - Although the EIR identified a recycled water system and a desalinization plant, the EIR should explain what actions would be necessary to develop them and the potential environmental impacts of those projects.
  - The EIR must acknowledge and explain any uncertainties such as necessary government approvals, environmental review, and funding. The EIR should also address the timing of these supplies and when they will be available to the project.
  - If the identified future water sources are not reasonably foreseeable, then the EIR must identify additional contingent sources and the environmental impacts of those options.
- Determine cumulative demands to water supply system and disclose whether the project will contribute to a water supply shortfall for the relevant water customer community.
- Mitigation may include curtailing construction of later phases of the project if contemplated water supplies are not developed. Mitigation should be restructured to require water supply verification for each defined phase of development and to add all

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feasible mitigation of water supply impacts, for example grey water systems, rain catching systems, and conservation measures.

- Once all feasible mitigation is imposed, the City and the EIR consultant should decide if all of those measures will reduce the water supply impacts to less than significant. If not, or if there is any uncertainty that they would do so, then findings and statement of overriding considerations for this impact will probably be required.
- If the project has significant water supply impacts, then a reduced water impact project alternative must be analyzed even if it would not completely avoid the significant impact on water supply. *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal. App. 4th at 1304-05.

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