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December 16, 2019

Via e-mail

City Council
Dino Pick, City Manager
City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940
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Re: Initial Study/Negative Declaration – Del Rey Oaks Housing Element

Dear Members of the City Council and Mr. Pick:

We thank Mr. Pick for his time in conference calls on December 5, 2019 and December 11, 2019 with Michael DeLapa of LandWatch and Alex Lorca, your City Attorney. We thank the City for its efforts to revise the Housing Element to address LandWatch's concerns. Unfortunately, LandWatch cannot support either of the housing elements now being proposed by City staff.

City staff are now proposing that the Council consider certifying the proposed Negative Declaration and adopting one or the other of two alternative versions of the Housing Element, either:

- The November 20 Housing Element. This was based on the September 18, 2019 draft with revisions made based on comments received by HCD after HCD's review of the September draft. Those revisions appear in Appendix A of the proposed Negative Declaration and were incorporated into the November 20, 2019 Housing Element. The full November 20, 2019 Housing Element appears as Attachment A to the December 17, 2019 staff report. This is the version that was recommended by the Planning Commission.

  or

- The Appendix F/G Housing Element. This is the version revised by staff after the Planning Commission recommendation and first made available on December 13, 2019, after the close of business. It appears as Attachments F and G to the December 17, 2019 staff report. (F is redlined, G is clean). The staff report states that this version was intended to address concerns raised by LandWatch.

LandWatch raised concerns that the City had failed to provide an adequate CEQA assessment in timely comments on the proposed Negative Declaration, submitted on November 14, 2019. Despite those comments, the Planning Commission recommended that the Council certify the Negative Declaration and adopt the November 20, 2019 Housing Element. LandWatch then initiated contact with City staff to discuss possible resolutions, leading to the December 5 and December 11 calls with Mr. Pick and Mr. Lorca and to staff's preparation of the Appendix F/G Housing Element.

LandWatch explained in its CEQA comments and in its discussions with City staff that groundwater cannot be pumped for housing on the Fort Ord Sites 1 and 1a without significant impacts; that a groundwater supply is not actually committed to those sites; that the City must prepare an EIR if it permits residential development in Fort Ord;, and that, contrary to the November 20 Housing Element, a water supply *is* in fact committed for Sites 2, 3, and 4 within the planning period, based on the CPUC's order to Cal-Am.

The City cannot adopt either the November 20 Housing Element nor the Appendix F/G Housing Element on the basis of the Negative Declaration without violating CEQA. The City now admits that Fort Ord housing development would have potential groundwater impacts that require additional environmental review before development is permitted, an admission that flatly contradicts the Negative Declaration. As explained below, it is clear that the City intends to permit housing development on the Fort Ord sites, so the time for CEQA review is now.

Furthermore, as explained below, if the City adopts either Housing Element, it will no longer be able to disapprove housing on Fort Ord Sites 1 and 1a, or to subject it to locally imposed discretionary review, because the City has been dilatory in rezoning adequate sites for housing. Under Government Code section 65583(g) and under the Housing Accountability Act, the City has forfeited its discretion to disapprove housing on sites it identifies as suitable for housing, *even if it never rezones them*. Accordingly, any implication that the City can safely defer environmental review until it rezones the sites or approves a project is wrong.

LandWatch also objects that neither of the Housing Elements proposed by staff comply with the statutory requirements for Housing Elements. Neither of them provides an accurate description of the availability of a Fort Ord water supply, and the November 20 Housing Element fails to disclose the acknowledged availability of a water supply within the planning period for Sites 2, 3, and 4. The Appendix F/G Housing Element violates the statutory requirement to "include a program" to rezone adequate sites because it states that it "removes future rezoning action as a program."

LandWatch continues to believes that the City could approve a housing element without an EIR if it were revised to locate housing on Sites 2, 3, or 4, where water supply

will be available through Cal-Am by 2021 or sooner. LandWatch remains willing to work with the City to propose revisions to the Housing Element that would address our concerns and, we believe, would satisfy the California Department of Housing and Community Development ("HCD") that the City is complying with its obligation to adopt an adequate Housing Element.

A. Neither the November 20 Housing Element nor the Appendix F/G Housing Element comply with housing element law requirement to inventory only those sites that have "available or accessible" water supply or a "mandatory plan of program" to supply water. Nor do they comply with the requirement to describe available water supplies.

1. The City has a duty to provide an inventory of land that is actually suitable for housing during the planning period and to accurately describe the availability of a water supply. The sites included in the inventory must have an accessible and available water supply or a mandatory plan or program to supply water.

The Housing Element indicates that the City's strategy for meeting its RHNA relies solely on ensuring there is sufficient vacant land available to accommodate residential units. (November 20 Housing Element, p. 3-3; App. F/G Housing Element, p. 3-3.)

A valid housing element must contain an "inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites." (Gov. Code, § 65583(a)(3).) That inventory must identify sites sufficient to meet the City's RHNA "*within the planning period.*" (Gov. Code, § 65583.2(a), emphasis added.)

That inventory may include sites that are not zoned residential, but only if the housing element includes a program to rezone the sites as necessary to permit residential use. (Gov. Code, § 65583.2(a)(4).) The city must "make sites available *during the planning period* with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning." (Gov. Code, § 65583(c)(1), emphasis added.)

The sites in the inventory must meet specified criteria. (Gov. Code, § 65583.2.). In particular, the sites listed in the inventory must have an available and accessible water supply or a mandatory program or plan to provide it:

> Parcels included in the inventory must have sufficient water, sewer, and dry utilities supply *available and accessible* to support housing development or be included in an existing general plan program or other *mandatory program or plan*, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development.

(Gov. Code, § 65583.2(b)(5(B), emphasis added.)

2. The November 20 Housing Element and the Appendix F/G Housing Element do not comply with housing element law because they include the Fort Ord sites in the inventory of suitable sites even though those sites do *not* have an available and accessible water supply or a mandatory program or plan to provide it.

There is no water supply for the Fort Ord Sites 1 and 1a that meet the statutory criteria for a suitable site because there is no infrastructure to deliver water and no commitment to supply it.

First, the City admits that the water supply is not now "*available and accessible*" but merely "planned." (Appendix F/G Housing Element, p. 3-8.) But the City does not identify a "*mandatory* plan or program" to provide infrastructure. In fact, the City admits provision of a water supply is not now feasible: "water service and extension are dependent upon funding resources to extend water lines from General Jim Moore Boulevard to the sites and *no current funding sources are available at this time*." (*Ibid*.)

Second, the City claims that there is "an existing water allocation of 242.5 acre-feet per year from the MCWD in accordance with FORA and the MCWD's 2015 Urban Water Management Plan." (*Ibid.*) But the City does not disclose that this FORA "allocation" is not a commitment to supply water. As detailed in LandWatch's November 14, 2019 letter and its references, the FORA "allocation" is illusory paper water that does not constitute a right to a water supply, but at most a right to a share of whatever water can be supplied; and any right to that share will be extinguished in less than seven months when FORA sunsets.[1]

To summarize earlier comments, the allocation purports to be based on shares of the Army's 1993 pumping agreement with the Monterey County Water Resources Agency. However, any right that the Army had to pump groundwater under that agreement was a temporary right, subject to the condition that pumping not aggravate

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[1] John Farrow, letter to Kim Carvalho, Nov. 14, 2019, pp. 6-9.

seawater intrusion. Because pumping does in fact continue to aggravate seawater intrusion, there is no continuing right to pump under that agreement. Finally, even if there were a right to pump, the "allocation" system is under FORA's authority, and it will not survive FORA's dissolution on June 30, 2020. There is currently no mandatory commitment to supply water to the Fort Ord sites and no mandatory sharing commitment after June 30, 2020.

Third, completely reversing its conclusion in the Negative Declaration that there are no water supply impacts, the City now admits that there *are* potential groundwater impacts that may preclude a water supply for the Fort Ord sites. In particular, the City admits that

- "due to potential groundwater impacts, a complete environmental review will need to occur before development" on the Fort Ord sites. (Appendix F/G Housing Element, p. 3-12.)

- "[a]ny development on the former Fort Ord will need to undergo an environmental review as there are potential impacts surrounding groundwater, traffic, and noise." (Appendix F/G Housing Element, p. 4-19.)

- provision of groundwater in Fort Ord is "controversial in the former Fort Ord area." (Appendix F/G Housing Element, p. 3-8.)

The City cannot prejudge the outcome of a future environmental review. As explained in comments by LandWatch and hydrologist Timothy Parker on the Negative Declaration, approving residential development for Fort Ord Sites 1 and 1a would cause significant impacts. The City cannot approve development with significant impacts if there are feasible alternatives, such as locating the housing in Sites 2, 3, or 4. (14 CCR, § 15021(a)(2).) Indeed, it is because of the uncertainty of a Fort Ord water supply that the City acknowledges that it "is looking to address the RHNA" through Sites 2, 3, and 4 instead. (Appendix F/G Housing Element, p. 3-12.) The time for CEQA review and consideration of the alternatives is now.

The City claims that "MCWD may determine to provide water from other sources" than groundwater. (*Ibid.*) However, this speculation, without more, is not a "mandatory plan or program" for a water supply.

The Appendix F/G Housing Element contains Program C.4 to "ensure the availability of a water supply to serve the long-term housing needs of the City." This is not a mandatory program or plan that will assure a water supply during the 5th Housing Cycle. Program C.4 calls for nothing more than "meeting and consultation" with other agencies, and its "timeline and objective" calls only for the City to "participate in an annual meeting with MPWMD, MCWD, FORA, and other appropriate agencies by the

end of 2020." A meeting does not constitute a "mandatory program or plan" for a water supply. (Gov. Code, § 65583.2(b)(5)(B).)

3. The November 20 Housing Element does not comply with housing element law because it misrepresents the water supply for Sites 2, 3, and 4 by failing to describe the planned Cal-Am water supply; and it omits Sites 2, 3, and 4 even though they *do* have a mandatory plan or program for a water supply.

The November 20 Housing Element's analysis of possible rezoning sites rejects Sites 2, 3, and 4 based on the purported lack of water (November 20 Housing Element, pp. 3-7, 4-18, 4-19.) Thus, the November 20 Housing Element does not meet the statutory requirements to provide an accurate description of existing or planned water supply. (Gov. Code, § 65583.2(b)(5)(A).)

As discussed in LandWatch's November 14, 2019 letter, the November 20 Housing Element fails to disclose that the California Public Utilities Commission approved a Certificate of Public Convenience and Necessity for California-American Water Company's Monterey Peninsula Water Supply Project in Decision D.18-09-17 and denied a rehearing of that decision in an order issued February 5, 2019.[2,3] That decision authorizes and *requires* Cal-Am to develop a water supply by year-end 2021, in time to meet the requirements of the SWRCB's Cease and Desist Order 2009-0060 ("CDO").[4] The moratorium on new water connections required by the CDO and authorized by the CPUC decision D.11-03-048, issued in A.10-05-020, will then end, and new hookups will be permitted.[5]

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[2] CPUC, Order Modifying Decision (D.) 18-09-017, And Denying Rehearing Of Decision, As Modified, Issued Feb. 5, 2019, available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M262/K004/262004679.PDF.

[3] The Negative Declaration disclosed the substance of the November 20 Housing Element. As noted above, the November 20 Housing Element was based on the September 18, 2019 draft with revisions made based on comments received by HCD after HCD's review of the September draft. Those revisions appear in Appendix A of the proposed Negative Declaration and were subsequently incorporated into the November 20, 2019 Housing Element, which appears as Attachment A to the December 17, 2019 staff report.

[4] CPUC, Decision D12-04-019, Findings of Fact, 24, 25, p. 169, available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M229/K424/229424336.PDF.

[5] CPUC, Decision D.11-03-040, p, 50, available at http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/134272.PDF.

The ordering paragraphs of the California Public Utilities Commission's Decision D12-04-019 constitute a "mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities to parcels included in the territory." [6] (Gov. Code, § 65583.2(b)(5)(A).) For example, Ordering Paragraph 8 provides that "California-American Water Company *shall implement* the environmentally superior alternative (Alternative 5a) of the Monterey Peninsula Water Supply Project identified in the Final Environmental Impact Report."[7] This is a "mandatory program or plan" and therefore meets the statutory requirements with respect to water supply in order to list a site in an inventory of sites for rezoning. (Gov. Code, § 65583.2(b)(5)(A).)

The City's faulty analysis of the water supply for Fort Ord Sites 1 and 1a and its failure to include Sites 2, 3, and 4 in the inventory of suitable sites are violations of the mandates of the statutes governing housing elements.

B. Substantive environmental review is required *now* for the November 20 Housing Element, which commits the City to permit residential development on Sites 1 and 1a in Fort Ord.

The proposed November 20 Housing Element, which was recommended by the Planning Commission, clearly commits the City to permit residential development in the former Fort Ord, where it is not currently permitted. In our December 5 call with Mr. Pick and Mr. Lorca, and at the Planning Commission hearing, Mr. Pick and Mr. Lorca suggested that the proposed Housing Element was merely aspirational or merely a "policy" document for which CEQA review is not required. This is incorrect for three reasons.

First, as explained in LandWatch's November 14, 2019 letter, it is well established that a General Plan is a project subject to CEQA, even though it consists of "policies."

Second, the mandatory language of Housing Programs A.1, A-2, and A-3 in the November 20 Housing Element requires the City to amend its General Plan and Zoning Ordinance to permit residential uses in the former Fort Ord. This language is not merely aspirational or precatory. It commits the City to this action. And that commitment requires CEQA compliance.

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[6] CPUC, Decision D12-04-019, pp. 206-215, available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M229/K424/229424336.PDF.

[7] *Id.* at 207, emphasis added.

Third, the City's preparation of a Negative Declaration for its adoption of that Housing Element acknowledges that the adoption is a discretionary project that may cause physical impacts to the environment.

The question is not whether CEQA applies. The question is whether the proposed Negative Declaration is a sufficient form of compliance. For the reasons set out in LandWatch's November 14, 2019 letter and discussed further below, the proposed Negative Declaration is an insufficient form of compliance.

C. Substantive environmental review is also required *now* for the Appendix F/G Housing Element.

1. Substantive environmental review is required for the Appendix F/G Housing Element because it is clearly foreseeable that the City will permit residential use of Fort Ord, notwithstanding the inclusion of other sites under consideration.

The Appendix F/G Housing Element requires substantive environmental review because it would foreseeably permit residential development on the Former Fort Ord with the potential to cause effects on the environment. The revised Program A.1 still includes the Fort Ord sites as sites that the City may rezone to permit housing.

Not only is residential development on the Fort Ord sites foreseeable under the Appendix F/G Housing Element, it is clearly the City's preferred course of action, and it is the action recommended by the Planning Commission. In fact, the Planning Commission resolution asks the Council to rezone Site 2 to *prevent* residential use on that site. It was clear from the Planning Commission discussion that there is substantial opposition to provision of addition housing except in Fort Ord.

The City is already making efforts to develop housing in Fort Ord. The City has advised FORA in connection with FORA's development of its Capital Improvement Program that the City intends to develop 500 housing units on its Fort Ord land.[8] The Appendix F/G Housing Element acknowledges that the City "is working with FORA to allow for housing on this site." (Appendix F/G Housing Element, p. 3-8.)

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[8] EPS, Fort Ord Habitat Conservation Plan, Financial Model Sensitivity Analysis and Cost Allocation Alternatives, Nov. 13, 2019, pp. 7-8; Appendix C, Table C-1; FORA, Capital Improvement Program, Fiscal Year 2019-20 through 2028-29, Table 4 and Table 6, available at https://www.fora.org/Reports/CIP-Current.pdf.

Furthermore, housing development on Sites 1 and 1a is the only alternative that was evaluated in the Negative Declaration. The project description in the Negative Declaration describes the project as providing housing in Fort Ord:

> Policies and programs promote future mixed-uses that would include both residential and commercial uses as well as amend the City General Plan and Zoning Ordinance to provide adequate housing to meet the RHNA need of 86 units, *specifically in City-owned property in the former Fort Ord are*a (as identified in the Housing Element).

(Negative Declaration, p. 11, emphasis added.)

Indeed, the Negative Declaration is *not* an adequate evaluation of development on Sites 2, 3, and 4 because it does not consider that possibility. The City cannot adopt the Appendix F/G Housing Element without violating CEQA because the Negative Declaration provides no environmental review of housing development on Sites 2, 3, and 4.

The City may argue that Program A.1 in the Appendix F/G Housing Element simply defers the identification of suitable sites. If so, the Housing Element *would fail to comply with the mandate that it actually provide the inventory of suitable sites*, and, based on a careful analysis of suitability criteria including water supply availability, state how many residential units each site can support. (Gov. Code, §§ 65583(a)(3), 65583.2(b) and (c).)

2. Substantive environmental review is also required *now* for the Appendix F/G Housing Element because, if the City includes the Fort Ord Sites 1 and 1a in its inventory of suitable sites, *the City may not disapprove housing development on those sites, or subject it to locally imposed discretionary review, even if it never rezones the sites*.

a. Government Code section 65583(g) would prohibit the City from disapproving a housing project on any of the sites in the inventory, even if the City does not rezone the sites, because the City failed to accomplish the required rezoning in the planning period.

Normally, a City has three years from adoption of the housing element to accomplish the required rezoning. (Gov. Code, § 65583(c)(1)(A).) However, where a City has failed to adopt a housing element within 120 days of the statutory deadline in Government Code section 65588, the City must accomplish the rezoning within three

years and 120 days of that statutory deadline for adoption of the housing element. (Gov. Code, § 65583(c)(1)(A).)[9]

The City has not submitted a valid housing element since the 1990s. The City's 5th Cycle Housing period is December 15, 2015 to December 14, 2023. (Zachary Olmstead, HCD, letter to Dino Pick, December 14, 2018.) Because the City failed to meet the statutory deadline for the fifth housing element cycle, it was required to accomplish a rezoning of sufficient land to accommodate its RHNA within 3 years and 120 days of December 31, 2015, i.e., by March 31, 2019. (Gov. Code, § 65583(c)(1)(A); *see* Zachary Olmstead, HCD, letter to Dino Pick, December 14, 2018 [deadline missed].) It still has not accomplished the rezoning to accommodate its RHNA.

Because the City did not accomplish the required rezoning timely, the provisions of Government Code section 65583(g) are triggered. These provisions prohibit the City from disapproving a housing development project located on the sites identified for rezoning to accommodate the RHNA, *even if the City has not yet rezoned them*:

> If a local government fails to complete the rezoning by the deadline provided in subparagraph (A) of paragraph (1) of subdivision (c), as it may be extended pursuant to subdivision (f), except as provided in paragraph (2), *a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit,* or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph. Any subdivision of sites shall be subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)). Design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(Gov. Code, § 65583(g).) In short, if the City includes Fort Ord sites in the list of sites it may rezone, it will not be able to disapprove a housing project on those sites or to subject a project to a locally imposed discretionary permit. Without a discretionary approval, the

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[9] And, where a city failed in a prior period to identify or make available adequate sites to meet its RHNA, the city must zone or rezone adequate sites within the first year of the new planning period. (Gov. Code, § 65584.09(a); *see* Shannan West, HCD, letter to Dino Pick, Nov. 14, 2019 [commenting on housing element draft that required rezoning of Site 1a, explained that housing element will not be compliant until rezoning of Site 1a is actually implemented].)

City would have no authority to conduct CEQA review. (Public Resources Code, § 21080(a).) Thus, the City or a developer may argue that further CEQA review is forbidden because the statutory language bars imposition of any "locally imposed discretionary permit."[10] (Gov. Code, § 65583(g).) Thus, the time for CEQA review is now.

HCD has been clear that once a city has failed to meet the rezoning timelines required under Government Code section 65583(c)(1)(A), *all* of the sites identified in inventory of suitable sites in its housing element are subject to the mandatory approval process set out in Government Code section 65583(g). Here is HCD's explanation of the statute to the City of Woodland:

> Be advised timeframes imposed pursuant to GC Section 65583(c)(1)(A) have elapsed; therefore the provisions of GC Section 65583(g) apply to Woodland. All sites included in Appendix E-1, Tables E-1-2 and E-1 -3 are subject to these provisions. Specifically GC Section 65583(g) states in the event a local government fails to complete rezoning by the deadline prescribed in GC Section 65583(c)(1)(A), a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project:
>
> - is proposed to be located on a site required to be rezoned and
> - complies with applicable objective general plan and zoning standards and criteria, including design review standards, described in the rezone program action.
>
> In addition, any subdivision of sites shall be subject to the Subdivision Map Act and design review shall not constitute a "project". Noncompliance with these requirements and other requirements of State law creates the risk of the jurisdiction being subject to a lawsuit and Court order to compel action and compliance.[11]

Thus, the City's eventual rezoning decision will not control whether residential development is permitted on the Fort Ord Sites 1 and 1a. *In view of the City's failure to*

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[10] LandWatch does not concede that CEQA compliance would be not required for the compliance with the *state-imposed* Subdivision Map Act.

[11] Jennifer Seeger, HCD, letter to Paul Navazio, City Manager, City of Woodland, Aug. 8, 2017, emphasis added, available at http://www.hcd.ca.gov/community-development/housing-element/docs/yolwoodland080817.pdf.

timely rezone suitable sites, the mere listing of the Fort Ord sites in the Housing Element inventory of sites suitable for residential development would permit that development without further locally imposed discretionary review.

The City must provide adequate CEQA review now if it lists the Fort Ord sites as suitable for housing. CEQA does not permit deferral of environmental review for a General Plan amendment, as explained in LandWatch's November 14, 2019 letter. However, even if deferral were permitted, the City cannot assume that if will be able to conduct CEQA review through some later discretionary review.

b. The Housing Accountability Act would prohibit the City from disapproving a housing project on any of the sites in the inventory, *even if it never rezones the sites*.

Even if the City had not been more than three years and 120 days late in meeting its rezoning requirements, the Housing Accountability Act would not permit the City to disapprove a housing project on the sites identified as suitable or available for affordable housing in the Housing Element. The Housing Accountability Act is clear that as soon as the City has identified a site as suitable or available for very low, low, or moderate-income households in the Housing Element, it can no longer disapprove a housing project on the grounds that the site has not yet been re-designated or rezoned for residential use. (Gov. Code, § 65589.5(d)(5)(A).)

Again, the mere inclusion of the Fort Ord sites in the inventory of sites that the housing element identifies as suitable or available for affordable housing development will effectively permit housing development on these sites, and the City will not be able to disapprove that development even if it never rezones the land for residential development.

The City faces this problem whether it adopts the Appendix F/G Housing Element or the November 20 Housing Element.

Because residential development would be permitted if the City lists the Fort Ord Sites 1 and 1a, the City must now undertake adequate CEQA review. Indeed, CEQA review now is all the more urgent because the proponents of such development may argue that the statutory limitations on local discretion precludes any subsequent CEQA review.

D. The City has not complied with the statutory mandates for Housing Elements. And the City will not and cannot attain compliance with statutory mandates by adopting the proposed Housing Element, with or without revisions.

In conversations with LandWatch and in statements to the Planning Commission, Mr. Pick has explained that the City wishes to adopt the Housing Element as drafted before the end of 2019 in order to ensure that it is eligible for grant funding under SB 2. Regardless of whether HCD issues a grant, the City will still not comply with the mandates for housing elements. For example, HCD has advised the City that its housing element will not be compliant until the required rezoning of suitable parcels for 5th Cycle compliance is actually implemented. (Shannan West, HCD, letter to Dino Pick, Nov. 14, 2019.)

There are other reasons why the City cannot become compliant by adopting either of the proposed housing elements. As explained above, both the November 20 Housing Element and the Appendix F/G Housing Element contain prejudicially invalid analyses and determinations with regard to water supply, and the November 20 Housing Element omits suitable Sites 2, 3, and 4 based on an erroneous determination that water is not available within the planning period.

Furthermore, the Appendix F/G Housing Element either improperly defers the actual site inventory required by Government Code section 65583(a)(3) and 65583.2(b) and (c), or it improperly equivocate by a form of conditional site identification. The Appendix F/G Housing Element states that its "revisions included *removal of future rezoning action as a program* and additional review of the land use inventory to address the questions and comments involving environmental and water availability for properties," implying that not all of the sites in the inventory have been identified as suitable. (Appendix F/G Housing Element, p. 3-4, emphasis added.)

The City cannot meet the requirements of housing element law if it "removes future rezoning action as a program." A city may only include a site zoned nonresidential in the required inventory of suitable sites if the housing element "includes a program to rezone the site." (Government Code, § 65583.2(a)(4).)

The requirement for further environmental review to determine if development is feasible on the Fort Ord sites indicates that the inventory of sites is improperly conditional. (Appendix F/G Housing Element, pp. 3-12, 4-19.) Because the City admits that it cannot make the determination of site suitability for the Fort Ord Sites 1 and 1a, as it is required to do by 65583.2(b) and (c), it should not include those sites in the inventory. Indeed, in view of the determination that Sites 2, 3, and 4 are in fact suitable and sufficient, the City should simply omit the Fort Ord sites.

In sum, if the City adopts either the November 20 Housing Element or the Appendix F/G Housing Element, the City will not have submitted a compliant Housing Element and will not have cured the violations enumerated in the HCD's "5th Cycle (2015-2023) Housing Element Notice of Noncompliance," which we incorporate by reference.[12] It is not sufficient to submit just any housing element; the City must submit a compliant element.

Mr. Pick has stated that the eligibility for grant funding under SB 2 turns on whether the City has adopted a housing element. In fact, the eligibility requirements require "an *HCD-compliant* housing element," which the City has not prepared.[13] In addition, HCD's grant funding guidelines would require that the City meet a number of other requirements, and it is unclear that the City can do so.[14]

E. If the City Council intends to adopt the Appendix F/G Housing Element, which was not reviewed by the Planning Commission, it must refer the revisions back to the Planning Commission.

The revisions to the November 20 Housing Element proposed in the Appendix F/G Housing Element would be substantial modifications to the Housing Element that was considered and recommended by the Planning Commission. The Commissioners were clear that they were *not* approving Sites 2, 3, and 4 for residential development. Indeed, the Planning Commission's approved motion included request that the City Council consider rezoning the 17-acre Site 2 as open space in order to *preclude* residential development on that site. The most substantive discussion by the Planning Commission was the choice of sites. A change to that choice is clearly a substantial modification.

After a planning commission makes a recommendation for a general plan amendment, "any substantial modification proposed by the legislative body not previously considered by the commission during its hearings, shall first be referred to the planning commission for its recommendation." (Gov. Code, § 65356.) Accordingly, the

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12 Zachary Olmstead, HCD, letter to Dino Pick, City of Del Rey Oaks, Dec. 14, 2018, available at http://www.hcd.ca.gov/community-development/housing-element/docs/DelReyOaks-NoncomplianceWrittenFindings121418.pdf.

13 HCD, SB 2 Planning Grants, Application Review and Threshold Requirements, available at https://www.hcd.ca.gov/grants-funding/active-funding/planning-grants.shtml#review.

14 *Ibid.*

City Council may not act on the Appendix F/G Housing Element unless it first refers it back to the Planning Commission.

F. A subsequent EIR is required due to changed circumstances, new information, and changes to the Base Reuse Plan.

We offer the following additional comments on the proposed Negative Declaration. These comments further clarify the form of environmental review that would be required if the City were to adopt a housing element that permits residential development in Sites 1 and 1a in Fort Ord. In particular, these comments explain that in light of changes to the Base Reuse Plan, significant new information, and changed circumstances, the City must prepare a subsequent EIR before approving the proposed Housing Element.

1. The Negative Declaration does not purport to tier from the Base Reuse Plan EIR. And, in any event, CEQA does not allow the Negative Declaration to tier from the Base Reuse Plan EIR because the Housing Element is inconsistent with the Base Reuse Plan and the General Plan and because a subsequent EIR is required.

The Negative Declaration references FORA's 1997 EIR for the Base Reuse Plan, but it does not purport to tier from it. CEQA does not permit the Negative Declaration to tier from the Base Reuse Plan EIR for three reasons. First, Public Resources Code § 21094(b) bars tiering if the project is not consistent with the plan for which the first tier EIR was prepared. Here, neither of the proposed housing elements is consistent with the Base Reuse Plan because the Base Reuse Plan did not include residential use on the City's Fort Ord parcels. The Appendix F/G Housing Element *admits* that the Base Reuse Plan does not permit residential use on the City's Fort Ord parcels. (Appendix F/G Housing Element, p. 3-8.) Furthermore, the Base Reuse Plan EIR did not evaluate residential use of the City's Fort Ord parcels.

Second, Public Resources Code § 21094(b) also bars tiering if the project is not consistent with the applicable General Plan. The Housing Element is inconsistent with the City's General Plan, as is evident from the admitted need for amendments to that General Plan to accommodate residential uses on Fort Ord Sites 1 and 1a. (Appendix F/G Housing Element, p. 3-7.) Again, since the Project is inconsistent with the General Plan, there can be no assurance that its impacts were adequately assessed by the General Plan EIR.

Third, Public Resources Code § 21094(b)(3) bars tiering if a project is subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 due to changed circumstances and/or new information. Here, as discussed below, there are changed circumstances and new information that bar reliance on the 22-year old analysis in the

Base Reuse Plan EIR, which no longer provides an adequate basis for environmental review of subsequent discretionary decisions affecting water supply.

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.)

LandWatch has also advised federal agencies considering discretionary decisions involving Fort Ord water supply, that the National Environmental Policy Act ("NEPA") also requires that a federal 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).)

The discussions of water supply, hydrology, and water quality in the Negative Declaration 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.

2. 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 have 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 acre feet per year (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 Negative Declaration 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 in incorrect. As lead agency for the Housing Element, Del Rey Oaks must prepare a subsequent environmental review that actually evaluates the groundwater impacts in light of changes to the Base Reuse Plan project, including the proposed Del Rey Oaks land uses in Fort Ord, changed circumstances, and new information.

LandWatch incorporates its earlier comments and Timothy Parker's comments by reference. In addition to the November 14, 2019 comments by LandWatch and hydrologist Timothy Parker on the Negative Declaration, these earlier comments include the following letters:

- Michael DeLapa, letter to Kurt Overmeyer, City of Seaside, August 21, 2019, re Campus Town Specific Plan Draft EIR. (Exhibit 1 to this letter.)

- 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. (Exhibit 2 to LandWatch's November 14, 2019 letter regarding the Negative Declaration.)

- John Farrow, letter to Marina Coast Water District Board of Directors, February19, 2018, re Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marina Coast Water District (MCWD). (Exhibit 3 to LandWatch's November 14, 2019 letter regarding the Negative Declaration.)

- Timothy K. Parker, letter to John H. Farrow, February 15, 2018, re Groundwater Impacts from Increased Pumping to Support Ord Community Development. (Exhibit 9 to LandWatch's November 14, 2019 letter regarding the Negative Declaration.)

- 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). (Exhibit 2 to this letter.)

- 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). (Exhibit 3 to this letter.)

- 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). (Exhibit 8 to LandWatch's November 14, 2019 letter regarding the Negative Declaration.)

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.

3. 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 is in fact causing new significant impacts in the form of aquifer depletion and seawater intrusion. Del Rey Oaks use of groundwater for Fort Ord development would make a considerable contribution to these impacts.

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.

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.[15]

- Annual potable pumping to support Fort Ord from 1986-1989 was 5,083 AFY and the average from 1986-1990 was 5,126 AFY.[16] Water use declined from 1980 to 1990, except for the single year 1984.[17]

- 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.[18]

- 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.[19]

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[15] 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.

[16] *Id.* at 1-6.

[17] *Id.* at 1-6, 1-14.

[18] *Id.* at 1-15

[19] *Id.* at 1-7 to 1-8.

- 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 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*.[20] And indeed, the 1996 Base Reuse Plan EIR states that "[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.)

4. The Army EIS and the BRP EIR were based on the assumption that existing pumping from the 180-foot and 400-foot aquifers 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 later, 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.[21] Despite the expectation that the impacts of the Base

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[20] Agreement Between the United States of America and the Monterey County Water Resources Agency Concerning Annexation of Fort Ord Into Zones 2 and 2A of the Monterey County Water Resource Agency, Sept 21, 1993 (Agreement No. A-06404).

[21] *See e.g.*, John Farrow, letter to Colonel Gregory Ford, Feb. 26, 2019, pp. 3-7.

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.

- 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.[22]

- However, by 2001, in response to public concerns about cost and other issues, the Salinas Valley Water Project was revised to exclude urban deliveries.[23] 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.

5. 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 circumstance 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 hydrologist 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

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[22] 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].

[23] MCWRA and USACE, Salinas Valley Water Project Draft EIR/EIS, SCH# 200034007, June 2001, p. 1-9.

> 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.[24] 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 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, <u>provided that seawater intrusion conditions are not exacerbated</u> (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.

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[24] MCWRA, State of the Salinas River Groundwater Basin, p. 4-25, available at https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1020&context=hornbeck_cgb_6_a /.

6. 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 circumstance 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.

7. 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 circumstance 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, and only 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 new 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 is a change in the project, new information, and changes circumstances that warrants subsequent environmental review.

8. The availability of a water supply for Fort Ord development and the Fort Ord Housing Element can no longer be assured. This, too, is a change in circumstance and new information that warrant an SEIS and SEIR.

The Negative Declaration 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.[25]

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. [26]

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

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[25] Timothy Parker, letter to John Farrow, Nov. 14, 2019, p. 9.

[26] *See* John Farrow, letter to Colonel Gregory Ford, Feb. 26, 2019.

distribution.[27] (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.

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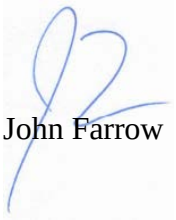
In conclusion, the City cannot adopt the either of the two proposed housing elements based on the Negative Declaration as long as they include the Fort Ord Sites 1 and 1a in the inventory of sites suitable for affordable housing development. The Negative Declaration fails to provide what CEQA requires: a subsequent environmental impact report to assess the changed circumstances, changed project, and new information regarding water supply and water supply impacts. LandWatch asks that the City provide adequate and timely environmental review or alter the proposed housing element so that the proposed housing sites are not located in the former Fort Ord. In addition, both of the housing elements are fatally flawed because they do not comply with the housing element law.

Yours sincerely,

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



John Farrow

JHF:hs

cc: Robin Huntley, HCD

Exhibits

1. Michael DeLapa, letter to Kurt Overmeyer, City of Seaside, August 21, 2019, re Campus Town Specific Plan Draft EIR.

2. Michael L. DeLapa, letter to MCWD Board of Directors, January 18, 2017, re Negative Declaration and Initial Study for Ord Community

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[27] *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.

Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD).

3. 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).

4. US Army Corps of Engineers, Other Physical Attributes Baseline Study of Fort Ord, California, April 1992.

5. Agreement Between the United States of America and the Monterey County Water Resources Agency Concerning Annexation of Fort Ord Into Zones 2 and 2A of the Monterey County Water Resource Agency, Sept 21, 1993 (Agreement No. A-06404).

6. MCWRA, Salinas Valley Water Project Draft Master EIR, SCH# 97-121020, Oct. 1998 (excerpts).

7. MCWRA and USACE, Salinas Valley Water Project Draft EIR/EIS, SCH# 200034007, June 2001 (excerpts).

8. EPS, Fort Ord Habitat Conservation Plan, Financial Model Sensitivity Analysis and Cost Allocation Alternatives, Nov. 13, 2019.

EXHIBIT 1

August 21, 2019

Kurt Overmeyer
Economic Development Department
City of Seaside
440 Harcourt Avenue
Seaside California 93955
Kovermeyer@ci.seaside.ca.us
cityclerk@ci.seaside.ca.us

RE: Campus Town Specific Plan Draft EIR

Dear Kurt,

LandWatch Monterey County's comments on the Campus Town Specific Plan Draft EIR are as follows:

A. Project Description

Through the adoption of the Campus Town Specific Plan and associated entitlements, the Proposed Project would involve the construction and operation of up to 1,485 housing units; 250 hotel rooms; 75 youth hostel beds; 150,000 square feet of retail, dining, and entertainment uses; 50,000 square feet of office, flex, makerspace, and light industrial space; park/recreational areas, including approximately nine acres of public open space and 3.3 acres of private open space; and supporting infrastructure on approximately 122.23 acres. Construction would occur in two phases over approximately 13 years from April 2021 through 2034.

B. Air Quality

The analysis of the project's consistency with the Air Quality Management Plan is flawed because it fails to follow the Monterey Bay Air Resources Board's (MBARD) guidelines (p. 4.2-22 and 4.2-31) MBARD guidelines require consistency be addressed on a jurisdictional (city) basis. (https://www.mbard.org/ceqa) Rather than address consistency for the City of Seaside, the DEIR addresses consistency on a countywide basis. The consistency finding should be revised to meet MBARD's guidelines.

C. Green House Gas Emissions

Because the proposed Project would result in an increase in greenhouse gas (GHG) emissions of approximately 15,248 metric tons of carbon dioxide per year above the Plan Area, impacts under this baseline analysis would be cumulatively considerable. (p. 7-16) The DEIR identifies the following GHG reduction measures, but these measures are neither specified with any

precision nor identified as enforceable mitigation measures. All of the applicable GHG reduction strategies identified in the DEIR must be specified and required.

The plan identifies the following mitigation measures:

- Mitigation Measure GHG-1(a) Construction Emissions Reductions
- GHG-1(b) Residential EV Chargers
- GHG-1(c) Commercial EV Chargers
- GHG-1(d) Greenhouse Gas Reduction Plan for Operational Emissions

The California Air Pollution Control Officer Association recommends the following additional mitigation measures be considered:

1. Air conditioning units shall be Freon-free.
2. Recycling facilities consistent with the local waste collection company shall be provided for each residential unit and in all public or common areas that generate trash.
3. Recycling education shall be provided to all homeowners upon purchase and annually thereafter.
4. 5% of demolition and construction waste shall be recycled.
5. Building energy use shall exceed the applicable Title 24 Energy Efficiency standards applicable at the time the building permit is issued by 20%.
6. Programmable thermostat timers shall be provided.
7. Multimetering “dashboards” shall be provided in each dwelling unit to visualize real-time energy use.
8. On-site energy generation using solar power units shall be provided on each available roof that does not face north
9. At least 75% of project electrical energy shall be provided through on-site solar power or other on-site electrical generation facilities that do not emit carbon.
10. All residential roofs and other building roofs that have adequate solar orientation (not north-facing) shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.
11. Large buildings hall use a combined heating and cooling system (cogeneration)
12. All pools and spas shall be heated using solar water heaters unless they use naturally heated water.
13. Pumps and motors for pools and spas shall be energy efficient.
14. Pools and spas that are not naturally heated shall have automatic covers to retain heat.
15. Roofs shall be light colored to minimize cooling requirements.
16. Construction equipment shall be powered by clean-burning fuel, bio-diesel fuel, and/or other alternative fuels, or shall use electric or hybrid-electric engines so as to reduce construction emissions by 33% over 2013 “business as usual” construction equipment emissions.
17. The Project would use clean-burning fuel, bio-diesel fuel, and/or other alternative fuels for heavy construction equipment to reduce construction emissions by 25% over 2010 “business as usual” construction equipment emissions.
18. Operational vehicles supporting the project, including shuttles, shall be electric or other zero emission vehicles.
19. Construction equipment idling shall be limited to 5 minutes.
20. Delivery vehicle idling shall be limited to 3 minutes.

D. Consistency with the Fort Ord Reuse Plan

The DEIR finds:

> Since 1991, there has been a total of 1,766 existing/replacement dwelling units built within the former Fort Ord area. This includes 352 units at Preston Park, 201 units at Seahaven, 192 units at Abrams B, 56 units at the MOCO Housing Authority Project, 39 units at the Shelter Outreach Plus Project, 13 units at the Veterans Transition Center, 11 units at Interim Inc., 297 units at Sunbay, 225 units at Bayview, and 380 units at Seaside Highlands (FORA 2019a). (p. 3-4)

LandWatch data show 295 for Sea Haven. Additionally, the DEIR omits 668 units built at East Garrison and 350 built at the Dunes of Monterey Bay.

The DEIR does not address project consistency with the Fort Ord Reuse Plan (Base Reuse Plan or "BRP") Development Resource Management Plan ("DRMP"), which limits new residential units to 6,160. (BRP 2001 Reprint, DRMP, section 3.11.5.4 (b).)

Our data show the following new residential projects that have been approved/entitled:

East Garrison	1,470
Sea Heaven	1,050
The Dunes at Monterey Bay	1,237
Cypress Knolls	712
Seaside Highlands	380
Nurses Barracks	40
Seaside Resort	125
Seaside Senior Living	88
Marina's Permanent supportive Housing for Veterans @ Hayes Circle	71
Total	**5,173**

This leave a total of 987 units remaining of the 6,160 units allocated for new development under the BRP. Please explain how the City intends to assure consistency with the 6,160-unit cap. Please explain whether this project will take priority over new residential development now proposed for the Main Gate Specific Plan, a project that was initially proposed as non-residential development.

E. Cumulative Project List

The Cumulative Project List (Table 4-1) should identify 712 residential units for Cypress Knolls. Additionally, the following projects should be added to the list since they are approved and entitled and are within the cumulative impact area:

- East Garrison 1,470 residential units
- Sea Haven 1,050 residential units
- The Dunes at Monterey Bay 1,237 units
- Seaside Resort 125 residential units
- Seaside Senior Living Center 88 units
- Housing for Hayes Circle 71 residential units
- South of Tioga 356 residential units

F. Water

1. Introduction

In the 1993 Annexation Agreement between the Army and Monterey County Water Resources Agency ("MCWRA"), MCWRA agreed to permit the Army to pump up to 6,600 acre-feet per year (afy) of groundwater from Fort Ord wells in exchange for the Army's $7.4 million payment toward a replacement water supply project of at least 6,600 afy. Recognizing that existing pumping was contributing to seawater intrusion, the 1993 agreement provides that MCWRA would develop that replacement water supply and that all groundwater pumping in Fort Ord must cease when the replacement water supply project is completed. The 1993 Annexation Agreement expressly anticipates completion of the replacement water supply by 1999. Twenty-six years later, no agency has provided that replacement supply.

The Army's 1993 and 1996 environmental reviews of Fort Ord disposal and reuse expressly assume that MCWRA's agreement to permit the Army to pump up to 6,600 afy was a "short-term" agreement and that no pumping would be permitted if seawater intrusion continued. The Army's environmental reviews provide that civilian reuse of Fort Ord would require a replacement water supply. The 1993 EIS and the 1996 SEIS identified a number of replacement water supply projects then under discussion, including desalination and various surface water transfers. Provision of one of these replacement water supplies was identified as "non-Army responsibility" mitigation, to which the local agencies comprising the Fort Ord Working Group had committed themselves. In preparing the EIS for the Fort Ord Disposal and Reuse, the Army relied on the specific expectation that the then-proposed Salinas Valley Seawater Intrusion Program would deliver 6,600 afy of new water supply to Fort Ord. However, the local agencies have not provided the 6,600 afy replacement water supply.

In 2001, the Army assigned its interest in Fort Ord groundwater production to FORA and MCWD, reserving 1,749 afy for its own use. Since then, based on that assignment, the Fort Ord Reuse Authority ("FORA"), Marina Coast Water District ("MCWD"), and the local land use jurisdictions that are members of FORA have assumed that they may pump up to 6,600 afy from the former Fort Ord *indefinitely* to support Army operations and civilian reuse, regardless of the environmental impact of this pumping.

Neither the 1993 agreement between the Army and MCWRA, nor any subsequent assignment of the Army's interest in that agreement, created a permanent right to pump groundwater regardless of impact on the aquifer. Furthermore, regardless of its *entitlement* to a share of a temporary water supply, the City of Seaside is obliged to investigate, disclose, and mitigate the significant impacts of *using* that supply under CEQA.

The DEIR's discussion of water supply and water supply impacts for the Campus Town Specific Plan is fundamentally flawed for two reasons. First, it improperly assumes that there is a 181.3 afy supply of groundwater *in perpetuity* for the project based on the City's remaining unallocated share of the purported 6,600 afy water supply. Second, it fails to evaluate the impacts of *using* that supply, including impacts to the Deep Aquifer and to the aquifers above the Deep Aquifer (the "upper aquifers").

In light of the lack of a certain supply and the significant direct and cumulative effects of using any additional groundwater, *the EIR should propose mitigation that would require that the project secure a water supply other than groundwater for all phases of development*. Mitigation Measure UTIL-1 should apply to the first 181 afy of water needed, not just to the final 260 afy.

Detailed comments regarding the DEIR's water supply discussion follow.

2. Baseline findings and documents prepared pursuant to CEQA § 21083.8.1 and 14 CCR § 15229

The DEIR states that the BRP PEIR relies on the specialized baseline provisions in CEQA section 21083.8.1, citing the BRP PEIR at section 1.2.2, Baseline Determination. (DEIR, p. 3-3). The DEIR states that FORA has allocated 6,600 afy of Salinas Valley groundwater among the Ord Community land use jurisdictions and that this "6,600 AFY is considered the 1991 Statutory Baseline under the Base Reuse Plan." (DEIR, pp. 4.16-1, 4.16-3.)

Public Resources Code § 21083.8.1 provides in part:

> (b)(1) When preparing and certifying an environmental impact report for a reuse plan, including when utilizing an environmental impact statement pursuant to Section 21083.5, the determination of whether the reuse plan may have a significant effect on the environment may be made in the context of the physical conditions that were present at the time that the federal decision became final for the closure or realignment of the base. The no project alternative analyzed in the environmental impact report shall discuss the existing conditions on the base, as they exist at the time that the environmental impact report is prepared, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.
>
> (2) For purposes of this division, all public and private activities taken pursuant to, or in furtherance of, a reuse plan shall be deemed to be a single project. However, further environmental review of any such public or private activity shall be conducted if any of the events specified in Section 21166 have occurred.
>
> (c) *Prior to preparing an environmental impact report* for which a lead agency chooses to utilize the provisions of this section, *the lead agency shall do all of the following:*
>
> (A) *Hold a public hearing* at which is discussed the federal environmental impact statement prepared for, or in the process of being prepared for, the closure of the military base. The discussion shall include the significant effects on the environment examined in the environmental impact statement, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement. Notice of the hearing shall be given as provided in Section 21092. The hearing may be continued from time to time.
>
> (B) *Identify pertinent responsible agencies and trustee agencies and consult with those agencies prior to the public hearing* as to the application of their regulatory policies and permitting standards to the proposed baseline for environmental analysis, as well as to the reuse plan and planned future nonmilitary land uses of the base. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed reuse plan and to submit their comments to the lead agency.
>
> (C) At the close of the hearing, *the lead agency shall state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and*

environmental review process, taking into account the adopted environmental standards of the community, including, but not limited to, the applicable general plan, specific plan, and redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, integrated waste management plans, and county hazardous waste management plans.

(D) At the close of the hearing, *the lead agency shall state, in writing, the specific economic or social reasons, including, but not limited to, new job creation, opportunities for employment of skilled workers, availability of low- and moderate-income housing, and economic continuity, which support the selection of the baseline*.

CEQA Guidelines § 15229 provides in part as follows:

When preparing and certifying an EIR for a plan for the reuse of a military base, including when utilizing an Environmental Impact Statement pursuant to Section 21083.5 of the Public Resources Code, the determination of whether the reuse plan may have a significant effect on the environment may, at the discretion of the lead agency, be based upon the physical conditions which were present at the time that the federal decision for the closure or realignment of the base or reservation became final. These conditions shall be referred to as the "baseline physical conditions." Impacts which do not exceed the baseline physical conditions shall not be considered significant.

(a) *Prior to circulating a draft EIR* pursuant to the provisions of this Section, *the lead agency shall do all of the following, in order*:

(1) *Prepare proposed baseline physical conditions*, identify pertinent responsible and trustee agencies and consult with those agencies prior to the public hearing required by subdivision (a)(2) as to the application of their regulatory authority and permitting standards to the proposed baseline physical conditions, the proposed reuse plan, and specific, planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed baseline physical conditions and the proposed reuse plan and to submit their comments to the lead agency.

(2) *Hold a public hearing* at which is discussed the federal EIS prepared for, or being prepared for, the closure or realignment of the military base or reservation. The discussion shall include the significant effects on the environment, if any, examined in the EIS, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. *Prior to the close of the hearing, the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions*. The lead agency shall specify particular baseline physical conditions, if any, which it will examine in greater detail than they were examined in the EIS. Notice of the hearing shall be given pursuant to Section 15087. The hearing may be continued from time to time.

(3) *Prior to the close of the hearing, the lead agency shall do all of the following*:

(A) *Specify the baseline physical conditions which it intends to adopt for the reuse plan EIR*, and specify particular physical conditions, if any, which it will examine in greater detail than were examined in the EIS.

(B) *State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process*, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans.

(C) *State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate-income housing, and economic continuity which support selection of the baseline physical conditions*.

Please identify the time that the federal decision for the closure or realignment of the Ford Ord base became final. In this connection, note that while the Base Realignment and Closure Commission recommended closure in 1991, the Army did not sign a Record of Decision until December 1993, and the base did not formally close until September 1994.

Please provide the "proposed baseline physical conditions" that FORA was required to prepare "prior to circulating a draft EIR" for the BRP pursuant to 14 CCR § 15229(a)(1). Please note that the five documents identified in the DEIR at page 3-4 were not prepared by FORA.

Please identify the "pertinent responsible and trustee agencies" with whom FORA consulted not less than 30 days before a public hearing on adoption of baseline conditions as required by 14 CCR § 15229(a)(1).

Please identify, provide, and summarize any comments received from the "pertinent responsible and trustee agencies" with whom FORA consulted on baseline conditions as required by 14 CCR § 15229(a)(1).

Please provide the notice of the public hearing and identify the date and location of that public hearing conducted by FORA at which was "discussed the federal EIS prepared for, or being prepared for," the Fort Ord reuse, as required by 14 CCR § 15229(a)(2).

Please provide the notice of the public hearing and identify the date and location of that public hearing conducted by FORA prior to the closure of which hearing FORA specified "whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions," as required by 14 CCR § 15229(a)(2).

Please confirm that notice of that hearing was given as required by 14 CCR § 15229(a)(2). If the hearing was continued, please identify the date(s) on which it was continued and the date on which it was closed.

Please explain how FORA complied with the requirements in 14 CCR § 15229(a)(3)(A) and (B) that, prior to the close of the hearing required by 14 CCR § 15229(a)(2), FORA did the following:

- Stated "specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans."

- Stated “the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate-income housing, and economic continuity which support selection of the baseline physical conditions.”

Please provide and identify the dates, titles, and location of any documents that constitute the statements required to be made by FORA by 14 CCR § 15229(a)(3)(A) and (B).

3. Identify the BRP PEIR baseline assumptions

The DEIR states that the BRP PEIR relies on the specialized baseline provisions in CEQA section 21083.8.1, citing the BRP PEIR at section 1.2.2, Baseline Determination. (DEIR, p. 3-3). The DEIR states that FORA has allocated 6,600 afy of Salinas Valley groundwater among the Ord Community land use jurisdictions and that this “6,600 AFY per year is considered the 1991 Statutory Baseline under the Base Reuse Plan.” (DEIR, pp. 4.16-1, 4.16-3.) The DEIR states that the “6,600 acre-feet per year amount includes 5,200 acre-feet from the 180-foot and 400-foot aquifers, along with 1,400 acre-feet per year from the 900-foot or Deep Aquifer (FORA 1998).” (DEIR, p. 4.16-3.) The DEIR also states that the “6,600 acre-feet per year figure is derived from the 1984 peak and the 1988-1992 average amount of potable water Fort Ord withdrew from the Salinas Basin, not including pumping from a non-potable golf course well.” (DEIR, p. 4.16-19.)

Please identify the baseline conditions in the BRP PEIR for annual groundwater pumping and indicate specifically the pages where those conditions are set out in the BRP PEIR. Please identify the source of these baseline assumptions.

Please identify the time period, the geographic scope, and the groundwater basin or subbasin for which these baseline conditions are stated. In particular, please separately identify the baseline conditions in the BRP PEIR for annual groundwater pumping for the 900-foot or Deep Aquifer, for the 180-foot aquifer, for the 400-foot aquifer, and for the “upper aquifers” and the Deep Aquifer within the “Monterey Subbasin,” i.e., the areas identified in the DEIR in its discussion of the setting for its discussion of Hydrology and Water Quality at pages 4.9-2 through 4.9-5 and Figure 4.9-2.

Although the DEIR states that Figure 4.9-2 “shows the Plan Area and the updated groundwater subbasin boundaries,” (DEIR, p. 4.9-2), the Plan Area is not in fact shown on that figure. Please provide a revised Figure 4.9-2 showing the Plan Area.

Please provide a figure that depicts each well that would supply water to the Plan Area in relation to the subbasin boundaries depicted in Figure 4.9-2. For each well, please indicate whether it draws water from the 180-foot aquifer, the 400-foot aquifer, the Deep Aquifer, or some other aquifer.

4. “Upper aquifer” location

The DEIR distinguishers the 180/400 Foot Aquifer Subbasin from the Monterey Subbasin. However, the DEIR then uses the term “upper aquifers” without clarifying whether it is referring to aquifers in the 180/400 Foot Aquifer Subbasin or aquifers in the Monterey Subbasin.

The DEIR implies that it is using the term “upper aquifers in the Salinas Valley Groundwater Basin” to refer only to the “180-foot aquifer and 400-foot aquifer which is North of the Monterey Subbasin:”

> Seawater intrusion is an ongoing problem in the Salinas Valley Groundwater Basin (DWR 2004). The upper aquifers in the Salinas Valley Groundwater Basin (180-foot

> aquifer and 400-foot aquifer which is North of the Monterey Subbasin) along the coast are experiencing high salinity due to seawater intrusion.[2] MCWD's wells in Central Marina, although near the coast, are in the Deep Aquifer within the Monterey Subbasin (DWR, Bulletin 118, Basin No. 3-004.10) of the broader Salinas Groundwater Basin, which has not experienced signs of seawater intrusion and is considered to have reliable quality.

(DEIR, p. 4.9-5; see also 4.16-19 [same statement].)

A footnote to this discussion distinguishes the Monterey Subbasin from the "subbasin referred to as the '180/400 Foot Aquifer' by the Department of Water Resources:

> "While the Ord Community water supply come in part from wells in the 400-foot aquifers, these wells are located within the defined boundaries of the Monterey Subbasin. The subbasin referred to as the "180/400 Foot Aquifer" by the Department of Water Resources is defined as overdrafted, but the wells at issue in the WSA are not within the boundaries of that subbasin. "

(DEIR, p. 4.9-5, fn. 2; see also 4.16-20, fn.7 [same statement].)

However, elsewhere the DEIR states that four wells serving the Ord Community are in "the upper aquifers:"

> In the Ord Community, the District has one well in the deep aquifer and four wells in the upper aquifers; these five wells are outside the area currently affected by seawater intrusion.

(DEIR, p. 4.9-5; see also pp. 4.9-25, 4.16-20.)

Please explain whether the four wells serving the Ord Community in the "upper aquifers" are in the Monterey Subbasin or the 180/400 Foot Aquifer Subbasin.

For each of the references to "upper aquifers," which occurs on DEIR pages 4.9-5, 4.9-25, 4.16-19, and 4.16-20), please clarify whether the DEIR is referring to aquifers within the Monterey Subbasin or the 180/400 Foot Aquifer Subbasin.

5. Historic pumping from Deep Aquifer and other aquifers *for use on Fort Ord*

The MCWD 2015 Urban Water Management Plan (UWMP) at page 45 identifies wells used to support Central Marina and the Ord Community as follows:

> The District currently has three Central Marina wells in the Deep Aquifer, MCWD-10, MCWD-11 and MCWD-12, constructed in 1983, 1986 and 1989 respectively. These wells are depicted in Figure 2.2.
>
> The U.S. Army's original wells serving the former Fort Ord were located in the Main Garrison area near Marina. When wells indicated varying degrees of seawater intrusion, the Army in 1985 installed four wells further inland. Located near the intersection of Reservation and Blanco Roads in Marina (Figure 2.2), the wells draw from the 180-Foot and 400-Foot Aquifers (well numbers FO-29, FO-30, FO-31 and FO-32). Well FO-32 suffered a screen failure and was shut down in the late 1990s. The District added Wells 34 (in the Deep Aquifer) and Well 35 (in the 400-ft Aquifer) in 2011.

(MCWD 2015 UWMP, p. 45.)

DEEP AQUIFER WATER SUPPLIED TO FORT ORD: Including water supplied to the Ord Community from MCWD's Central Marina wells that are in the Deep Aquifer and from any Ord Community wells that are in the Deep Aquifer, please indicate the annual amount of groundwater supplied to the Ord Community from the Deep Aquifer for each year since 1991. Please identify the wells by number from which water has been supplied to the Ord Community from the Deep Aquifer.

UPPER AQUIFER WATER SUPPLIED TO FORT ORD: Including water supplied to the Ord Community from MCWD's Central Marina wells that are in the aquifers other than the Deep Aquifer and from any Ord Community wells that are in in the aquifers other than the Deep Aquifer, please indicate the annual amount of groundwater supplied to the Ord Community from the aquifers other than Deep Aquifer for each year since 1991. Please identify the wells by number from which water has been supplied to the Ord Community from the aquifers other than the Deep Aquifer.

CROSS CONNECTION OF MARINA AND FORT ORD: Please explain whether MCWD serves the Ord Community with any water from MCWD's wells in Central Marina. If so, how much of the Ord Community water supply is taken from MCWD's Central Marina wells? Please provide this information on an annual basis since the inception of any cross-connection of service between Marina and the Ord Community. Please provide the information separately for the Deep Aquifer and for aquifers other than the Deep Aquifer.

Please explain whether MCWD serves Marina with water from any wells in the Ord Community. If so, how much of the Central Marina water supply is taken from MCWD's wells in the Ord Community? Please provide this information on an annual basis since the inception of any cross-connection of service between Marina and the Ord Community. Please provide the information separately for the Deep Aquifer and for aquifers other than the Deep Aquifer.

6. Monterey Subbasin conditions and pumping

a. DEIR statements regarding overdraft and seawater intrusion

The DEIR states that the Plan Area is in the Monterey Subbasin of the Salinas Valley Groundwater Basin. (DEIR, p. 4.9-2.) The DEIR states that seawater intrusion is an ongoing problem in the Salinas Valley Groundwater Basin and that the "upper aquifers in the Salinas Valley Groundwater Basin (180-foot aquifer and 400-foot aquifer which is North of the Monterey Subbasin) along the coast are experiencing high salinity due to seawater intrusion." (*Ibid.*) The DEIR states that " MCWD's wells in Central Marina, although near the coast, are in the Deep Aquifer within the Monterey Subbasin . . . which has not experienced signs of seawater intrusion and is considered to have reliable quality." (*Ibid.*)

The DEIR states

> MCWD's 2015 UWMP concludes that "neither seawater intrusion nor groundwater contamination pose an immediate threat to water supply reliability" (MCWD 2015 UWMP § 5.2, at p. 73). In the Ord Community, the District has one well in the deep aquifer and four wells in the upper aquifers; these five wells are outside the area currently affected by seawater intrusion. MCWD is closely monitoring the quality in these wells. While there "is some concern that the Deep Aquifer may become affected by seawater intrusion," there is a monitoring well that serves as an "early warning system to identify any seawater intrusion…" (MCWD 2015 UWMP Section 4.2.5, at p. 48). . . . ¶ As to the 180-foot and 400-foot Aquifers, the MCWD 2015 UWMP concluded that "[t]he Salinas Valley Water Project has reduced groundwater pumping in the 180/400 Foot Aquifer Subbasin.

> Therefore, MCWD's groundwater supply is fully available in annual average, single dry year and multiple dry years" (MCWD 2015 UWMP Section 5.1, at p. 72). The Monterey Subbasin is subject to SGMA, but is not designated as critically overdrafted (DWR 2019).

(DEIR, p. 4.9-5; see also 4.16-20 [same statement].)

A footnote to this discussion observes

> "While the Ord Community water supply come in part from wells in the 400-foot aquifers, these wells are located within the defined boundaries of the Monterey Subbasin. The subbasin referred to as the "180/400 Foot Aquifer" by the Department of Water Resources is defined as overdrafted, but the wells at issue in the WSA are not within the boundaries of that subbasin. "

(DEIR, p. 4.9-5, fn. 2; see also 4.16-20, fn.7 [same statement].)

b. Current conditions in the *upper aquifers* of Monterey Subbasin

As quoted above, the DEIR distinguishes the Monterey Subbasin from the 180/400 Foot Aquifer Subbasin and then provides overdraft and seawater intrusion information only for the 180/400 Foot Aquifer Subbasin. In particular, the DEIR states that the wells serving the project are either in the Deep Aquifer or "within the defined boundaries of the Monterey Subbasin," which the DEIR states is distinct from the "subbasin referred to as the "180/400 Foot Aquifer" by the Department of Water Resources." (DEIR, p. 4.9-5.) The DEIR states that DWR has defined the 180/400 Foot Aquifer as overdrafted. However, *the DEIR does not disclose whether the Monterey Subbasin is experiencing overdraft or seawater intrusion*. Nor does the DEIR disclose the hydrological connection and influences between the Monterey Subbasin and the 180/400 Foot Aquifer Subbasin. Even if the wells supplying water to the Project are not in the immediate vicinity of seawater intrusion, increased pumping from those wells may contribute to cumulative overdraft and seawater intrusion.

Please explain whether the "upper aquifers" in which MCWD has 4 wells serving the Ord Community are in overdraft. Please identify the 4 MCWD well numbers in the "upper aquifers" using the well numbers identified at page 45 pf the 2015 UWMP.

Please explain whether the "upper aquifers" in which MCWD has 4 wells serving the Ord Community are suffering seawater intrusion. In responding, please discuss whether the *aquifers* are suffering seawater intrusion, not just whether the particular wells are suffering seawater intrusion. Please identify the extent and causes of seawater intrusion, if any, in the "upper aquifers" in which MCWD has 4 wells serving the Ord Community.

c. Cumulative pumping from the *upper aquifers* of Monterey Subbasin

The DEIR fails to provide essential information to assess *cumulative* impacts to the "upper aquifers" of the Monterey Subbasin in which MCWD has 4 wells serving the Ord Community. Since overdraft, falling groundwater levels, aquifer depletion, and seawater intrusion are determined in part by the relation of cumulative pumping and recharge, the EIR should provide current and projected cumulative pumping, recharge, and water balance data.

Please provide the following information necessary to an informed analysis of cumulative effects to the "upper aquifers" of the Monterey Subbasin from which wells serving the project would pump:

- Total current annual groundwater pumping from the Monterey Subbasin.

- Total projected annual groundwater pumping from the Monterey Subbasin.
- Total annual recharge to the Monterey Subbasin
- The yield from the Monterey Subbasin that is sustainable without overdraft, falling groundwater levels, or seawater intrusion
- The amount of increased pumping from the Monterey Subbasin that would be caused by this project.

Please explain whether the "upper aquifers" in which MCWD has 4 wells serving the Ord Community are hydrologically interconnected to the subbasin referred to as the 180/400 Foot Aquifer Subbasin by the Department of Water Resources or to any other subbasin in the Salinas Valley Groundwater Basin. Please explain whether and to what extent pumping from the Monterey Subbasin contributes to overdraft, aquifer depletion, falling groundwater levels, or seawater intrusion in these other subbasins.

d. Effect of Salinas Valley Water Project and other projects on the *upper aquifers* of Monterey Subbasin

The DEIR states:

> As to the 180-foot and 400-foot Aquifers, the MCWD 2015 UWMP concluded that "[t]he Salinas Valley Water Project has reduced groundwater pumping in the 180/400 Foot Aquifer Subbasin. Therefore, MCWD's groundwater supply is fully available in annual average, single dry year and multiple dry years" (MCWD 2015 UWMP Section 5.1, at p. 72).

(DEIR, p. 4.9-5.)

Please explain how and to what extent the Salinas Valley Water Project has reduced pumping in the 180/400 Foot Aquifer Subbasin. When did the Salinas Valley Water Project commence? How much reduction in annual pumping has occurred in the 180/400 Foot Aquifer Subbasin since the Salinas Valley Water Project began to operate? How much of that reduction is attributable to the Salinas Valley Water Project?

Please explain why a reduction in pumping in the 180/400 Foot Aquifer Subbasin since the Salinas Valley Water Project began to operate supports the inference that "MCWD's groundwater supply is fully available in annual average, single dry year and multiple dry years."

We note in this connection that the DEIR expressly distinguishes the Monterey Subbasin from the 180/400 Foot Aquifer Subbasin. In particular, the DEIR states that the wells serving the project are either in the Deep Aquifer or "within the defined boundaries of the Monterey Subbasin," which the DEIR states is distinct from the "subbasin referred to as the "180/400 Foot Aquifer" by the Department of Water Resources." (DEIR, p. 4.9-5.)

Please explain whether and by how much the Salinas Valley Water Project has reduced pumping from the "upper aquifers" of the Monterey Subbasin. Please explain whether and by how much the Salinas Valley Water Project has reduced pumping from the Deep Aquifer.

The DEIR does not present any evidence that the subbasin referred to as the "180/400 Foot Aquifer" by the Department of Water Resources or the "upper aquifers" of the Monterey Subbasin are themselves a sustainable or even long term source of water supply or that they are a material source of recharge to the 900-foot or Deep Aquifer. Recent studies indicate that the efforts to halt overdraft and seawater intrusion in the Salinas Valley Groundwater Basin, including its 180-foot and 400-foot aquifers, have not been successful and are not expected to succeed without additional water supply projects. Studies also indicate that a temporary slow-

down in the rate of seawater intrusion has been reversed and that seawater intrusion has in fact accelerated. The DEIR is inadequate as an informational document because it fails to discuss this.

e. Deep Aquifer pumping and projected water use

The DEIR fails to provide an adequate analysis of existing and projected future pumping from the Deep Aquifer, or to explain how much increased pumping this project would cause from the Deep Aquifer.

The DEIR states

> MCWD's wells in Central Marina, although near the coast, are in the Deep Aquifer within the Monterey Subbasin . . . which has not experienced signs of seawater intrusion and is considered to have reliable quality.

(DEIR, p. 4.9-2.)

Please explain whether the "Deep Aquifer within the Monterey Subbasin" is hydrologically connected to the Deep Aquifer within the adjacent subbasins of the SVGB.

The DEIR states

> The District is the only significant user of the Deep Aquifer, although there are Deep Aquifer wells serving the Monterey Dunes Colony (120 homes) and the Armstrong Ranch (MCWD 2015 UWMP, Section 4.1 at pp. 31–32).

(DEIR, p. 4.16-3.) The same statement is made in the MCWD 2015 UWMP at pages 31 and 32. The 2015 UWMP also states in the preceding sentence that "[t]he three water production wells in the Central Marina service area and one in the Ord Community are in the Deep Aquifer, as described in Section 4.2.1."

Please identify the MCWD wells that pump from the Deep Aquifer, using the well numbers identified in the 2015 UWMP at page 45. Please explain whether the referenced wells serving the Armstrong Ranch and the Dunes Colony are distinct wells.

Please identify the amount of pumping from the Deep Aquifer used to support Fort Ord in the period 1982-1993.

Please identify the amount of current pumping from the Deep Aquifer from all users.

Please identify the amount of foreseeable future projected pumping from the Deep Aquifer for all users, including the pumping projected from wells for agricultural use. We note that MCWD has initiated litigation over the permitting of new agricultural wells in the Deep Aquifer.

Please identify the sources of recharge for the Deep Aquifer and the rate of recharge.

Please identify the amount of pumping from the Deep Aquifer that can be sustained without causing depletion of the Deep Aquifer or falling groundwater levels.

Please identify the amount of groundwater pumping for this project that would be taken from the Deep Aquifer. Please separately identify the amount of pumping for this project that would be taken from aquifers other than the Deep Aquifer and identify those other aquifers.

f. Deep Aquifer conditions

Please explain what the DEIR means in claiming that the Deep Aquifer has not experienced signs of seawater intrusion and is considered to have a reliable quality. (DEIR pp. 4.9-5, 4.9-25, 4.16-19.)

g. 2003 Deep Aquifer pumping effects

The DEIR fails to discuss the effect of pumping the Deep Aquifer on the quality of the "upper aquifers."

Section 4.9 makes one confused and incomplete statement that may contemplate the possibility of adverse effects from increased pumping of the Deep Aquifer. The DEIR states

> In 2003, a study modeled seawater intrusion resulting from increasing pumping from the Deep Aquifer by two to five times the baseline rate, and found that "in the absence of other action to control seawater intrusion, the landward flow of groundwater would increase…" (MCWD 2015 UWMP Section 4.2.5, at p. 50). No increases of such a magnitude in pumping from the Deep Aquifer are expected.

(DEIR, p. 4.9-5.)

Please identify the 2003 study referenced by the DEIR.

Please explain what is meant by "the landward flow of groundwater." How, if at all, is "the landward flow of groundwater" related to seawater intrusion?

Please identify the referenced "baseline rate" of Deep Aquifer pumping in the 2003 study and its source.

h. DEIR references to 1998 Facilities Agreement regarding baseline use of the Deep Aquifer

The DEIR states

> The 6,600 AFY is considered the 1991 Statutory Baseline under the Base Reuse Plan. The 6,600 acre-feet per year amount includes 5,200 acre-feet from the 180-foot and 400-foot aquifers, along with 1,400 acre-feet per year from the 900-foot or Deep Aquifer (FORA 1998).[3]"

((DEIR, p. 4.16-3.) The footnote 3 cites section 5.3.1 of the 1998 "Water/Wastewater Facilities Agreement" between FORA and MCWD.

Section 5.3.1 of the 1998 provides Water/Wastewater Facilities Agreement provides:

> 5.3.1. Groundwater Use. The parties will cooperate on MCWD's increased withdrawal of potable groundwater from MCWD's existing wells in the 900-foot aquifer by up to 1,400 acre-feet per year (afy), in compliance with law, to enable the increased withdrawals from 5,200 afy to 6,600 afy for use in the service area, as stipulated in paragraph 4.c. of the September 1993 Agreement between The United States of America and the Monterey County Water Resources Agency, and in paragraph 5.1.1.1 of the "Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands," recorded August 7, 1996, in Reel 3404 Page 749, in the Office of the Monterey County Recorder.

Please explain how the reference to a permitted "*increased* withdrawal of potable groundwater from MCWD's existing wells in the 900-foot aquifer by up to 1,400 acre-feet per year (afy)" in the

1998 Agreement supports the contention that any pumping from the Deep Aquifer is part of a baseline.

7. 1996 Annexation Agreement and 1998 facilities agreement accounting

Paragraph 5.1.1.1 of the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands provides that MCWD may increase its withdrawals of potable groundwater by up to 1,400 afy from the 900-foot aquifer to enable the increased withdrawals from 5200 afy to 6600 afy for use on Fort Ord, as provided in paragraph 4.c. of the September 1993 Agreement between the Unites States of America and MCWRA.

Paragraph 5.3.1 of the 1998 Water/Wastewater Facilities Agreement contains the same provision.

Please provide the amount of groundwater pumped from the 900-foot or Deep Aquifer annually by MCWD for use on Fort Ord for the five years prior to 1996 and for each year subsequent to 1996. This information is relevant to whether additional water may be pumped from the Deep Aquifer to support the project under the terms of the 1996 and 1998 agreements.

8. Augmented water supply

The 2015 MCWD UWMP, incorporated by reference into the DEIR, states at page 17:

> One of the mitigation measures in the Final EIR, Reuse Plan and Master is the development of 2,400 afy of additional water supply for the Ord Community, which will allow development beyond the initial 6,000 dwelling units.

Please identify the specific documents and page numbers in the "in the Final EIR, Reuse Plan and Master [sic, Master Resolution]" setting forth this mitigation measure.

9. Impacts from increased pumping of groundwater, including overdraft, seawater intrusion, falling groundwater levels, and aquifer depletion

The DEIR apparently assumes that as long as groundwater pumping to the Ord Community does not exceed 6,600 afy, which it identifies as the "statutory baseline," there can be no significant impacts on the aquifers caused by increased groundwater pumping for the project. Thus, the DEIR fails to provide an assessment of the effect of increased pumping on overdraft, aquifer depletion, falling groundwater levels, and seawater intrusion. Instead, its analysis in sections 4.9 and 4.16 focus only on the availability and reliability of the assumed 6,600 afy supply.

The DEIR makes similar claims regarding the reliability of water supplies in sections 4.9 and 4. 16. In particular, the DEIR claims that the 6,600 afy allocation from FORA is considered reliable for several reasons:

- Because the SVGB has a large storage volume and because water levels vary 20 to 30 feet seasonally and an additional 10-20 feet during drought periods. (DEIR, p. 4.16-19.)
- Because MCWD's Deep Aquifer wells have not experienced sea water intrusion. (DEIR, pp. 4.9-5, 4.16-19.)
- Because the 2015 UWMP states that seawater intrusion and groundwater contamination are not immediate threats. (DEIR, pp. 4.9-5, 4.16-20.)
- Because as "to the 180-foot and 400-foot Aquifers, the 2015 the MCWD 2015 UWMP concluded that '[t]he Salinas Valley Water Project has reduced groundwater pumping in the 180/400 Foot Aquifer Subbasin. Therefore, MCWD's groundwater supply is fully

available in annual average, single dry year and multiple dry years' (MCWD 2015 UWMP Section 5.1, at p. 72)." (DEIR, pp. 4.9-5, 4.16-20.)

- Because the Monterey Subbasin is not designated as critically overdrafted. (DEIR, p. 4.16-20.)
- Because MCWD and the SVBGSA are required to develop sustainability plans to achieve sustainability by 2040. (DEIR, p. 4.16-20.)
- Because MCWRA has adopted a Long-Term Management Plan for the Salinas River Valley. (DEIR, p. 4.16-20.)

Based on these considerations, the DEIR concludes that the existing wells "are able to provide water to serve Fort Ord *in perpetuity*." (DEIR, p. 4.16-20 [emphasis added].) Section 4.16 proposes mitigation measure UTIL-1 in order to ensure an additional supply *after* the project has exhausted the remaining 181.3 afy of the City's sub-allocation of the 6,600 afy. (DEIR, p. 4.16-26.) Thus, the focus of analysis in section 4.16 is the *availability* of a water supply, not the impacts on the groundwater resource of *using* that supply.

The discussion in section 4.9 does not consider the possibility that incremental pumping of less than 6,600 afy for Fort Ord use would result in significant impacts to the groundwater resource, including overdraft, seawater intrusion, falling groundwater levels, or aquifer depletion. (See DEIR, p. 4.9-16 [thresholds of significance].)

The section 4.9 significance criteria and discussion address violation of water quality standards, but this section does not discuss contamination due to seawater intrusion. (DEIR, pp. 4.9-17 to 4.9-20.)

The section 4.9 significance criteria and discussion address interference with groundwater recharge so as to impede sustainable groundwater management. But this section does not discuss the effect of incremental groundwater pumping that interference with sustainable management. (DEIR, pp. 4.9-21 to 4.9-22.)

The section 4.9 significance criteria and discussion address altered drainage, but this discussion does not address the effects of incremental groundwater pumping. (DEIR, pp. 4.9-22 to 4.9-25.)

The section 4.9 significance criteria and discussion address obstruction of the implementation of a water quality control plan or a sustainable groundwater management plan. (DEIR, pp. 4.9-25 to 4.9-27.)

OBSTRUCTION OF WATER QUALITY CONROL PLAN: In this discussion, the DEIR first recites all of the same considerations identified in section 4.16 related to the *availability* of a water supply. (Compare DEIR, p. 4.9-25 to 4.16-19 to 4.16-20.) The DEIR then claims that there would be no significant impact to the water quality control plan as long as pumping stays within the 6,600 afy allocation to Fort Ord:

> The Proposed Project would increase the demand for water, most of which would derive from groundwater sources. For the existing conditions of the City's groundwater supply, and the effects of groundwater demand from development, see Section 4.16, Utilities and Service Systems. As discussed therein, *the potable water demand for the project would exceed the allocations available to the project, therefore impacts would be significant without mitigation*. If groundwater pumping were to be increased to meet this demand without mitigation, this would potentially result in seawater intrusion, which would decrease water quality, by increasing salt concentrations (such as chloride, nitrogen, sodium, etc.). To address the discrepancy between the Proposed Project's

441.6 AFY of potable water demand and the 181.3 AFY of available potable water supply, Mitigation Measure UTIL-1 requires the City to secure water supplies for the Proposed Project by offsetting potable water demands. *Because the potable water demands of the Proposed Project would be offset by the City, the Proposed Project would not result in seawater intrusion*.

(DEIR, pp. 4.9-26 [emphasis added].)

The DEIR is inadequate because it does not discuss the impacts on overdraft, groundwater levels, aquifer depletion, or seawater intrusion caused by increasing the *existing* levels of groundwater pumping. Nor does the DEIR discuss whether there could be significant direct or cumulative impacts from some level of increased pumping to support new Fort Ord development short of 6,600 afy.

OBSTRUCTION OF SUSTAINABLE GROUNDWATER MANAGEMENT PLAN: The discussion of the potential obstruction of a sustainable groundwater management plan also recites the background related to the allocation of the 6,600 afy, noting that Mitigation Measures UTIL-1 requires additional supplies when the project has exhausted the City's sub-allocation of the 6,600 afy. The discussion states that the mitigation measures UTIL-1 will ensure that pumping stays within the 6,600 afy allocation; that two groundwater sustainability agencies will design plans to ensure sustainability by 2040; and that MCWRA's Long-Term Management Plan for the Salinas River Valley will curtain future seawater intrusion and "ensure the reliability of the 6,600 AFY" so that the wells can supply water to Fort Ord "in perpetuity." (DEIR, p. 4.9-17.) This discussion is inadequate because also assumes without analysis that there would be no adverse impact to groundwater resources as long as pumping for Fort Ord does exceed the assumed 6,600 afy baseline.

10. MCWRA's Long-Term Management Plan for the Salinas River Valley

Although the DEIR references MCWRA's Long-Term Management Plan for the Salinas River Valley, the Plan itself casts substantial doubt on the ability of existing agencies to accomplish its proposed management actions. It states at page 5-1 that "while Monterey County Water Resources Agency (MCWRA) does currently have extensive authorities under the Agency Act, its current funding is limited and targeted at a narrower set of responsibilities." Indeed, MCWRA's Long-Term Management Plan for the Salinas River Valley states at page 5-2 that there "was no firm agreement on the appropriate structure of a long-term administrative approach to LTMP implementation, but many stakeholders agreed that the approach could—and likely would—evolve over time."

MCWRA's Long-Term Management Plan for the Salinas River Valley contains Table 4-1, Salinas River LTMP Recommended Management Objectives and Actions. None of the management action in Table 4-1 appear to be approved, funded, or environmentally reviewed.

Please identify each management action in Table 4-1 designed to mitigate falling groundwater levels, aquifer depletion, and seawater intrusion in the Fort Ord area that has been approved, funded, and environmentally reviewed under CEQA.

11. Sustainable Groundwater Management Plans

We are not aware that any Sustainable Groundwater Management Plan or any management actions or projects have been adopted under SGMA by either the SVGBGSA or MCWD. Please identify each management action and project that has been adopted by SVGBGSA or by MCWD in its capacity as a Groundwater Sustainability Agency under SGMA that is intended to

avoid or lessen overdraft, seawater intrusion, aquifer depletion, or falling groundwater in the Fort Ord area.

The DEIR's discussion of hydrology and water quality in section 4.9 states that "impacts to groundwater supply are also discussed in Section 4.16." (DEIR, p. 4.9-16.) However, the discussion in section 4.19 does not address impacts to groundwater supply such as aquifer depletion or seawater intrusion, but only the purported reliability of the existing 6,600 afy supply allocation.

12. Cumulative impact discussion of long-term sustainability of groundwater supplies in section 4.9, Hydrology and Water Quality

In section 4.9, the DEIR provides a discussion of cumulative impacts with regard to the "long-term sustainability of groundwater supplies." (DEIR, p. 4.9-29.)

The DEIR identifies the geographic scope of this cumulative analysis with reference to a watershed boundary:

> The geographic scope for cumulative hydrology and water quality impacts is the southern portion of the Monterey Bay HU watershed in which the Plan Area is located, which extends from the slopes of the Fort Ord National Monument on the east to the Pacific Ocean on the west. This portion of the watershed encompasses the cities of Marina, Sand City, Seaside, and Monterey. In this portion of the watershed, water generally flows from east to west or southeast to northwest, downhill towards the Monterey Bay. This geographic scope is appropriate for hydrology and water quality because water quality impacts are localized in the watershed where the impact occurs.

(DEIR, p. 4.9-27.)

Please explain whether the southern portion of the Monterey Bay HU watershed is depicted in the diagram at https://indicators.ucdavis.edu/cwip/huc/18060015. If not, please provide a map indicating the area comprising the southern portion of the Monterey Bay HU watershed.

We note that the southern portion of the Monterey Bay HU watershed is not coextensive with the Monterey Subbasin and/or the 180/400 Foot Aquifer Subbasin identified in the groundwater setting discussion at DEIR pages 4.9-2 through 4.9-5.

Please explain how groundwater pumping *outside* the Monterey Subbasin and/or the 180/400 Foot Aquifer Subbasin is relevant to the determination of cumulative effects of groundwater pumping in the Monterey Subbasin and/or the 180/400 Foot Aquifer Subbasin.

Please explain why the scope of the cumulative impact analysis does not include *all of* the Monterey Subbasin and/or the 180/400 Foot Aquifer Subbasin that were identified in the discussion of the relevant groundwater setting at DEIR pages 4.9-2 through 4.9-5.

We believe that the scope of the analysis of cumulative impacts to the long-term reliability of groundwater supplies in the DEIR is unjustified because the relevant scope is in fact the hydrologically interconnected groundwater basins that provide water supply to the project and that would be affected by groundwater pumping for the project.

The DEIR's discussion of cumulative impacts relative to the long-term sustainability of groundwater supplies consists of the following paragraph:

> As discussed under Impacts HWQ-2 and HWQ-5, the Proposed Project would increase the demand for water, most of which would be derived from groundwater sources. Cumulative development would also increase demands for groundwater supplies.

> Compliance with applicable regulations and the impending development of groundwater sustainability plans for the Monterey Subbasin would ensure the long-term sustainability of groundwater supplies. Therefore, cumulative development would not result in a significant cumulative impact. To address the discrepancy between the Proposed Project's 441.6 AFY of potable water demand and the 181.3 AFY of available potable water supply, Mitigation Measure UTIL-1 requires the City to secure water supplies for the Proposed Project by offsetting potable water demands. Consequently, the Proposed Project's impacts to groundwater supplies and groundwater management efforts would be less than significant and the Proposed Project would not have a cumulative considerable contribution to a significant cumulative impact related to groundwater.

(DEIR, p. 4.9-29.)

The cumulative analysis discussion of potential impacts to sustainability of groundwater supplies does not provide any information about the existing or foreseeable future groundwater pumping from the geographic area included in the geographic scope of analysis. Please provide either a list of past, present, and probable future projects producing related or cumulative impacts or a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Please provide this information for the identified geographic scope of the cumulative analysis.

Please also provide existing and projected cumulative groundwater pumping for the Monterey Subbasin Deep Aquifer, Monterey Subbasin "upper aquifers," 180/400 Foot Aquifer Subbasin Deep Aquifer, 180/400 Foot Aquifer Subbasin "upper aquifers."

The discussion also fails to provide a summary of the expected environmental effects to be produced by the projects producing related or cumulative impacts. Please provide that information. We note that the DEIR is devoid of any discussion of cumulative impacts related to overdraft, falling groundwater levels, aquifer depletion, or seawater intrusion.

The discussion also fails to provide a reasonable analysis of the cumulative impacts of the relevant cumulative projects. Please provide that information.

The DEIR should indicate whether there is a significant cumulative effect from all projects, including the proposed project, taken in combination. If so, the DEIR should separately indicate whether the project would make a considerable contribution to that impact, and, if not, why not. Accordingly, please explain whether there is a significant cumulative effect from all projects, including the proposed project, taken in combination. Please separately explain whether the Project would make a considerable contribution to a significant cumulative impact, and, if not, why not.

The DEIR discusses Mitigation Measure UTIL-1 as if it were a sufficient basis to conclude that the project would not make a considerable contribution to a significant cumulative impact. As in the DEIR's discussion of direct impacts, this conclusion is inadequate and unsupported because it fails to consider that incremental groundwater pumping short of the 6,600 afy allocated by FORA for Fort Ord development may nonetheless make a considerable contribution to a significant cumulative impact in the form of overdraft, falling groundwater levels, aquifer depletion, and seawater intrusion.

Please explain whether the DEIR purports to tier from a cumulative impact discussion in a previous EIR. If so, please identify that previous EIR and discuss its conclusions.

13. Cumulative impact discussion in section 4.16

The DEIR provides a separate discussion of "cumulative water supply impacts" in section 4.16. (DEIR, pp. 4.16-28.)

The DEIR identifies the geographic scope of this cumulative analysis as the MCWD service area:

> The geographic scope for cumulative water supply impacts is the MCWD service area, depicted in Figure 4.16-1. This geographic scope is appropriate because, as the local water purveyor, MCWD is responsible for supplying potable water to all residential, commercial, industrial, and fire protection uses within its service area, including the Plan Area (MCWD 2016).

(DEIR, p. 4.16-28.)

We believe that this geographic scope is unjustified because the relevant scope is the hydrologically interconnected groundwater basins that provide water supply to the project and that would be affected by groundwater pumping for the project. MCWD is not the only entity extracting water from these aquifers or regulating that extraction. Thus, the discussion of foreseeable cumulative pumping, based on MCWD's projected pumping for Marina and Fort Ord, is not adequate because it does not disclose all relevant sources of existing and foreseeable groundwater pumping that would affect the availability of groundwater supplies and does not discuss foreseeable regulatory constraints.

The actual discussion of cumulative water supply impacts in section 4.16 is limited to a comparison of MCWD's existing and future pumping demand to the purported 6,600 afy water supply allocation for Fort Ord and the 4,440 afy groundwater pumping limit for Central Marina, Armstrong Ranch, and RMC Lonestar set out in the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands. This discussion provides no information relevant to the sustainability of that water supply or to the cumulative effects of groundwater pumping on overdraft, aquifer depletion, falling groundwater levels, and seawater intrusion.

Furthermore, the DEIR fails to provide an adequate discussion of the certainty of the water supply in the face of existing and foreseeable regulatory constraints. Instead, the DEIR assumes that the perpetual availability of the proposed groundwater supply is ensured by the Fort Ord Reuse Agency suballocation of a purportedly perpetual 6,600 afy entitlement for use on Fort Ord.

First, the DEIR fails to acknowledge that the purported 6,600 afy allocation does not represent a permanent entitlement to use groundwater. The 1993 Agreement between the Army and MCWRA provides that pumping must cease when a replacement potable water supply project is implemented.

Second, the DEIR fails to acknowledge that the 6,600 afy allocation was made, and can only be enforced, by the Fort Ord Reuse Agency and that it will no longer be effective or enforceable as between the land use jurisdictions within the Ord Community when the Fort Ord Reuse Agency sunsets in 2020.

Third, the DEIR also fails to discuss the independent constraint on water supply provision represented by the cap on cumulative residential units in the Base Reuse Plan.

Fourth, the DEIR fails to disclose and discuss the constraints on pumping from the Deep Aquifer in the 1996 Annexation Agreement and Groundwater Mitigation Framework.

Finally, the DEIR fails to acknowledge that any groundwater pumping remains subject to regulation, including suspension, by MCWD, by MCWRA, by the County of Monterey, and by the SVGBGSA and MCWD as sustainability agencies under SGMA.

14. Proposed mitigation

The DEIR characterizes Mitigation Measure UTIL-1 as a water offset program. The DEIR improperly defers the formulation of the water offset program without explaining why deferral is necessary or appropriate.

There is no apparent necessity to defer the formulation of the offset program.

Furthermore, deferral is not appropriate when there is any question as to feasibility of the program. The EIR fails to provide any evidence that an offset program is feasible.

Mitigation Measure UTIL-1 lacks performance specifications. A water offset program would only be effective if the offset were verifiable, permanent, and additive. As written, UTIL-1 does not mandate these conditions or explain how they will be ensured.

The DEIR identifies four possible offset projects: the golf courses; Seaside Highlands and Soper Field; the Main Gate project; and duel-plumbing to accommodate recycled water. Please explain whether any of these projects were approved with the expectation or commitment that its use of potable water would be replaced with recycled water. If so, offsets would not be additive.

The DEIR claims that there would be no secondary impacts from UTIL-1 because "the recycled water supply is a pre-existing project that has already been subject to environmental review." (DEIR, p. 4.16-22.) Please identify the environmental review document or documents in which each of the four possible offset programs was discussed. Please identify the environmental impacts that were disclosed in these documents and whether any of these impacts remained unavoidably significant.

Any incremental pumping to support the project, including the first 181 afy required, would result in significant impacts to groundwater resources and would make a considerable contribution to significant cumulative impacts to groundwater resources. *Mitigation Measure UTIL-1 should be modified to require a verifiable, permanent, and additive reduction in long-term existing groundwater pumping to offset the amount of* ***any*** *provision of groundwater to the project.*

15. The DEIR fails to discuss consistency with relevant BRP policies

The DEIR identifies two of the BRP policies relevant to water supply and water supply impacts:

> Hydrology and Water Quality Policy B-1 ensures additional water is available to critically deficient areas. Hydrology and Water Quality Policy B-2 provides for development on verification of an assured long-term water supply.

(DEIR, p. 4.16-13.)

Although the DEIR lists these two policies, it does not discuss them or explain how the project could be consistent with them.

Please explain what steps the City has taken and what steps it will take to comply with Hydrology and Water Quality Policy B-1. In particular, please address the following Programs under Policy B-1.

BRP Hydrology and Water Quality Program B-1.2 requires that the City "shall work with FORA and the MCWRA to determine the feasibility of developing additional water supply sources for

the former Fort Ord, such as water importation and desalination, and actively participate in implementing the most viable option(s)." Please explain what steps the City has taken and what steps it will take to comply with this program.

BRP Hydrology and Water Quality Program B-1.3 requires that the City "shall adopt and enforce a water conservation ordinance developed by the Marina Coast Water District." Please explain what steps the City has taken and what steps it will take to comply with this program.

BRP Hydrology and Water Quality Program B-1.4 requires that the City "shall continue to actively participate in and support the development of 'reclaimed' water supply sources by the water purveyor and the MRWPCA to insure adequate water supplies for the former Fort Ord." Please explain what steps the City has taken and what steps it will take to comply with this program.

BRP Hydrology and Water Quality Program B-1.5 requires that the City "shall promote the use of on-site water collection, incorporating measures such as cisterns or other appropriate improvements to collect surface water for in-tract irrigation and other nonpotable use." Please explain what steps the City has taken and what steps it will take to comply with this program.

BRP Hydrology and Water Quality Program B-1.6 requires that the City "shall work with FORA to assure the long-range water supply for the needs and plans for the reuse of the former Fort Ord." Please explain what steps the City has taken and what steps it will take to comply with this program.

BRP Hydrology and Water Quality Program B-1.7 requires that the City "in order to promote FORA's DRMP, shall provide FORA with an annual summary of the following: 1) the number of new residential units, based on building permits and approved residential projects, within its former Fort Ord boundaries and estimate, on the basis of the unit count, the current and projected population. The report shall distinguish units served by water from FORA's allocation and water from other available sources; 2) estimate of existing and projected jobs within its Fort Ord boundaries based on development projects that are on-going, completed, and approved; and 3) approved projects to assist FORA's monitoring of water supply, use, quality, and yield." Please explain what steps the City has taken and what steps it will take to comply with this program. In this regard, please explain what steps the City has taken and will take to ensure that approval of the project would comply with DRMP section 3.11.5.4 (b), which caps total new residential units within the former Fort Ord at 6,160 units.

Please explain what steps the City has taken and what steps it will take to comply with Hydrology and Water Quality Policy B-2, which requires verification of an assured long-term water supply.

The DEIR fails to set out the relevant BRP Policies that mandate action by FORA and the City to prevent seawater intrusion. The City is required by BRP Hydrology and Water Quality Policy C-3 to "work with" MCWRA "to estimate the current safe yield" and to "participate in implementing measures to prevent future intrusion" as follows:

> Hydrology and Water Quality Policy C-3: The MCWRA and the City shall cooperate with MCWRA and MPWMD to mitigate further seawater intrusion based on Salinas Valley Basin Management Plan.
>
> Program C-3.1: The City shall continue to work with the MCWRA and the MPWMD to estimate the current safe yield 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.

> Program C-3.2: The City shall work with MCWRA and MPWMD to determine the extent of seawater intrusion into the Salinas Valley and Seaside groundwater basins in the context of the Salinas Valley Basin Management Plan, and shall participate in implementing measures to prevent further intrusion.

(BRP 2001 Reprint, p. 351.)

Please explain what steps the City has taken and what steps it will take to comply with Hydrology and Water Quality Policy C-3 and programs C-3.1 and C-3.2.

Please identify the Salinas Valley Basin Management Plan referenced in Hydrology and Water Quality Policy C-3.

16. The DEIR fails to disclose the impacts of not supplying water to later phases of the project

Where an EIR relies on mitigation in the form of a ban on development if adequate water supplies cannot be secured, the EIR must also discuss the impacts of not building approved development. Here, Mitigation Measure UTIL-1 would bar further approvals of discretionary permits or entitlements for the project without proof that offsets are available.

Please discuss the effects of not building the complete project as proposed. Please include a discussion of secondary impacts to public services, utilities, infrastructure, traffic, GHG emissions, and schools and to the jobs/housing balance if the entire project is not built as proposed and some or all of the expected jobs and tax benefits fail to be realized. Please base this discussion on the most recent economic analysis of the project and identify that analysis. Please note that inconsistency of the project with BRP policies related to the jobs/housing balance may be significant impacts because those policies are intended to avoid or reduce environmental impacts.

Please state clearly which portions of the project could possibly be foregone if there is insufficient water supply. What commitment, if any, does the Specific Plan or the EIR contain to creation of a viable and balanced project in the event that water supplies are not sufficient? Please note that the Specific Plan expressly leaves the phasing of the project to the discretion of each applicant for entitlements. Specific Plan, p. 198.

17. WSA

LandWatch incorporates by reference its attached comments on the Water Supply Assessment for the Campus Town Specific Plan, provided to the MCWD Board of Directors on June 15, 2018.

Thank you for the opportunity to comment.

Regards,

Michael DeLapa
Executive Director

Attachment, LandWatch comments on WSA for Campus Town Specific Plan, June 15, 2018

EXHIBIT 2

January 18, 2017

Via e-mail and hand delivery

Board of Directors
Care of Paula Riso, Clerk to the Board
Marina Coast Water District
11 Reservation Road,
Marina, CA 93933
priso@mcwd.org

Subject: Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District (MCWD)

Dear Members of the Board of Directors:

LandWatch Monterey County has reviewed the Initial Study and Negative Declaration for the proposed project. The Salinas Valley Groundwater Basin (SVGB) is critically overdrafted and has been so identified by the Department of Water Resources; and, because of that cumulative overdraft, seawater intrusion continues to advance inland, rendering large portions of the aquifer unusable. Any action that furthers and facilitates increased pumping from the aquifer, including the proposed annexation of the Ord Community to MCWD's service area, will make a considerable contribution to the existing significant cumulative impact.

Because MCWD must acknowledge the existence of a significant cumulative impact to which the annexation will make a considerable contribution, MCWD may not approve the annexation without preparing an environmental impact report in which MCWD should propose mitigation to address significant impacts. Pending preparation of an environmental impact report, LandWatch asks that MCWD decline to certify the proposed negative declaration or to approve the annexation.

1. **The project will cause physical impacts on the environment by facilitating increased pumping from the SVGB**.

The Initial Study repeatedly claims that the project will have no physical effect on the environment because, it claims, MCWD already intends to provide service to the Ord community. However, regardless of its prior intentions, MCWD is not legally obligated to provide a water supply that it cannot provide without causing harm to the aquifer. That is, MCWD need not commit itself to serve the Ord Community with water that it cannot

safely and sustainably produce. MCWD's decision to annex the Ord Community would constitute a commitment to serve this community with increasing amounts of water, a significant portion of which MCWD intends to provide through increased groundwater pumping. For example, the Initial Study projects that MCWD will increase its water service to the Ord Community by over 2,492 acre-feet/year (afy) between 2020 and 2035. Initial Study, p. 50. The reason for this increase in demand is the expectation that currently undeveloped parcels will become developed in accordance with the Fort Ord Reuse Plan and the General Plans of the FORA member agencies. This proposed increase in water supplied by MCWD, partially provided by increased groundwater pumping, would clearly have physical impacts on the environment.

2. **Overdraft and seawater intrusion in the SVGB continues and existing groundwater management efforts are not sufficient to mitigate or halt it**.

In connection with the Final EIR for Monterey Downs and Monterey Horse Park and Central CoastCemetery Specific Plan (SCH201291056) dated October 12, 2016, LandWatch and its hydrologist Timothy Parker submitted extensive comments. We incorporate those comments by reference and provide copies herewith. We note that provision of water for the proposed development of the Monterey Downs project is precisely the kind of future water supply commitment that the MCWD annexation would facilitate because the Monterey Downs project purported to be consistent with the Fort Ord Reuse Plan and with the General Plans of the City of Seaside and Monterey County.

As Mr. Parker substantiates, cumulative pumping in the Salinas Valley Groundwater Basin and its Pressure Subarea has resulted in aquifer depletion and associated seawater intrusion, and current groundwater management efforts are not sufficient to avoid this significant cumulative impact. This conclusion is not controversial and is well documented by the technical reports cited by Mr. Parker, which we also incorporate by reference.

3. **The Initial Study fails to evaluate the effects of increased pumping, instead relying on the outdated Fort Ord Reuse Plan EIR.**

The Initial Study purports to rely on and incorporate by reference the 1997 Fort Ord Reuse Plan Program EIR. The Initial Study claims incorrectly that "there have been no substantial changes in the environmental setting of the proposed area that would warrant new analyses." Initial Study, p. 23. The Initial Study claims that policies, programs and mitigation measures in the Fort Ord Reuse plan reduced impacts to a less than significant level. Initial Study, pp. 23, 52.

In fact, there is significant new information since 1997 that demonstrates that the analysis in the Reuse Plan EIR is outdated and that new analysis is warranted. This information includes, for example,

- DWR, Critically Overdrafted Basins, January 2016 – identifying the Salinas Valley Groundwater Basin as critically overdrafted and therefore requiring an accelerated Groundwater Sustainability Plan under the Sustainable Groundwater Management Act.

- MCWRA, State of the Salinas River Groundwater Basin, January, 2015 – identifying existing pumping from the Basin as unsustainable and

recommending pumping reductions in the Pressure Subarea from which this project proposes to increase pumping.

- MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013 – acknowledging the need for additional groundwater management projects to deliver water to replace coastal area pumping.

- Testimony of Robert Johnson, MCWRA, to Monterey County Planning Commission, Oct. 29, 2014 – acknowledging that the demand projections used for the Salinas Valley Water Project understated actual demand, that the Salinas Valley Water project would not be sufficient to halt seawater intrusion, and that additional groundwater management projects are needed.

- MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017 – acknowledging that seawater intrusion has leapfrogged forward through 2015 and recommending that pumping cease in the areas of impact, recommending a moratorium on extractions from new wells in the 900-foot Deep Aquifer,

This and other information cited by Mr. Parker demonstrates that there have in fact been substantial changes in the environmental setting of the proposed area over the past 20 years that would warrant new analyses. First, seawater intrusion has advanced another two miles inland since the 1997 Reuse Plan EIR, constituting a substantially more severe significant effect than shown in the Reuse Plan EIR. Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[] . . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and could not have been known" at the time of the Reuse Plan EIR. Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by Reuse Plan policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the Reuse Plan itself.

4. The Initial Study assumes without evidence that there would be no significant impacts as long as pumping stays within the 6,600 afy allocation.

The Initial Study projects that MCWD may pump up to its 6,600 afy allocation of SVGB groundwater to meet projected demand through 2035. Initial Study, pp. 50-51. The Initial Study does not provide any discussion of the impacts of increased pumping, but it implies that there would be no significant impact as long as groundwater pumping stays within the 6,600 afy allocation of SVGB groundwater that was assigned to MCWD and then sub-assigned to the FORA member agencies. This same assumption was made in the Monterey Downs EIR, and Mr. Parker's comments establish that it is fundamentally flawed.

Mr. Parker establishes that the Base Reuse Plan EIR does not assume that 6,600 afy can be pumped without significant impacts. Instead, it expressly provides that additional water supplies will have to be obtained instead of relying on the 6,600 afy allocation if seawater intrusion continues. Mr. Parker writes:

The BRP PEIR impact analysis qualifies any reliance on the 6,600 afy allocation by stating that a potable water supply is "assumed to be assured from well water until a replacement is made available by the MCWRA," but only "provided that such withdrawals do not accelerate the overdraft and seawater intrusion problems in the Salinas Valley groundwater aquifer." (BRP PEIR p. 4-53 (emphasis added)). It states that the 6,600 afy "could" support the first phase of Ord community development through 2015 and then notes "given the existing condition of the groundwater aquifer, there is public concern over the ability of the water wells to 'assure' even the 6,600 afy." (BRP PEIR p. 4-53.) Thus, the BRP EIR evaluates the impacts of the BRP through 2015 in two distinct analyses, one of which assumes that 6,600 afy can be supplied without impacts and the other of which assumes that it cannot. In particular, it provides that "[a]ssuming groundwater wells on former Fort Ord were able to supply 6,600 afy," an additional 7,932 afy of supply would be required by 2015. (BRP PEIR, p. 4-53.) However, it then provides in the alternative that "[i]f groundwater wells were unable to supply the projected 2015 demand of 6,600 afy of water for former Fort Ord land uses, e.g., if pumping caused further seawater intrusion into the Salinas Valley Aquifer," additional supplies would have to be developed sooner, and even further recommends "that an alternate water supply source, such as on-site storage facilities, be considered." (BRP PEIR, p. 4-54.)

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.[1] 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

[1] 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).)

In sum, unlike the Monterey Downs DSEIR, the BRP PEIR does not assume that the 6,600 afy entitlement is a sufficient basis to determine whether there will be a significant water supply impact from continued groundwater pumping.[2]

Here, the Annexation Initial Study makes precisely the same unfounded assumption that was made in the Monterey Downs EIR that pumping may be increased up to the 6,600 afy allocation without significant impacts. The assumption is belied by both the Reuse Plan EIR and the fact of 20 more years of continued seawater intrusion.

5. 6,600 afy does not constitute baseline use.

The 6,600 afy allocation does not represent baseline pumping. Thus, MCWD may not simply assume that pumping within the 6,600 allocation is not a new impact.

First, the average pumping at the time that Fort Ord was in use by the Army was never 6,600 afy. That amount represents a single peak year pumping in 1984. The 1993 Army/MCWRA agreement reports that average pumping from 1988-1992, the period that brackets the 1991 closure decision, was about 5,200 afy. Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993, ¶ 4c.

Second, the Reuse Plan EIR does not identify 6,600 afy as the baseline use. The discussion of water supply in the section captioned "environmental setting" references the Army/MCWRA agreement that "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." Reuse Plan EIR, p. 4-49. However, the discussion in this section does not identify any prior pumping amounts, and a reference to an agreement regarding future pumping does not even purport to identify historic baseline pumping. As Mr. Parker explains, the Reuse Plan EIR provides that mitigation would be required for any pumping that would lead to an increase in seawater intrusion, even if this occurs before the 6,600 afy allocation is pumped. The Reuse Plan EIR's discussion of the environmental setting with respect to water supplies identifies the 6,600 afy figure as the allocation in the MCWRA/Army agreement, not as baseline use. The discussion expressly provides that this allocation is available only "provided that such provisions do not aggravate or accelerate the existing seawater intrusion." Reuse Plan EIR, p. 4-49.

Third, if the Reuse Plan EIR adopts any baseline figure for Salinas Valley Groundwater Basin pumping on the Former Fort Ord, that figure is not 6,600 afy. The figure may be the 5,100 afy average pumping for the 4 to 5 years immediately prior to 1991, based on

[2] Timothy Parker, Technical Memorandum to John Farrow, Oct. 8, 2016, pp. 8-9.

the Army's NEPA documents. In Section 1.2.2, Baseline Determination, the Reuse Plan EIR expressly adopts the Amy's NEPA document baseline: "As with the Army's FEIS and DSEIS, this EIR determines whether the proposed project may have a significant effect on the environment based on physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." Reuse Plan EIR, p. 1-3. The Reuse Plan EIR states that this approach "complies with Section 21083.8.1 of the Public Resources Code and utilizes the extensive research already conducted for the Army's NEPA documents, which use the same baseline year." *Id.* Section 21083.8.1 permits a reuse plan EIR or EIS to rely on conditions at the time of the closure decision as a baseline provided that certain procedures are followed.[3]

The Reuse Plan EIR then identifies the specific NEPA documents that were used to determine the Environmental Setting for water supply analysis. Reuse Plan EIR, pp. 1-3, 1-10 (Table 1.9-1). These include the Army's December 1995 Draft SEIS, the Army's June 1993 Final EIS Volume 1, and the Army's April 1992 "*Other Physical Attributes Baseline Study of Fort Ord, California."* These documents identify the baseline water use from the Salinas Valley Groundwater Basin as 5,100 afy, not as 6,600 afy, as follows:

- The 1996 Final SEIS states that "[a]s reported in the final EIS (Volume 1, page 4-56), average water demand on Fort Ord was 5,100 acre-feet (af) during 1986-1989. Water use has declined in recent years with the decrease in the number of personnel living on and occupying the base. Annual water use was 5,634 af in water year 1992, 3,971 af in 1993, and 3,235 af in 1994."[4]

- The June 1993 Final EIS states that "[a]nnual water consumption decreased from a high of 6,600 acre-feet in 1984 to an average of 5,100 acre-feet during

[3] These procedures include circulation of proposed baseline conditions to affected agencies "prior to circulating a draft EIR" followed by a public hearing at which "the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions." Guidelines, § 15229(a)(1), (2). Although the BRP PEIR states that it availed itself of the Public Resources Code § 21083.8.1 baseline provisions and that baseline conditions are as of the September 1991 closure decision (Reuse Plan EIR, p. 1-3), there is no evidence that FORA actually followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify baseline water use conditions in a document circulated before the PEIR and to state an intent to adopt that as the baseline. See FORA, Resolution 97-6, June 13, 1997 (Certifying BRP PEIR and discussing proceedings and hearings). CEQA does not authorize FORA to rely on the Army's prior compliance with these procedures, if in fact the Army did comply.

[4] Dept. Of the Army, Final Supplemental EIS Fort Ord Disposal and Reuse, June 1996, p. 4-11, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538//Section_4.pdf. The quote from the Final SEIS is of the unchanged text of the 1995 Draft SEIS.

1986-1989."[5] Table 4.5-2 identifies 5,100 afy as the average pumpage for Fort Ord.[6]

- The April 1992 *Other Physical Attributes Baseline Study of Fort Ord, California,* provides a table of annual pumping, from which it is apparent that average annual pumping from 1986-1989 is 5,083 afy and the average from 1986-1990 is 5,126 afy.[7] That 1992 report identified declining water use from 1980 to 1990, except for the single year 1984.[8]

In sum, if the Army actually followed the procedures of Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to adopt a baseline figure and if FORA also complied with those procedures, then the baseline water use was not 6,600 afy but only 5,100 afy. The outlier 6,600 afy figure from 1984 could not have been used as a baseline because it does not represent the "physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." Reuse Plan EIR, p. 1-3; *see* Public Resources Code § 21083.8.1(c).

Fourth, even if FORA or the Army had followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify a baseline condition for water, they were required to "state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process." Public Resources Code, § 21083.8.1(c)(C). The Reuse Plan EIR does explain how the 6,600 afy figure is to be integrated into its analysis and mitigation of water supply impacts. Reuse Plan EIR, pp. 4-49, 4-53 to 4-54. And that discussion does not indicate an intent to treat 6,600 afy as a baseline condition within which there is no significant impact, because it requires mitigation even if the 6,600 afy allocation is not pumped in full. CEQA does not permit the imposition of mitigation unless there are significant impacts. Guidelines, § 15126.4(a)(3). Thus, treating 6,600 afy as a baseline "no impact" level is inconsistent with the fact that Reuse Plan EIR repeatedly states that use of the 6,600 afy allocation is only to be permitted if it does not contribute to seawater intrusion and that mitigation may be required even if water use does not rise to 6,600 afy. *See* Reuse Plan EIR, pp. 4-49, 4-53 to 4-54.

And the Army's EIS also makes clear that 1) there is no categorical right to pump 6,600 afy, and 2) even the right to pump up to 5,200 afy is subject to a no-harm condition:

> MCWRA will not object to Fort Ord/POM Annex withdrawal from the basin of up to 6,600 af/yr, provided that no more than 5,200 af/yr are withdrawn from the

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[5] Dept. of the Army, Final EIS, Fort Ord Disposal and Reuse, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

[6] *Id.* at 4-59.

[7] US Army Corps of Engineers, *Other Physical Attributes Baseline Study of Fort Ord, California,* April 1992, p. 1-6, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202//Section_1.pdf.

[8] *Id.* at 1-6, 1-14.

> 180-foot aquifer and 400-foot aquifer and that such withdrawals do not threaten to aggravate or accelerate the existing seawater intrusion problem.[9]

Fifth, Public Resources Code, § 21083.8.1(c)(A) provides that "[p]rior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement." The Reuse Plan EIR does in fact require further analysis of physical conditions than the analysis provided in the EIR. For example, Program C-3.1 requires determination of the safe yield of the portion of Fort Ord overlying the Salinas Valley Groundwater Basin "to determine available water supplies." Reuse Plan EIR, p. 4-55. Program C-3.2 require further investigation of seawater intrusion in the context of the Salinas Valley Basin Management Plan and measures to prevent further intrusion. Again, these provisions are simply inconsistent with treating 6,600 afy as a permissible baseline use that would not constitute a significant impact.

6. 6,600 afy is not a safe yield.

MCWD cannot argue that 6,600 afy represents its share of the safe yield for the SVGB, i.e., an amount that MCWD can pump without significant impact. Safe yield or sustainable yield is defined as "the amount of groundwater that can be pumped annually on a long-term basis without causing undesirable results."[10] The Final EIS for the Fort Ord base closure and reuse also acknowledges that 1) safe yield must be determined for the entire groundwater basin and 2) pumping for Fort Ord already exceeded safe yield as of 1993:

> The concept of safe yield is meaningful only when applied to an entire groundwater basin. The amount of yield available to individual users within the basin depends of the amounts and locations of pumping by other users. In the Salinas Valley groundwater basin, present pumping in and near Fort Ord exceeds safe yield in the 180-foot and 400-foot aquifers, as indicated by continuing seawater intrusion and water levels below sea level in those aquifers. This indicates that the yield from the 180-foot and 400-foot aquifers for Fort Ord is less than its present pumpage, assuming that pumping by other users remains unchanged.[11]

Base Reuse Plan Hydrology and Water Quality Program C 3-1 requires that member agencies work with MCWRA to determine safe yield to determine available water supplies. For example, the Reuse Plan EIR provides for the City of Seaside:

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[9] Dept. of the Army, Final Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse, June 1996, p. 4-11, emphasis added, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538//Section_4.pdf.

[10] Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

[11] Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57.

> The City shall continue to work with the MCWRA and the MPWMD to estimate the safe yield in the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and the Seaside groundwater basins to determine available water supplies.

Reuse Plan EIR, p. 4-55. Similar provisions apply to the other member agencies. There is no evidence that the member agencies or MCWD have worked with MCWRA to determine safe yield for the Fort Ord area.

Furthermore, as the Final EIS for the Fort Ord base closure and reuse indicates, the concept of safe yield only makes sense for a basin as whole, not just the Fort Ord area. MCWRA's most recent determination of the sustainable or safe yield for the Salinas Valley Groundwater Basin and the Pressure Subarea indicates that pumping has been and remains in excess of safe yield. In particular, the 2016 State of the Salinas Valley Groundwater Basin report indicates that the safe yield of the Pressure Subarea is about 110,000 to 117, 000 afy and that existing pumping already exceeds this yield by about 12,000 to 19,000 afy.[12] The safe yield for the Salinas Valley Groundwater Basin as a whole (the four subareas constituting Zone 2C, the assessment area for the Salinas Valley Water Project) is from 499,000 to 506,000 afy, and existing pumping already exceeds this yield by 17,000 to 24,000 afy.[13]

7. The Initial Study fails to provide an adequate cumulative analysis and it may not tier from the Reuse Plan EIR.

The Initial Study claims that cumulative impacts were adequately evaluated in prior environmental documents, presumably the Reuse Plan EIR. Initial Study, p. 82. However, changed circumstances, new information, and changes in the Reuse Plan itself that have occurred since the Reuse Plan EIR require reexamination of the cumulative analysis and preclude tiering. Accordingly, MCWD is obliged to prepare a new water supply analysis and not to tier from the water supply analysis in the Reuse Plan EIR.

Public Resources Code § 21094(b)(3) bars tiering if a project is subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 due to changed circumstances and/or new information. Here, there are changed circumstances and new information that bar reliance on the out-of-date cumulative analysis. As discussed above, information cited by Mr. Parker demonstrates that there have in fact been substantial changes in the environmental setting of the proposed area that would warrant new analyses. First, seawater intrusion has advanced another two miles inland since the 1997 Reuse Plan EIR, constituting a substantially more severe significant effect than shown in the Reuse Plan EIR. Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[] . . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and

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[12] MCWRA, State of the Salinas Valley Groundwater Basin, 2016, p. 4-25, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

[13] *Id.* at 4-26.

could not have been known" at the time of the Reuse Plan EIR. Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by Reuse Plan policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the Reuse Plan itself. Most significantly, MCWD has not yet implemented the long-term water supply replacement projects that are mandated by the Reuse Plan and its EIR in the event that seawater intrusion continues.

Case law is clear that additional analysis of water supply impacts is required under section 21166 when new information shows more severe impacts or the planned water sources are not implemented timely:

> To the extent that a subsequent subdivision proposal relies on different water sources than were proposed in the specific plan it implements, or the likely availability of the intended water sources has changed between the time of the specific plan and the subdivision application (or more has been learned about the effects of exploiting those sources), changes in the project, the surrounding circumstances or the available information would exist within the meaning of section 21166, requiring additional CEQA analysis under that section . . .

Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412,438; see also *id.* at 431, n. 7. Here, the new information about the severity of cumulative impacts, changes to circumstances, and to the project itself with regard to water supply are subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 and therefore tiering, at least for the water supply analysis, is not permitted. The Initial Study erred by not providing a new analysis of water supply impacts, in particular, a new cumulative analysis.

Finally, even if tiering were permitted, MCWD must still assess whether the incremental effects of the Project would be considerable when viewed in the context of past, present, and probable future projects. Guidelines, § 15152(f)(2). We note that the California Supreme Court has clarified that additional review of a subsequent project may be required in a tiering context even where 21166 does not apply:

> The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIR's." (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then "CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR." (*Ibid*. citing Pub. Resources Code, § 21094, subds. (a), (c).)

Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist. (2016) 207 Cal. Rptr. 3d 314, slip op. at p. 11 (emphasis added).

8. The Initial Study fails to disclose that increased pumping by MCWD to supply the Ord community through 2035 would make a considerable contribution to a significant cumulative impact.

By way of background, cumulative impact analysis requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project's own effect is a considerable contribution. Guidelines, § 15130(a); *see* Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be "individually minor but collectively significant." *Communities for a Better Environment v. California Resources Agency* ("*CBE v. CRA*") (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

- "define the scope of the area affected by the cumulative effect,"
- explain "the geographic limitation used,"
- identify the past, present, and future projects "producing related or cumulative impacts" or provide projections of the conditions "contributing to the cumulative effect,"
- provide a "summary of the expected environmental effects to be produced by those projects." Guidelines, § 15130(b)(3), (4).

In step two, if there a significant cumulative effect, the agency must determine whether the project's contribution is "considerable," i.e., "whether 'any additional amount' of effect should be considered significant in the context of the existing cumulative effect." *CBE v. CRA, supra*, 103 CalApp.4th at 119. The determination whether a project's effects are a considerable contribution to a significant cumulative impact requires an acknowledgement of the existence of that cumulative impact and assessment of its severity because "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *Communities for a Better Environment v. California Resources Agency* ("*CBE v. CRA*") (2002) 103 Cal.App.4th 98, 120.

Here, there is overwhelming evidence that a step-one determination must conclude that there is a significant regional cumulative impact from groundwater pumping by past, present, and reasonably foreseeable future projects, including the Monterey Downs project. The evidence, including Mr. Parker's comments, shows that

- there has been and still is an ongoing significant cumulative impact to groundwater resources in the form of declining groundwater levels and seawater intrusion due to over-pumping of groundwater;

- this impact is due to basin-wide pumping, not just pumping within the Reuse Plan area;

- this impact has not been avoided by existing groundwater management projects;

- there are no committed, funded groundwater management projects that will avoid this impact in the foreseeable future; and

- the impact will be aggravated by increases in pumping to support future development, including projected increases in agricultural pumping and new urban development such as the Ord community buildout.

Given this evidence, and the complete lack of analysis of relevant cumulative conditions in the Initial Study, the omission of an adequate cumulative analysis is prejudicial to informed decision making and public participation.

Furthermore, the Initial Study presents no contrary evidence to support a step-one finding that there is no significant cumulative impact from cumulative groundwater pumping – an issue that the Initial Study simply fails to address. The lack of analysis precludes any step-one conclusion or finding that there is not a significant cumulative impact.

The lack of analysis also precludes any step-two conclusion that increased water demand for the Ord buildout does not constitute a considerable contribution to a significant cumulative impact. Any implied approach to a step-two conclusion based on the relatively small percentage of basin pumping undertaken by MCWD or the fact that the pumping may be from the 900-foot aquifer would be based on a legally and factually erroneous approach to cumulative analysis. Indeed, the Initial Study argues that the MCWD pumping is only 1% of total Salinas Valley Groundwater Basin pumping. Initial Study, p. 49. Any implication that this means that pumping to support the Ord buildout it is not a considerable contribution to a significant cumulative imapct is wrong as a matter of law and fact.

An EIR may not conclude a cumulative impact is insignificant merely because the project's individual contribution to an unacceptable existing condition is, by itself, relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles* ("*LAUSD*") (1997) 58 Cal.App.4th 1019, 1025-1026; *CBE v. CRA, supra*, 103 Cal.App.4th at 117-118, 121. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,718, the Court rejected the agency's "ratio" theory that found impacts not to be a considerable contribution merely because they were a relatively small percent of the total impact. *Id.* at 720. Because the relevant question was "whether any additional amount" of incremental impact "should be considered significant in light of the serious nature" of the problem (*id.* at 718), a valid determination whether a project's contribution is considerable must reflect the severity of the cumulative problem. "[T]he greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE v. CRA, supra*, 103 Cal.App.4th at 120. Thus, even an "individually minor" impact may be "cumulatively considerable." *Id.*; *see also* Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25.

As Mr. Parker explains, what is relevant is whether <u>marginal increases</u> in pumping will be a considerable contribution in light of the severity of the overdraft and seawater intrusion problem. Because seawater intrusion is caused by the problem of overdraft, not by total pumping, the severity of the cumulative problem should be measured in terms of

the size of the overdraft or the amount of induced seawater intrusion. Here, the basin as a whole and the Pressure Subarea are in overdraft and, as Mr. Parker explains, any additional pumping will induce seawater intrusion equal to about 75% of the volume pumped. Furthermore, coastal pumping is more problematic than inland pumping. Thus, as Mr. Parker explains, the increase in pumping demand should be evaluated in light of the annual Pressure Subarea overdraft of 12,000 to 19,000 afy, not in relation to the 500,000 afy of total pumping in the Salinas Valley Groundwater Basin. Viewed in this light, and viewed in the light of the current recommendations by MCWRA that existing pumping be reduced in the Pressure Subarea, the marginal increase in pumping of 2,492 afy to support future Ord community buildout is a considerable contribution.

Finally, MCWD cannot argue that pumping to support the Ord buildout would be less than a considerable contribution to significant groundwater impacts because some portion of that pumping would come from the 900-foot Aquifer, also known as the Deep Aquifer. Based on available stratigraphic analysis and modeling, Mr. Parker demonstrates that increased pumping from the Deep Aquifer will also cause depletion of the 180-Foot and 400-Foot Aquifers because those aquifers are the source of recharge to the Deep Aquifer. Mr. Parker also demonstrates that increased pumping from the Deep Aquifer will aggravate seawater intrusion to the 180-Foot and 400-Foot Aquifers. Increased pumping from the Deep Aquifer may deplete that aquifer and it may also induce seawater intrusion into the Deep Aquifer itself. Finally, MCWRA has now recommended a moratorium new pumping from the 900-foot Aquifer.[14]

9. Other matters

In addition, many of LandWatch's 2011 comments on the previous project and environmental document have never been addressed. We have the following additional comments on the revised project and environmental document:

a. **Project Description**. Marina Coast Water District (MCWD) currently is working with the Salinas Valley Basin Groundwater Sustainability Agency to address requirements of the Groundwater Sustainability Act. Under the proposed project, MCWD would be able to more effectively address the Act's requirements because it would have the authority to levy fees and/or taxes to fund needed projects. The Initial Study should identify this as a project outcome.

b. **General Plan Consistency with Base Reuse Plan.** The document finds that all General Plans and/or project EIRs are consistent with the Reuse Plan EIR (p. 18) The germane consistency determination is consistency of General Plans, etc. with the FORA Reuse Plan, not the FORA Reuse Plan EIR. Please identify those general plans that have not had a consistency determination, e.g., 2010 Monterey County General Plan. Revise the following statement as needed:

c. **Table 3.** The table identifies Water and Wastewater Service providers. It shows MCWD as providing water service to the City of Seaside. The

[14] MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Oct. 2017, pp 2-3, available at http://www.co.monterey.ca.us/home/showdocument?id=57394

referenced 2003 City of Seaside General Plan identifies MCWD as working on the Regional Urban Water Augmentation Project for the former Fort Ord; however, the table should be augmented to identify the California American Water as the primary water provider. Table 3 also identifies MCWD as providing water service to the City of Monterey. MCWD's service would only apply to the City of Monterey projects on the former Fort Ord. The table should be augmented to identify the California American Water as the primary water provider and MPWMD as the agency charged with overseeing the water resources in the non-Fort Ord areas.

Thank you for the opportunity to review the document.

Sincerely,

Michael DeLapa
Executive Director

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EXHIBIT 3

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October 12, 2016

Via Hand Delivery and E-mail

City of Seaside City Council
c/o City Clerk
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Re: Final EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056)

Dear Members of the City Council:

On behalf of LandWatch Monterey County ("LandWatch") we write regarding the Final Supplemental Environmental Impact Report ("FSEIR") and the Draft Supplemental Environmental Impact Report ("DSEIR") (together, the "SEIR") for the Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan ("Project") and regarding the proposed approval of Project entitlements.

The FSEIR fails adequately to address the issues raised by public comments on the DSEIR made by LandWatch and others. In addition, approval of the project entitlements is inconsistent with the Fort Ord Reuse Plan (also known as the Base Reuse plan or "BRP").

LandWatch reiterates its request that the City revise and recirculate the SEIR to address the defects set out in its comments.

A. Summary of comments

WATER ANALYSIS INADEQUATE: The SEIR fails to meet CEQA's requirements for an adequate analysis of water supply impacts because it assumes uncritically that there would be no significant impacts to the Salinas Valley Groundwater Basin as long as pumping to support Fort Ord demand does not exceed the 6,600 afy that MCWRA "allocated" to the Army in 1993. Thus, it concludes that there would be no significant impact for Phases 1-3 of the project because water for those phases could be supplied from uncommitted portions of the 6,600 afy allocation. The SEIR does not support this conclusion with any actual analysis of impacts to the basin from increased pumping; it simply assumes that 6,600 afy can be pumped without impact. As the comments below and the attached letter from hydrologist Timothy Parker explains that assumption is completely unfounded:

- 6,600 afy does not represent a baseline or "no new impact" pumping level for Fort Ord. In fact, the SEIR identifies baseline pumping as the currently existing level of pumping – variously reported by the SEIR as from 1,650 afy to 2,311 afy.

- 6,600 afy does not represent a safe yield for Fort Ord pumping. Safe yield cannot be determined for the Fort Ord area by itself because it must be determined for the hydrologically interconnected Salinas Valley Groundwater Basin as a whole. MCWRA's 2016 State of the Salinas Valley Groundwater Basin report explains that the existing level of groundwater pumping is well beyond the Basin's safe yield. The California Department of Water Resource's identification of the Salinas Valley Groundwater Basin as critically overdrafted confirms this. So does Mr. Parker's attached technical memorandum.

- Contrary to the out-of-date 2010 MCWD Urban Water Management Report relied upon by the SEIR, the Salinas Valley Water Project will not halt seawater intrusion and balance the Basin hydrologically. MCWRA now acknowledges that the existing groundwater management projects, including the Salinas Valley Water project, are insufficient to accomplish this, and that additional groundwater management projects would be needed. These projects are not approved, environmentally reviewed, or funded. The SEIR simply ignores this information, despite Seaside's obligation under the BRP to cooperate with MCWRA in addressing seawater intrusion and determining the safe yield.

- The SEIR fails to provide a discussion and analysis of actual physical impacts from increased pumping as CEQA requires. The SEIR improperly assumes that as long as a water supply has been allocated on paper, there is no need to discuss the physical impacts from using that supply. The SEIR gets this entirely wrong: as the California Supreme Court has explained, the "ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project." *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434 (emphasis in original).

- The SEIR fails to provide an adequate discussion of cumulative water supply impacts. The DSEIR purports to "tier" from the program EIR for the Base Reuse Plan, but then does not even summarize that document's conclusion. The Base Reuse plan PEIR concludes that cumulative impacts, viewed at the relevant geographic scale of the Salinas Valley Groundwater Basin, are significant and unavoidable. The Monterey Downs SEIR looks only at Fort Ord demand, improperly conflating its project-specific and cumulative analyses, and then claims that there would be no significant cumulative impact as long as total Fort Ord demand remains within the 6,600 afy allocation. This ostrich-like approach ignores

the fact that there is already a significant cumulative impact and that additional pumping will aggravate overdraft and seawater intrusion.

PARTIAL PROJECT NOT ANALYZED: The SEIR admits that a water supply for Phases 4-6 is uncertain and so proposes simply not building Phases 4-6 as a mitigation measure for water supply impacts. Despite LandWatch's request and CEQA's mandate, the SEIR fails to assess the impact of not building these phases. Not building Phases 4-6 would render the project primarily residential and eliminate most of the commercial and jobs-creating uses. This would render the project inconsistent with Seaside and BRP policies mandating a strong jobs to housing ratio. It would also force residents to travel farther for jobs and shopping, increasing vehicle trips per capita and aggravating GHG impacts, which are based on per capita CO2 emissions. And not building the hotels, commercial space, and racetrack would render the fiscal effects of the project negative.

GHG ANALYSIS INADEQUATE: The FSEIR violates CEQA because if fails to disclose the actual basis of the numerous mitigation credits taken for GHG reduction measures. The DSEIR takes 25 distinct credits for project features to reduce the projected GHG emissions. When LandWatch asked for the specific assumptions that would justify these credits, the FSEIR simply referred LandWatch to documentation that confirms that project-specific assumptions are required, but does not provide those assumptions for this project. Thus, there is no evidence in the record that the claimed GHG reductions are warranted, and the FSEIR violates CEQA because it fails to provide good-faith reasoned responses to comments.

GHG MITIGATION INADEQUATE: The SEIR admits that GHG impacts will remain significant and unavoidable even after implementation of proposed mitigation. CEQA requires that the City adopt all feasible mitigation as long as impacts remain significant. CEQA also requires that the City respond to each mitigation measure proposed by the public and either adopt it or explain why it would not be effective or feasible. The FSEIR fails to respond at all to numerous feasible GHG mitigation proposed by the Monterey Bay Unified Air Pollution Control Agency and by LandWatch. The FSEIR rejects other mitigation, such as mandated solar electrical and water heating systems, without any showing that it is infeasible or ineffective. This violates CEQA.

FSEIR TAKES UNJUSTIFIED VEHICLE TRIP REDUCTION CREDIT AND REFUSES TO EXPLAIN IT: The traffic analysis assumes that 28% of vehicle trips will remain within the project site. Caltrans, TAMC, and LandWatch objected that this so-called "internal capture" rate is unjustified and unjustifiable. The FSEIR claimed that it provided documentation to Caltrans in response to its objection and that Caltrans had made no further objection. Not true. Caltrans has continued to object. Regardless, giving documentation to Caltrans does not answer the objections and questions raised by TAMC and LandWatch. The FSEIR also claims that the trip capture data is in the

DSEIR. This is not true. Indeed, if it were, it would not have been necessary to furnish the information privately to Caltrans.

TRAFFIC ANALYSIS AND MITIGATION IS INADEQUATE: The traffic analysis contains a number of additional flaws.

- The proposed mitigation for special event traffic, events which could occur as frequently as 125 times per year, is a to-be-determined-later "Events Management Plan." This mitigation is entirely ad hoc with no standards for what level of congestion will be permitted. This violates CEQA's requirement for specific performance standards when formulation of mitigation is deferred until after project approval.

- As Caltrans objected, the FSEIR fails to apply Caltrans' level of service standard in its analysis of the significance of impacts, even though it applies the adopted service standards for other jurisdictions (e.g., Marina, the County). Caltrans' goal is to maintain service at the cusp of LOS C and D. The FSEIR ignores impacts unless service degrades to LOS D, and thus fails to disclose additional significant impacts to Caltrans' facilities.

- The SEIR admits dozens of significant impacts to roads and intersections that will not be mitigated. LandWatch proposes that impacts to freeway ramps could be addressed with ramp metering and that the project should make fair share payments for this. The FSEIR responds that ramp metering is not planned by Caltrans so is infeasible. This is not true. Caltrans' current plan for the SR 1 corridor in the project vicinity expressly plans ramp metering. Again, the FSEIR's comment responses fail to evince good-faith.

NOISE ANALYSIS IS DEEPLY FLAWED: Noise from recreational areas of the project, including the Sports Arena, horse track, swimming center, and other equestrian facilities, noise from project construction, and noise from project traffic will exceed noise standards adopted by the Fort Ord Reuse Plan and the City of Seaside. Despite LandWatch's objections, the SEIR fails to acknowledge this and to provide a legally adequate noise analysis:

- The SEIR ignores one whole category of noise standards from the Base Reuse Plan, which are specifically intended to protect sensitive uses from loud short-term noise from activities like construction, sports events, and musical concerts. Unlike the 24-hour average noise standards, these so-called "statistical" noise standards regulate peak noise events and cumulative noise for intervals of 1, 5, 15, and 30 minutes in an hour. Without these standards, highly annoying short-term noise would be permitted, such as crowd cheering, PA systems, musical events, and swimming pool timing horns. Seaside has failed to adopt the BRP's statistical

noise standards even though the BRP mandates that it do so and in fact bars it from approving any projects in Fort Ord until it does so.

- The SEIR's analysis and mitigation of construction noise contains no quantitative analysis to determine if the project would exceed applicable standards, despite express requirements in the Seaside noise ordinance and BRP policies for quantitative assessment. Mitigation does not require the construction noise to meet any noise standard. Noise engineer Derek Watry demonstrates that construction noise would exceed applicable standards and that mitigation to meet applicable standards is infeasible.

- The SEIR's analysis of stationary noise impacts, e.g., noise from recreational facilities, fails to identify a consistent threshold of significance so it is unclear how the SEIR determines significance. Furthermore, the only noise standard mentioned in the proposed mitigation differs from the noise standards discussed in the qualitative assessment of the significance of impacts. And again, the SEIR fails to provide the required quantitative assessment of noise levels with and without mitigation.

- The SEIR fails to assess and mitigate noise impacts to open space users. BRP policies mandate strict standards to protect passively used open space, and information in the FSEIR indicates that this standard is not met. Passive open space use will be directly adjacent to the noisiest portions of the project. Numerous comments have objected to the imposition of the project's noise on this use.

- The traffic noise analysis is flawed because the analysis fails to protect outdoor uses by failing to measure impacts at the property line as required by both the City's noise ordinance and the BRP. Furthermore, the FSEIR refused to provide essential information to understand the traffic noise analysis requested by LandWatch: the identification of the land use and applicable noise standards on the road segments affected by the project. As Mr. Watry explains, for at least one segment, this omission obscures the fact that the project will contribute considerably to a significant cumulative noise impact.

THE PROJECT IS INCONSISTENT WITH THE BASE REUSE PLAN: The project conflicts with numerous noise policies in the BRP. Seaside has failed to adopt required BRP noise standards and has failed to undertake noise analysis required by BRP policies. Project noise will exceed standards in several BRP noise policies. The SEIR admits that the project is inconsistent with BRP water policies requiring additional water supplies and prohibiting approval of a development project without an assured long-term water supply. If water supply limitations result in a predominately residential project and

a failure to build out the commercial and recreational uses, the project will conflict with BRP (and Seaside) policies mandating a balanced jobs/housing ratio.

BELATED ELIMINATION OF RACING RENDERS ANALYSIS INVALID: The last-minute elimination of horse-racing from the list of allowed uses does not actually ensure that racing will not be permitted by a subsequent interpretation or revision of the specific plan, particularly if regulation of racing is found to be preempted by state law. If Seaside were serious about the racing ban, it could and should make the ban enforceable by identifying it as CEQA mitigation and by banning horseracing by ordinance.

Horseracing is an integral part of the economic justification for the project, representing 40% of the jobs and the primary attraction that would generate hotel taxes, without which the Wildan Report indicates that the project would be a fiscal loss for Seaside. There is no analysis that would suggest that other uses will replace these equestrian jobs and revenues.

And even if Seaside is not concerned about fiscal consequences of the bait-and-switch strategy saddling it with unbalanced residential construction, Seaside is still accountable for the inadequate environmental analysis. Without the commercial and jobs uses assumed in the SEIR, the assumed jobs/housing balance will not materialize. This would result in inconsistencies with Seaside and BRP policies, including policies intended to minimize transportation and air pollution impacts and conserve water supplies to support balanced growth.

For all of these reasons, LandWach urges the Seaside City Council to decline to certify the inadequate SEIR and to decline to approve project entitlements.

Detailed comments are set out below and in the attached letters from hydrologist Timothy Parker and noise engineer Derek Watry.

B. The SEIR fails as an informational document because its discussion of groundwater impacts is incomplete and inadequate.

Because the FSEIR fails to provide adequate responses to the issues LandWatch raised in its DSEIR comments, LandWwatch asked hydrogeologist Timothy Parker to review the SEIR and relevant documentation. Mr. Parker's comments are attached and incorporated by reference in the discussion below.

1. The FSEIR fails to respond adequately to comments objecting to reliance on the 6,600 afy allocation as the basis to find impacts less than significant.

LandWatch objected that the DSEIR improperly concludes that project-specific and cumulative impacts would be less than significant in Phases 1-3 based on the fact that

a portion of the 6,600 afy allocation to Fort Ord from the 1993 annexation agreement remains unallocated and thus available to the Project. Comment PO 208-22.

The SEIR consistently implies or states that impacts would be less than significant as long as the 6,600 afy "allocation" to Fort Ord, or the "sub-allocation" to the City of Seaside and/or the County of Monterey that remains available to the project, is not exceeded. See DSEIR at 4.8-34 to 35 (project-specific groundwater supply impact less than significant through Phase 3 because "Project would only use groundwater that is within MCWD's existing 6,600 AFY allocation"), 4.8-46 (same for cumulative water quality impact), 4.19-22 to 25 (project specific water supply impact less than significant through phase 3 and "potentially significant" for Phases 4-6), 4.19-32 ("project-related cumulatively considerable water supply impacts" are "significant and unavoidably cumulatively-considerable" for Phases 4-6).[1]

Thus, the DSEIR's clear implication is that as long as total pumping for Fort Ord does not exceed the 6,600 afy allocation, there would be no significant impact.

LandWatch objected that this conclusion is unwarranted because the 6,600 afy does not represent either a baseline usage or a safe yield determination. The FSEIR admits that the 6,600 afy is neither a baseline nor a safe yield. FSEIR, p. 11.4-1027. However, the FSEIR response fails to provide the required good-faith reasoned analysis

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[1] DSEIR section 4.19 outlines the allocation of the 6,600 afy to the various jurisdiction within the Ord Community in Table 4.19-2, Groundwater Allocation by Jurisdiction. DSEIR, p. 4.19-4. Section 4.19 then identifies the sub-allocations to projects within the City of Seaside and the County of Monterey in Table 4.19-4, Groundwater Sub-Allocations, concluding that there is 412.9 afy of "City/County Unallocated" water supply. DSEIR, p. 4.19-5. DSEIR section 4.19 explains that the project's potable demand for Phases 1-4 would be 410.8 afy, which is within the "existing unallocated water supply of 412.9 AFY" and therefore "a less than significant impact concerning potable water demand is concluded for Project Phases I through IV." DSEIR, p. 4.19-23. Section 4.19 then explains that there is only sufficient "unallocated non-potable water supply" for Phases 1-3 and that therefore a "potentially significant impact is identified for Project Phases IV through VI." DSEIR, p. 4.19-24. Section 4.19 proposes Mitigation Measure W-1, which would require "proof of an adequate water supply" that ensures "current unused water supply is allocated" before future development is permitted. Section 4.19 then concludes that "given the uncertainties involving the water supply options, sufficient water supplies would not be endured to Phases IV through VI. Therefore impacts concerning water supply availability would remain significant and unavoidable." DSEIR, p. 4.19-26.

Section 4.19 uses the same arithmetic to conclude that the "project-related cumulatively considerable water supply impacts" are less than significant for phases 1-3 but significant and unavoidable for phases 4-6 due to "the uncertainties involving the water supply options." DSEIR, p. 4.19-32.

DSEIR section 4.8 references the discussion in section 4.19 and states that impacts from Phases 4-6 would be "potentially significant" because "additional groundwater would be need to be acquired to meet the remainder of the Project's groundwater demand for Phases IV through VI." DSEIR, p. 4.8-34. Section 4.8 goes on to explain that because of "uncertainties involving the water supply options, sufficient water supplies would not be ensured to Phases IV through VI. Therefore impacts in this regard would be significant and unavoidable." DSEIR, pp. 4.8-34 to 4.8-35.

Section 4.8 draws the same conclusions regarding cumulative impacts as section 4.19.

because 1) it mischaracterizes LandWatch's comments and 2) it implies that there is no connection between the 6,600 afy allocation and the remaining unclaimed portions of the sub-allocations to the City and County:

> The commenter's following assertions are incorrect: (1) SEIR does not conclude that water supply impacts would be less than significant if total water demand for Project buildout is below 6,600 AFY; and (2) SEIR does not conclude that water supply impacts would be less than significant if total water demand for Phases I-III is below 6,600 AFY. Rather, DSEIR page 4.19-30 states that under the 1993Agreement, 6,600 AFY of the Salinas Basin groundwater is available for use on Ord Community Service Area lands, not limited only to the Project. As stated in MR 11.3.9 (Water) and Response PO 208-5, DSEIR page 4.19-23 concludes that Phases I-IV would have a less than significant impact concerning potable water demand because the existing unallocated potable water supply of 412.9 AFY (from the 1,722 AFY of groundwater FORA allocated to the City and County) would be sufficient to meet the total potable water demand of approximately 410.8 AFY for these phases combined. Furthermore, as stated in MR 11.3.9 (Water) and Response PO 208-5, DSEIR page 4.19-26 concludes that sufficient water supplies cannot be assured to Phases IV-VI at this time, despite implementation of feasible mitigation (Mitigation Measure W-1); therefore, impacts concerning water supply availability would remain significant and unavoidable. As can be seen from these statements, the above conclusions are not premised on the assumption that the 6,600 AFY allocation from the Agreement either represents the baseline condition or the safe yield from the affected aquifers, on which to base the Project's water supply analysis, as falsely asserted by commenter."

FSEIR p. 11.4-1027, emphasis added.

First, LandWatch did not suggest, as the FSEIR states, that the DSEIR finds impacts less than significant as long as the Project itself does not use 6,600 afy. LandWatch objected that "the DEIR assumes that as long as the Project does not exceed its allocation of a portion of the 6,600 'entitlement' there will be no significant water supply impacts." PO 208-22.

Second, the response simply ignores the fact that the sub-allocations to the City and the County that will not be exceeded until Phase 4 represent portions of the 6,600 afy allocation and that the DSEIR clearly identifies exceeding the 6,600 afy allocation as the basis for a significant impact. For example, in discussing the rationale for its conclusion that project-specific impacts are less than significant through Phase 3 but not after that, the DSEIR explains that "the Ord Community is allocated 6,600 AFY of groundwater" and that "[t]he project would only use groundwater that is within the MCWD's existing allocation." DSEIR, p. 4.8-34; *see* DSEIR, p. 4.9-9 (identifying the 1993 Annexation Agreement as the source of this allocation); 4.19-4 to 5 (explaining that the groundwater allocation by jurisdiction is based on FORA's sub-allocation of the 6,600 afy allocation

to the Ord Community); *see also* FSEIR, p. 11.4-1027 ("sufficient water supplies cannot be assured to Phases IV-VI at this time, despite implementation of feasible mitigation (Mitigation Measure W-1); therefore, impacts concerning water supply availability would remain significant and unavoidable")

Indeed, if exceeding the 6,600 afy allocation is not the basis on which the SEIR identifies a significant cumulative impact, then the SEIR fails to provide any clear threshold for that conclusion. The FSEIR itself confirms that "groundwater supply is determined by the allocations and sub-allocations shown in DSEIR Tables 4.19-3 and 4.19-4." FSEIR p. 11.4-1027. These tables clearly indicate that the groundwater supply to the Ord Community is 6,600 afy. DSEIR, p. 4.19-4.

2. The SEIR's assumption that the project's Phase 1-3 impact is less than significant because it is within the 6,600 afy allocation is not supported by analysis in the SEIR and is not accurate.

It is clear that the SEIR assumes that 1) there will be no significant cumulative impact from all BRP projects taken together as long as their combined water use is less than 6,600 afy, and 2) the Project itself will not make a considerable contribution to a significant cumulative impact as long as its water use does not exceed the portion of that 6,600 afy that has not been allocated to other projects.

Because the SEIR assumes that there would be no significant cumulative impact (and no considerable contribution to a significant cumulative impact) as long as Fort Ord projects stay within the 6,600 afy entitlement, it fails to consider the possibilities that, even if the 6,600 afy threshold is not crossed, 1) there is already a significant cumulative impact from existing pumping, 2) that increased pumping from all projects including Monterey Downs in the future may result in a significant cumulative impact, and 3) increased pumping for the Monterey Downs project may be a considerable contribution to a significant cumulative impact.

In fact, the SEIR's conclusions that there is no significant cumulative impact as long as total Fort Ord pumping stays within 6,600 afy and that there is no considerable contribution to such an impact if the project does not exceed its sub-allocation of that 6,600 afy are legally flawed and factually unsupported.

As the California Supreme Court has explained, the "ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project." *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* ("*Vineyard*") (2007) 40 Cal.4th 412, 434 (emphasis in original). The SEIR gets this exactly wrong, focusing on whether there is a water source (i.e., a portion of the 6,600 afy allocation) for the project instead of discussing the impact of using that water source.

As Mr. Parker explains, the existence of the 6,600 afy allocation to Fort Ord does not establish that additional pumping within that 6,600 afy would have not significant impact. Mr. Parker demonstrates the following:

- The BRP Program Environmental Impact Report ("PEIR") did not assume that 6,600 afy could be pumped without impact. That document expressly provided that pumping within this allocation might in fact cause additional seawater intrusion, and it required specific mitigation that was intended to avoid this outcome. This includes the duty to determine safe yield and to accelerate the provision of additional water supply if groundwater pumping were unable to supply 6,600 afy without causing further seawater intrusion. BRP PEIR, pp. 4-49, 4-53 to 4-54.

- In fact, even though the allocated 6,600 afy has not yet been pumped, seawater intrusion has been exacerbated by cumulative pumping since the BRP PEIR was certified (e.g., another 2 miles advance of the seawater intrusion front) and will be exacerbated in the future by any additional pumping, including pumping to support the Project, whether from the 180-foot, 400-foot, or 900-foot aquifers.

Nor does the purported "reliability" of the water supply demonstrate that its use is without significant impacts. Mr. Parker demonstrates the following:

- The fact that the capacity of the Salinas Valley Groundwater Basin ("SVGB") is large enough to smooth out year-to-year climatic variations does not mean that this pumping does not deplete the aquifer over time. In fact, an ongoing annual average rate of depletion of the Salinas Valley Groundwater Basin since the 1930's has caused more than 5 miles of seawater intrusion. Thus, the groundwater supply may be "reliable" only in the sense that there would be <u>available</u> water in normal, single, and multiple dry years, the analytic periods required by the Water Code for an urban water management plan. But <u>using</u> that water exacerbates an overdraft condition and exacerbates seawater intrusion.

- The claim in MCWD's WSA and 2010 UWMP that the Salinas Valley Water Project ("SVWP") ensures a "reliable supply" in the sense of a "no impact" supply is not accurate. The Salinas Valley Water Project's 2002 modeling assumptions for cumulative demand have not proved accurate. Demand substantially exceeds the levels at which the Salinas Valley Water Project modeling assumed seawater intrusion would be controlled. The Monterey County Water Resources Agency ("MCWRA") now admits that the Salinas Valley Water Project will <u>not</u> halt seawater intrusion and that additional projects are needed. The most recent comprehensive report on the state of the Salinas Valley Groundwater Basin indicates that existing pumping from the basin as a whole is not sustainable. The report documents that the safe or sustainable yield of the Pressure Subarea, the subarea from which the project would draw its

water, is only 110,000 to 117,000 afy, but groundwater pumping exceeds this yield by about 12,000 to 19,000 afy.

- The fact that seawater intrusion has not been detected yet in the 900-foot aquifer does not mean that pumping the 900-foot aquifer is without impact. Existing stratigraphy and modeling show that pumping the 900-foot aquifer will induce seawater intrusion in the upper aquifers, i.e, the 180-foot and 400-foot aquifers. And pumping the 900-foot aquifer and may lead to seawater intrusion in the 900-foot aquifer through either of two routes: a direct hydraulic connection with the bay or through inter-aquifer transfer. The SEIR fails to address this, despite LandWatch comments asking for just this information.

3. 6,600 afy does not constitute baseline use.

It is clear that the 6,600 afy allocation does not represent baseline pumping. Thus, the City may not simply assume that pumping within the 6,600 allocation is not a new impact.

First, in response to landWatch's comments, the FSEIR denies that 6,600 afy is intended to represent either a baseline or safe yield. FSEIR, p. p. 11.4-1027.

Second, in response to LandWatch's request that the SEIR actually identify baseline use (PO 208-10, 208-14), the FSEIR references Master Response 11.3.9 and the discussions in the DSEIR sections 4.8 and 4.19. FSEIR, pp. 11.4-1022-1023. The FSEIR's Master Response 11.3.9 identifies baseline conditions for MCWD's Fort Ord area as the 2015 consumption of 1,650 afy (of which total the City was using 505 afy and the County 55 afy). FSEIR, p. 11.3-9. Section 4.19 of the DSEIR reports baseline pumping in the Ord Community Service Area from 2001 to 2010 as 2,311 afy, based on the MCWD Water Supply Assessment. DSEIR, p. 4.19-1 to 4.19-2. (Section 4.8 of the DSEIR reports pumping <u>capacity</u> and planned <u>future</u> pumping, but not baseline pumping. DSEIR, pp. 4.8-8 to 4.8-10, 4.8-33 to 4.8-35.) Regardless whether baseline pumping is assumed to be the 1,650 pumped in 2015 or the 2,311 afy average from 2001 to 2010, it is clear that the baseline is <u>not</u> 6,600 afy.

Third, the average pumping at the time that Fort Ord was in use by the Army was never 6,600 afy. That amount represents a single peak year pumping in 1984. The 1993 Army/MCWRA agreement reports that average pumping from 1988-1992, the period that brackets the 1991 closure decision, was about 5,200 afy. Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993, ¶ 4c.

Fourth, the BRP PEIR does not identify 6,600 afy as the baseline use. The discussion of water supply in the section captioned "environmental setting" references the Army/MCWRA agreement that "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 PEIR, p. 4-49. However, the discussion in this section does not identify any prior pumping amounts, and a reference to an agreement regarding future pumping does not even purport to identify historic baseline pumping. As Mr. Parker explains, the BRP PEIR provides that mitigation would be required for any pumping that would lead to an increase in seawater intrusion, even if this occurs before the 6,600 afy allocation is pumped. The BRP PEIR's discussion of the environmental setting with respect to water supplies identifies the 6,600 afy figure as the allocation in the MCWRA/Army agreement, not as baseline use. The discussion expressly provides that this allocation is available only "provided that such provisions do not aggravate or accelerate the existing seawater intrusion." BRP PEIR, p. 4-49.

Fifth, if the BRP PEIR adopts any baseline figure for Salinas Valley Groundwater Basin pumping on the Former Fort Ord, that figure is not 6,600 afy. The figure may be the 5,100 afy average pumping for the 4 to 5 years immediately prior to 1991, based on the Army's NEPA documents. In Section 1.2.2, Baseline Determination, the BRP PEIR expressly adopts the Amy's NEPA document baseline: "As with the Army's FEIS and DSEIS, this EIR determines whether the proposed project may have a significant effect on the environment based on physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." BRP PEIR, p. 1-3. The BRP PEIR states that this approach "complies with Section 21083.8.1 of the Public Resources Code and utilizes the extensive research already conducted for the Army's NEPA documents, which use the same baseline year." *Id.* Section 21083.8.1 permits a reuse plan EIR or EIS to rely on conditions at the time of the closure decision as a baseline provided that certain procedures are followed.[2]

The BRP PEIR then identifies the specific NEPA documents that were used to determine the Environmental Setting for water supply analysis. BRP PEIR, pp. 1-3, 1-10 (Table 1.9-1). These include the Army's December 1995 Draft SEIS, the Army's June 1993 Final EIS Volume 1, and the Army's April 1992 "*Other Physical Attributes Baseline Study of Fort Ord, California.*" These documents identify the baseline water use from the Salinas Valley Groundwater Basin as 5,100 afy, not as 6,600 afy, as follows:

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[2] These procedures include circulation of proposed baseline conditions to affected agencies "prior to circulating a draft EIR" followed by a public hearing at which "the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions." Guidelines, § 15229(a)(1), (2). Although the BRP PEIR states that it availed itself of the Public Resources Code § 21083.8.1 baseline provisions and that baseline conditions are as of the September 1991 closure decision (BRP PEIR p. 1-3), there is no evidence that FORA actually followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify baseline water use conditions in a document circulated before the PEIR and to state an intent to adopt that as the baseline. See FORA, Resolution 97-6, June 13, 1997 (Certifying BRP PEIR and discussing proceedings and hearings). CEQA does not authorize FORA to rely on the Army's prior compliance with these procedures, if in fact the Army did comply.

- The 1996 Final SEIS states that "[a]s reported in the final EIS (Volume 1, page 4-56), average water demand on Fort Ord was 5,100 acre-feet (af) during 1986-1989. Water use has declined in recent years with the decrease in the number of personnel living on and occupying the base. Annual water use was 5,634 af in water year 1992, 3,971 af in 1993, and 3,235 af in 1994."[3]

- The June 1993 Final EIS states that "[a]nnual water consumption decreased from a high of 6,600 acre-feet in 1984 to an average of 5,100 acre-feet during 1986-1989."[4] Table 4.5-2 identifies 5,100 afy as the average pumpage for Fort Ord.[5]

- The April 1992 *Other Physical Attributes Baseline Study of Fort Ord, California*, provides a table of annual pumping, from which it is apparent that average annual pumping from 1986-1989 is 5,083 afy and the average from 1986-1990 is 5,126 afy.[6] That 1992 report identified declining water use from 1980 to 1990, except for the single year 1984.[7]

In sum, <u>if</u> the Army actually followed the procedures of Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to adopt a baseline figure and <u>if</u> FORA also complied with those procedures, then the baseline water use was not 6,600 afy but only 5,100 afy. The outlier 6,600 afy figure from 1984 could not have been used as a baseline because it does not represent the "physical conditions that were present at the time the decision became final to close Fort Ord as a military base (September, 1991)." BRP PEIR, p. 1-3; *see* Public Resources Code § 21083.8.1(c).

Sixth, even if FORA or the Army had followed the process required by Public Resources Code § 21083.8.1(c) and CEQA Guidelines § 15229 to identify a baseline condition for water, they were required to "state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process." Public Resources Code, § 21083.8.1(c)(C). The BRP PEIR does explain how the 6,600 afy figure is to be integrated into its analysis and mitigation of water supply impacts. BRP PEIR, pp. 4-49, 4-53 to 4-54. And that discussion does <u>not</u> indicate an intent to treat 6,600 afy as a baseline condition within which there is no significant impact, because it requires mitigation <u>even if the 6,600 afy allocation is not pumped in</u>

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[3] Dept. Of the Army, Final Supplemental EIS Fort Ord Disposal and Reuse, June 1996, p. 4-11, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538//Section_4.pdf. The quote from the Final SEIS is of the unchanged text of the 1995 Draft SEIS.

[4] Dept. of the Army, Final EIS, Fort Ord Disposal and Reuse, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

[5] *Id.* at 4-59.

[6] US Army Corps of Engineers, *Other Physical Attributes Baseline Study of Fort Ord, California*, April 1992, p. 1-6, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-2202//Section_1.pdf.

[7] *Id.* at 1-6, 1-14.

full. CEQA does not permit the imposition of mitigation unless there are significant impacts. Guidelines, § 15126.4(a)(3). Thus, treating 6,600 afy as a baseline "no impact" level is inconsistent with the fact that BRP PEIR repeatedly states that use of the 6,600 afy allocation is only to be permitted if it does not contribute to seawater intrusion and that mitigation may be required even if water use does not rise to 6,600 afy. *See* BRP PEIR, pp. 4-49, 4-53 to 4-54.

And the Army's EIS also makes clear that 1) there is no categorical right to pump 6,600 afy, and 2) even the right to pump up to 5,200 afy is subject to a no-harm condition:

> MCWRA will not object to Fort Ord/POM Annex withdrawal from the basin of up to 6,600 af/yr, provided that no more than 5,200 af/yr are withdrawn from the 180-foot aquifer and 400-foot aquifer and that such withdrawals do not threaten to aggravate or accelerate the existing seawater intrusion problem.[8]

Seventh, Public Resources Code, § 21083.8.1(c)(A) provides that "[p]rior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement." The BRP FEIR does in fact require further analysis of physical conditions than the analysis provided in the EIR. For example, Program C-3.1 requires determination of the safe yield of the portion of Fort Ord overlying the Salinas Valley Groundwater Basin "to determine available water supplies." BRP PEIR, p. 4-55. Program C-3.2 require further investigation of seawater intrusion in the context of the Salinas Valley Basin Management Plan and measures to prevent further intrusion. Again, these provisions are simply inconsistent with treating 6,600 afy as a permissible baseline use that would not constitute a significant impact.

4. 6,600 afy is not a safe yield.

Safe yield or sustainable yield is defined as "the amount of groundwater that can be pumped annually on a long-term basis without causing undesirable results."[9] The FSEIR admits that 6,600 afy does not represent a safe yield figure for pumping to support Fort Ord reuse. FSEIR, p. 11.4-1027.

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[8] Dept. of the Army, Final Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse, June 1996, p. 4-11, emphasis added, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1538//Section_4.pdf.

[9] Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57, available at http://docs.fortordcleanup.com/ar_pdfs/AR-BW-1348//Section_4/section_4.5.pdf.

The Final EIS for the Fort Ord base closure and reuse also acknowledges that 1) safe yield must be determined for the entire groundwater basin and 2) pumping for Fort Ord already exceeded safe yield as of 1993:

> The concept of safe yield is meaningful only when applied to an entire groundwater basin. The amount of yield available to individual users within the basin depends of the amounts and locations of pumping by other users. In the Salinas Valley groundwater basin, present pumping in and near Fort Ord exceeds safe yield in the 180-foot and 400-foot aquifers, as indicated by continuing seawater intrusion and water levels below sea level in those aquifers. This indicates that the yield from the 180-foot and 400-foot aquifers for Fort Ord is less than its present pumpage, assuming that pumping by other users remains unchanged.[10]

Base Reuse Plan Hydrology and Water Quality Program C 3-1 requires that Seaside work with MCWRA to determine safe yield to determine available water supplies:

> The City shall continue to work with the MCWRA and the MPWMD to estimate the safe yield in the context of the Salinas Valley Basin Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and the Seaside groundwater basins to determine available water supplies.

BRP PEIR, p. 4-55. There is no evidence in the record that Seaside has in fact worked with MCWRA to determine safe yield for the Fort Ord area. LandWatch's DSEIR comments specifically requested a water balance analysis showing sustainable yields for the 180, 400, and 900 foot aquifers, i.e., the amounts that could be pumped without mining or depleting the aquifers. PO 208-10, 208-14. The FSEIR did not provide this information. FSEIR, pp. 11.4-1023, 11.3-7 to 11.3-11.3-17.

Furthermore, as the Final EIS for the Fort Ord base closure and reuse indicates, the concept of safe yield only makes sense for a basin as whole, not just the Fort Ord area. MCWRA's most recent determination of the sustainable or safe yield for the Salinas Valley Groundwater Basin and the Pressure Subarea indicates that pumping has been and remains in excess of safe yield. In particular, the 2016 State of the Salinas Valley Groundwater Basin report indicates that the safe yield of the Pressure Subarea is about 110,000 to 117, 000 afy and that existing pumping already exceeds this yield by about 12,000 to 19,000 afy.[11] The safe yield for the Salinas Valley Groundwater Basin as a whole (the four subareas constituting Zone 2C, the assessment area for the Salinas

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[10] Dept. of the Army, Fort Ord Disposal and Reuse Final EIS, June 1993, p. 4-57.

[11] MCWRA, State of the Salinas Valley Groundwater Basin, 2016, p. 4-25, available at http://www.mcwra.co.monterey.ca.us/hydrogeologic_reports/documents/State_of_the_SRGBasin_Jan16_2015.pdf.

Valley Water Project) is from 499,000 to 506,000 afy, and existing pumping already exceeds this yield by 17,000 to 24,000 afy.[12]

Instead of providing current information about safe yield for the basin, the FSEIR recites the out-of-date claim in the MCWD 2010 UWMP that the Salinas Valley Water Project is expected to balance the basin by resulting in a "net increase in storage of about 6,000 ac-ft annually." FSEIR, p. 11.4-1025. As Mr. Parker demonstrates, this claim is simply unsupportable in light of current information:

- The Salinas Valley Water Project EIR's modeling analysis claimed only that the Salinas Valley Water Project would balance the basin on the basis of 1995 demand levels, of about 473,000 afy.

- The Salinas Valley Water Project modeling projected that basin-wide demand would decline from 1995 to 2030 from 473,000 afy to 443,000 afy; however demand has averaged over 500,000 afy since 1995.

- MCWRA has acknowledged that the demand assumptions used for the Salinas Valley Water Project modeling did in fact understate basin-wide demand.

- MCWRA now acknowledges that additional future groundwater management projects, in addition to the existing projects such as the Salinas Valley Water Project, are required to mitigate and avoid future seawater intrusion.

- MCWRA's current analysis, based on 2013 modeling by Geoscience, calls for using 130,000 afy of surface water from the Salinas River to deliver additional water for coastal use, above and beyond the amount that can be provided by the Salinas Valley Water Project, in order to reduce coastal pumping and to establish the necessary groundwater elevations to prevent seawater intrusion.

- There is no certainty that seawater intrusion will be mitigated or avoided because the projects that are required to deliver this additional water are not committed, funded, or environmentally reviewed.

The FSEIR's continued reliance on the out-of-date claims for the Salinas Valley Water Project made in the MCWD 2010 UWMP are unaccountable in light of the MCWRA's open and public work on the continuing problem of seawater intrusion since 2010. The City of Seaside is required by BRP Hydrology and Water Quality Policy C-3 to "work with" MCWRA "to estimate the current safe yield" and to "participate in implementing measures to prevent future intrusion." DSEIR, p. 4.8-20. It is difficult to believe that the City has honored this policy obligation if it remains ignorant of MCWRA's current analysis of the seawater intrusion problem.

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[12] *Id.* at 4-26.

Regardless, the City cannot claim that additional pumping in the Fort Ord area up to 6,600 afy would be without impact on the grounds that 6,600 afy represents a safe yield level for Fort Ord pumping.

5. The SEIR must provide an adequate and independent cumulative analysis of water supply impacts because it may not rely on tiering from the BRP PEIR.

Changed circumstances, new information, and changes in the BRP itself that have occurred since the BRP PEIR require reexamination of the cumulative analysis and preclude tiering. Accordingly, the City is obliged to prepare a new water supply analysis and not to tier from the water supply analysis in the BRP PEIR.

As LandWatch has objected, the SEIR may not tier from the BRP PEIR, at least with respect to the water supply discussion. Public Resources Code § 21094(b) bars tiering if the Project is not consistent with the plan for which the first tier EIR was prepared. The SEIR admits that it is inconsistent with the BRP Hydrology and Water Quality Policies B-1 and B-2, which policies require additional water supplies and prohibit approval of a development project without an assured long-term water supply. DSEIR, p. 4.9-10; FSEIR 14.4-1020.

Public Resources Code § 21094(b) also bars tiering if the project is not consistent with the applicable General Plan. The project is inconsistent with Seaside's General Plan, as is evident from the need for substantial amendments to that General Plan. The FSEIR's argument that the Project would be consistent with the General Plan after amendment would simply read this section of Public Resources Code § 21094(b) out of the statute because the State Planning and Zoning law bars approval of projects that are inconsistent with the General Plan. Furthermore, if the Project is inconsistent with the General Plan, there can be no assurance that its impacts were adequately assessed by the General Plan EIR.

Most problematically, Public Resources Code § 21094(b)(3) bars tiering if a project is subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 due to changed circumstances and/or new information. Here, there are changed circumstances and new information that bar reliance on the out-of-date cumulative analysis.

First, seawater intrusion has advanced significantly since the 1997 BRP PEIR, constituting a substantially more severe significant effect than shown in the BRP PEIR. See Guidelines § 15162(a)(3)(B) ("Significant effects previously examined will be substantially more severe than shown in the previous EIR"). Within the meaning of Public Resources Code § 21166(b) and (c) this is a "substantial change[] . . . with respect to the circumstances under which the project is being undertaken" as well as "new information, which was not known and could not have been known" at the time of the BRP PEIR.

Second, the expected basin management plan, the cooperation in mitigation of seawater intrusion and development of new water supply, and the determination of safe yield required by BRP policies, including Hydrology and Water Quality Policies B-1, B-2, and C-3 have not materialized, and this is a substantial change in the BRP project itself. Public Resources Code § 21166(a). Indeed, the FSEIR admits that there have been substantial changes within the meaning of Public Resources Code § 21166. FSEIR at 14.4-1017 (acknowledging that the "various changes in the environmental and/or regulatory setting over the years" requires an SEIR). One of the admitted change in circumstances or changes in the BRP project is the "uncertainty" regarding "previously identified long-term water supply options," i.e., the options identified by the BRP PEIR as the purported basis for finding impacts less than significant. DSEIR p. 4.8-47. The DSEIR acknowledges that, in light of this uncertainty, it is no longer possible to find, as the BRP PEIR found, that the project's "adherence to the BRP policies and programs (as outlined below) and additional mitigation measures" would adequately mitigate impacts for all phases of the project.

The FSEIR admits that "MCWD has not implemented their long-term water supplies options to date" but apparently offers the excuse that this is "because the reuse of the former Army base slowed down considerably during the economic downturn beginning in 2008." FSEIR p. 11.4-1026. This misinterprets the BRP PEIR's water supply policies and mitigation requirements by implying that there is no obligation to provide any additional supply until 6,600 afy has been allocated to approved development projects. As discussed above and in Mr. Parker's comments, the BRP PEIR analysis of water supply impacts makes it clear that FORA did not necessarily expect that 6,600 afy could be pumped from the Salinas Valley Groundwater Basin to support uses on Fort Ord without causing further seawater intrusion, and its policies and mitigation do not permit the agencies to delay a solution if seawater intrusion persists. BRP PEIR, pp. 4-49, 4-53 to 4-54. As Mr. Parker demonstrates, seawater intrusion has advanced another two miles since the BRP PEIR was certified.

Case law is clear that additional analysis of water supply impacts is required under section 21166 when new information shows more severe impacts or the planned water sources are not implemented timely:

> To the extent that a subsequent subdivision proposal relies on different water sources than were proposed in the specific plan it implements, or the likely availability of the intended water sources has changed between the time of the specific plan and the subdivision application (or more has been learned about the effects of exploiting those sources), changes in the project, the surrounding circumstances or the available information would exist within the meaning of section 21166, requiring additional CEQA analysis under that section . . .

Vineyard, supra, 40 Cal.4th at 438; see also *id.* at 431, n. 7. Here, the new information about the severity of cumulative impacts, changes to circumstances, and to the project

itself with regard to water supply are subject to Public Resources Code § 21166 and/or CEQA Guidelines § 15162 and therefore tiering, at least for the water supply analysis, is not permitted. The SEIR erred by not providing a new analysis of water supply impacts, in particular, a new cumulative analysis.

6. Even if tiering were proper, the City must assess whether the project makes a considerable contribution to a significant cumulative effect.

Finally, even if tiering were permitted, the City must still assess whether the incremental effects of the Project would be considerable when viewed in the context of past, present, and probable future projects." Guidelines, § 15152(f)(2). We note that the California Supreme Court has clarified that additional review of a subsequent project may be required in a tiering context even where 21166 does not apply:

> The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIR's." (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then "CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR." (*Ibid*. citing Pub. Resources Code, § 21094, subds. (a), (c).)

Friends of the Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist. (2016) 207 Cal. Rptr. 3d 314, slip op. at p. 11 (emphasis added).

The determination whether a project's effects are a considerable contribution to a significant cumulative impact requires an acknowledgement of the existence of that cumulative impact and assessment of its severity because "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *Communities for a Better Environment v. California Resources Agency* ("*CBE v. CRA*") (2002) 103 Cal.App.4th 98, 120. Here, as discussed below, the SEIR simply fails to provide this assessment because it fails to provide an adequate cumulative analysis.

7. The SEIR fails to provide an adequate cumulative analysis of water supply impacts because it fails to acknowledge the existence of a significant regional cumulative impact and improperly limits the scope of cumulative analysis to the BRP area.

The DSEIR's cumulative analysis of water supply impacts is inadequate because 1) it is limited to the area subject to the BRP PEIR, i.e., former Fort Ord, and 2) it fails to consider in the first instance whether there is a significant cumulative impact from cumulative regional groundwater pumping. DSEIR 4.8-47, 4.19-30 to 4.19-32. Furthermore, to the extent that the FSEIR implies that cumulative impacts may be ignored because the project's contribution is a relatively small part of basin-wide pumping, the FSEIR is legally and factually in error.

By way of background, cumulative impact analysis requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project's own effect is a considerable contribution. Guidelines, § 15130(a); *see* Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be "individually minor but collectively significant." *Communities for a Better Environment v. California Resources Agency* ("*CBE v. CRA*") (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

- "define the scope of the area affected by the cumulative effect,"
- explain "the geographic limitation used,"
- identify the past, present, and future projects "producing related or cumulative impacts" or provide projections of the conditions "contributing to the cumulative effect,"
- provide a "summary of the expected environmental effects to be produced by those projects." Guidelines, § 15130(b)(3), (4).

In step two, if there a significant cumulative effect, the agency must determine whether the project's contribution is "considerable," i.e., "whether 'any additional amount' of effect should be considered significant in the context of the existing cumulative effect." *CBE v. CRA*, *supra*, 103 CalApp.4th at 119.

a. <u>The DSEIR errs by purporting to tier from the BRP PEIR but failing to summarize its cumulative groundwater analysis and conclusions.</u>

Notably, the geographic scope of the BRP PEIR's cumulative analysis was regional, including the Salinas Valley Groundwater Basin as a whole, and it found significant unavoidable cumulative impacts. BRP PEIR, p. 5-5. The DSEIR does not acknowledge this; indeed, despite its claim that it tiers from the BRP PEIR, the DSEIR fails even to summarize the regional cumulative analysis from the BRP PEIR. As

discussed above, tiering is not appropriate here. However, if it were proper, then the DSEIR would be inadequate because it fails to summarize the discussion.

b. The cumulative analysis is inadequate because it fails to justify limiting the geographic scope of analysis to the BRP area.

There is no justification for limiting the geographic scope of the cumulative analysis to the BRP area (former Fort Ord) because the seawater intrusion and aquifer depletion impacts are due to pumping throughout the Salinas Valley Groundwater Basin.

The FSEIR claims that "[t]he geographic scope of the area affected by the Project's cumulative effect is the former Fort Ord (BRP boundaries)." FEIR 11.4-1024. This is not true. Nor is the FSEIR's claim true that the area affected by the Project's impact limited to the MCWD service area. *Id.* As Mr. Parker explains, the area that would be affected by project pumping includes the Pressure Subbasin and the Salinas Valley Groundwater Basin as a whole since these areas are hydraulically interconnected.

More importantly, CEQA does not define the geographic scope of cumulative analysis based on the area affected but based on the location of the cumulative projects that cause effects in the same area that the project causes effects. The Guidelines require identification of projects "producing related or cumulative impacts" or projections of conditions "contributing to the cumulative effect." Guidelines §15130(b)(1). Case law is clear that it is improper to omit relevant past, present, and future projects that create related impacts. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214 (failure to consider all relevant projects in its cumulative impact analysis is an "overarching legal flaw"); *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 430-432 (failure to justify omission of offshore emissions is failure to comply with CEQA's legal mandates); *San Joaquin Raptor Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739-741 (omission of other known development projects).

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, 724 the court invalidated an EIR's cumulative air quality impact analysis not because its conclusions were unsupported by substantial evidence, but because the agency there – as here – had failed to conduct the analysis in the legally required manner by omitting consideration of all "past, present, and reasonably foreseeable probable future projects." *Id.* at 720, 724. The court rejected the agency's argument that it must defer to any substantial evidence within an EIR to support to support of the scope of cumulative analysis. *Id.* at 721-724. The court held that when an EIR's analysis fails to consider required factual information, the error is one of law, not fact, because the exclusion of relevant information improperly burdens the public to provide the relevant analysis. *Id.* at 724.

Again, as Mr. Parker explains, it is indisputable that projects and pumping outside the BRP area affect aquifer depletion and seawater intrusion within the BRP area. For

example, this is acknowledged by the BRP PEIR (at p. 5-5, acknowledging that regional growth could cumulatively affect aquifers and cause further overdraft and seawater intrusion), the MCWD 2010 UWMP (at p. 29, acknowledging that basin-wide pumping causes declining water levels in Pressure Subarea), and the Army's 1993 FEIS (at p. 4-57, acknowledging that the available yield without seawater intrusion depends on the amount of pumping throughout the basin).

Responding to Comment PO 208-16 objecting to the truncated scope of cumulative analysis, the FSEIR asserts that it has simply made the choice to rely on a summary of projections and has chosen the BRP as the source of that summary. FSEIR p. 11.4-1024. However, reliance on a summary of projections in an adopted plan is impermissible if there is evidence that the geographic scope is drawn too narrowly. *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1216-1217.

The FSEIR claims that its response PO 208-5 explains why the geographic scope was limited to the BRP. FSEIR pp. 11.4-1020, response PO 208-4, and p. 11.4-1023, response PO 208-15. However, response 208-5 does <u>not</u> justify the limitation of the geographic scope. That response purports to address objections that the DSEIR inadequately identifies and characterizes the pumping source aquifer(s), fails to identify other wells and cumulative pumping in the 900-foot aquifer, and fails to discuss recharge, saline contamination and sustained yield of the 900-foot aquifer. Response 208-5 makes the following points, which do not even purport to justify the geographic limitation:

- It claims it is speculative to state whether the 180-foot, 400-foot, or the 900-foot aquifer would supply Project water since they are connected hydraulically and the 180-foot and 400-foot aquifers are recharging the 900-foot aquifer. FSEIR 11.4-1020. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.

- It states that the 900-foot aquifer is "in reality a series of aquifers, not all of which are hydraulically connected." FSEIR p. 11.4-1020. This claim, which on its face contradicts the claim that all of the aquifers are hydraulically connected, does not explain why the scope of cumulative analysis is limited to the BRP area.

- It claims that the deep aquifer (the 900-foot aquifer) is not experiencing seawater intrusion. FSEIR p. 11.4-1021. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.

- It reiterates that the threshold of significance is substantial depletion of groundwater supplies or interference with recharge such that there would be a net deficit in aquifer volume or lowering of groundwater table level. FSEIR p. 11.4-1020. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.

- It states that mitigation will be required, that the impact will be significant and unavoidable for phases 4-6, and that a statement of overriding considerations will be required. FSEIR p. 11.4-1020 to 1021. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.

- It states that the DSEIR relied on the MCWD UWMP, which discussed the Salinas Valley Groundwater Basin. This claim admits that the relevant geographic scope of cumulative analysis should be the Salinas Valley Groundwater Basin.

- It claims that there is adequate pumping capacity, that the project would be required to submit proof of adequate water supply before development is allowed, that the project does not overlay areas subject to seawater intrusion, and that all of this means that it will not cause any increase in seawater intrusion. FSEIR p. 11.4-1021. This claim, which on its face is inconsistent with the well-established fact that all Salinas Valley Groundwater Basin pumping, and especially coastal pumping, is causing an increase in seawater intrusion, does not in any event explain why the scope of cumulative analysis is limited to the BRP area.

- It states that the Project will not interfere with recharge. FSEIR p. 11.4-1021 to 1022. This claim does not explain why the scope of cumulative analysis is limited to the BRP area.

- It states that the Ord area is limited to 6,600 afy from the Salinas Valley Groundwater Basin and that not all of this has been allocated. FSEIR p. 11.4-1022. This claim admits that the relevant geographic scope of cumulative analysis should be the Salinas Valley Groundwater Basin.

- It claims that the DSEIR's analysis is based on the 2010 UWMP and that therefore "the details concerning aquifer operations do not affect the DSEIR's analysis," which is "considered sufficient to allow decision-makers to make an informed decision concerning the project's impacts." FSEIR p. 11.4-22. Again, this claim does not address the relevant geographic scope of cumulative analysis.

In sum, the SEIR is inadequate because it fails to justify the geographic limitation of its cumulative analysis to the BRP area. And the SEIR's cumulative analysis is inadequate because it fails to list projects "producing related or cumulative impacts" or to provide a

summary of projections of conditions "contributing to the cumulative effect." Guidelines §15130(b)(1).

c. Failure to consider whether there is a significant cumulative impact from cumulative regional groundwater pumping is legally erroneous; failure to identify such an impact is a critical factual omission.

As noted, cumulative analysis may require two distinct determinations: whether there is a significant cumulative impact from all relevant projects and, if so, whether the project under review makes a considerable contribution to that impact.

Nowhere in a step-one analysis does the DSEIR consider whether, much less acknowledge that, there is a significant cumulative impact caused by groundwater pumping from regional projects or, alternatively, conclude that there is no significant cumulative impact from regional projects. Indeed, the DSEIR erroneously fails to distinguish between the single-step analysis required for a project-specific significance determination and the two-step analysis required for cumulative significance determinations. Instead, the DSEIR offers essentially the same analysis and conclusions for both its project-specific and cumulative analyses of groundwater supply impacts. It finds both the project specific impacts and the cumulative impacts to be less than significant for Phases 1-3, because an unallocated portion of the 6,600 afy allocation is available, and unavoidably significant for Phases 4-6, because additional sources of water are not certain. DSEIR, pp. 4.8-34 to 4.8-35 (project-specific groundwater impact), 4.8-47 to 4.8-48 (cumulative groundwater impact), 4.19-31 to 4.19-32 (project-specific water supply impact), 4.19-24 to 4.19-26 (cumulative water supply impact). The cumulative analysis does not even purport to provide the required two-step analysis that would include a step-one determination whether there is a significant cumulative impact and a step-two determination whether the project makes a considerable contribution to it.

Again, this error reflects the fundamental confusion of the question as to whether there is an available water supply with the question of whether there will be impacts from using that supply.

Here, there is overwhelming evidence that a step-one determination must conclude that there is a significant regional cumulative impact from groundwater pumping by past, present, and reasonably foreseeable future projects, including the Monterey Downs project. The evidence, including Mr. Parker's comments, shows that

- there has been and still is an ongoing significant cumulative impact to groundwater resources in the form of declining groundwater levels and seawater intrusion due to over-pumping of groundwater;

- this impact is due to basin-wide pumping, not just pumping within the BRP area;

- this impact has not been avoided by existing groundwater management projects;

- there are no committed, funded groundwater management projects that will avoid this impact in the foreseeable future; and

- the impact will be aggravated by increases in pumping to support future development, including projected increases in agricultural pumping and new urban development such as the Monterey Downs project.

Given this evidence, and the complete lack of analysis of relevant cumulative conditions in the Monterey Downs SEIR, the omission of an adequate cumulative analysis is prejudicial to informed decision making and public participation.

Furthermore, the SEIR presents no contrary evidence to support a step-one finding that there is no significant cumulative impact from cumulative groundwater pumping – an issue that the DSEIR simply fails to address. The lack of analysis precludes any step-one conclusion or finding that there is not a significant cumulative impact.

The lack of analysis also precludes any step-two conclusion that project's water demand does not constitute a considerable contribution to a significant cumulative impact. And, as discussed below, any implied approach to a step-two conclusion based on the relatively small percentage of basin pumping undertaken by MCWD or the fact that the pumping may be from the 900-foot aquifer would be based on a legally and factually erroneous approach to cumulative analysis.

d. Any implication that pumping by MCWD is less than significant, or less than cumulatively considerable would be legally and factually flawed.

Responding to LandWatch's objections to the DSEIR's cumulative analysis, the FSEIR argues that agricultural water use consumes 95% of Salinas Valley Groundwater Basin water and that urban use consumes only 5%, and that the MCWD pumping is only 1% of total Salinas Valley Groundwater Basin pumping, apparently implying some kind of support for the DSEIR's conclusion that cumulative impacts for Phases 1-3 would be less than significant. FSEIR p. 11.4-1024 ("these details provide further clarification of the cumulative impacts associated with groundwater demand and supply . . ."). If the implication of this discussion is that the project does not make a considerable contribution to a significant cumulative impact, it is wrong as a matter of law and fact.

An EIR may not conclude a cumulative impact is insignificant merely because the project's individual contribution to an unacceptable existing condition is, by itself, relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles* ("*LAUSD*") (1997) 58 Cal.App.4th 1019, 1025-1026; *CBE v. CRA, supra*, 103 Cal.App.4th at 117-118, 121. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,718, the Court rejected the agency's "ratio" theory that found impacts not to be a

considerable contribution merely because they were a relatively small percent of the total impact. *Id.* at 720. Because the relevant question was "whether any additional amount" of incremental impact "should be considered significant in light of the serious nature" of the problem (*id.* at 718), a valid determination whether a project's contribution is considerable must reflect the severity of the cumulative problem. "[T]he greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE v. CRA, supra*, 103 Cal.App.4th at 120. Thus, even an "individually minor" impact may be "cumulatively considerable." *Id.*; *see also* Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25.

As Mr. Parker explains, it is irrelevant whether groundwater is used for agriculture or urban uses – it depletes the same basin. And the magnitude of existing pumping by MCWD or others is also irrelevant. What is relevant is whether marginal increases in pumping will be a considerable contribution in light of the severity of the overdraft and seawater intrusion problem. Because seawater intrusion is caused by the problem of overdraft, not by total pumping, the severity of the cumulative problem should be measured in terms of the size of the overdraft or the amount of induced seawater intrusion. Here, the basin as a whole and the Pressure Subarea are in overdraft and, as Mr. Parker explains, any additional pumping will induce seawater intrusion equal to about 75% of the volume pumped. Furthermore, coastal pumping is more problematic than inland pumping. Thus, as Mr. Parker explains, the project's 250 afy increase in pumping demand should be evaluated in light of the annual Pressure Subarea overdraft of 12,000 to 19,000 afy, not in relation to the 500,000 afy of total pumping in the Salinas Valley Groundwater Basin. Viewed in this light, and viewed in the light of the current recommendations by MCWRA that existing pumping be reduced in the Pressure Subarea, the project's marginal pumping demand is a considerable contribution.

And, in any event, the Monterey Downs SEIR does not address the legally relevant questions because it fails in the first instance to identify the severity of the cumulative problem and fails in the second instance to consider the project's impact in light of that severity.

Any implication that the project's pumping is not a considerable contribution because it is small in comparison to total basin-wide pumping would make the same error as made in *Kings County* by focusing on the ratio of the project's pumping to the overall aquifer pumping or capacity and using these comparisons to "trivialize the project's impact" without putting Project demand in the context of the serious nature of the cumulative problem. *Kings County, supra*, 221 Cal.App.3d at 718. An EIR is legally inadequate if it is "focused upon the individual project's relative effects and omit[s] facts relevant to an analysis of the collective effect." *Id.* at 721.

Furthermore, it is clear that the FSEIR bases its significance conclusions solely on the availability of water supply, not the effects of using that supply or the relative magnitude of pumping. For example, despite the fact that the demand for Phases 1-3 is

approximately equal to the demand for Phases 4-6, the SEIR finds Phase 1-3 demand to have a less than significant impact and phase 4-6 demand to have an unavoidably significant impact.

Finally, the SEIR cannot be used to argue that project pumping would be less than a considerable contribution to significant groundwater impacts because some portion of that pumping would come from the 900-foot Aquifer, also known as the Deep Aquifer. Mr. Parker demonstrates, based on available stratigraphic analysis and modeling, that increased pumping from the Deep Aquifer will also cause depletion of the 180-Foot and 400-Foot Aquifers because those aquifers are the source of recharge to the Deep Aquifer. Mr. Parker also demonstrates that increased pumping from the Deep Aquifer will aggravate seawater intrusion to the 180-Foot and 400-Foot Aquifers. Increased pumping from the Deep Aquifer may deplete that aquifer and it may also induce seawater intrusion into the Deep Aquifer itself. Because the SEIR declined to discuss the relation of the 180-Foot, 400-Foot, and Deep Aquifers or to provide any assessment of impacts to the three aquifers in response to LandWatch's comments and questions, the SEIR provides no evidence to the contrary.

8. The SEIR's conclusion regarding phases 4-6 are not based on adequate analysis and the SEIR fails to discuss impacts from alterative water supplies.

As discussed, the SEIR errs by concluding without adequate analysis that water supply impacts for Phases 1-3 of the project would be less than significant and would not make a considerable contribution to a significant cumulative impact. The SEIR does acknowledge that supplying water for Phases 4-6 would be a significant unavoidable impact. However, the SEIR bases this conclusion solely on the fact that the Phase 4-6 water supply cannot be made available from the unallocated portion of the 6,600 afy allocation and that additional water supplies are uncertain, not based on any analysis of physical impacts on the environment from the water that is likely to be used by Phases 4-6.

Where a water supply is uncertain, an agency must identify alternative supplies and discuss the environmental impacts of tapping those sources. *Vineyard, supra,* 40 Cal.4th at 430, 431, 434. As LandWatch objected, the SEIR fails to provide any discussion of the environmental impacts of developing and providing alternative water supplies, such as the proposed desalinated or recycled water supplies. For example, the SEIR identifies the Regional Urban Water Augmentation Project ("RUWAP") and desalination as possible future water supply. DSEIR, pp. 4.19-7 to 4.19-9, 4.19-25 to 4.19-26; FSEIR pp. 11.3-13 to 11.3-15. However, despite LandWatch's request for a discussion of the environmental impacts of alternative supplies (PO 208-25), neither the DSEIR nor the FSEIR provide any information about these environmental impacts.

The FSEIR admits that "[s]ome of these water supply options were evaluated in past agency documents, as discussed in the DSEIR Section 4.9 [sic, 4.19], Water." However, nothing in in the discussion of future water supplies in Section 4.19 even

mentions the potential environmental impacts of those water supply projects. DSEIR, pp. 4.19-7 to 4.19-9, 4.19-25 to 4.19-26.

Instead of making good-faith efforts to investigate and provide the available information about the environmental effects of alternative water supplies, the FSEIR states that "[b]ecause it is unknown at this time what those environmental impacts would be, the DSEIR concluded that the impact with the provision of water for phases IV through VI could be significant and unavoidable." FSEIR, p. 11.4-1028. The contention that the environmental impacts of the RUWAP project "are unknown at this time" is not true. MCWD has certified four separate environmental reviews of the RUWAP project from 2004 to 2016, including the September 2004 Final EIR, the October 2006 Addendum No. 1, the February 2007, Addendum No. 2, and the April 2016 Addendum No. 3.[13] The SEIR could and should have discussed this available information, which it could have done by tiering and incorporation by reference. Furthermore, an agency may not simply label an impact unavoidably significant in order to dispense with analysis. *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.

9. Significant new information since the DSEIR was released requires recirculation.

An agency must recirculate a draft EIR for public comments and responses when there is significant new information after the draft EIR is released but prior to certification. Guidelines, § 15088.5(a). Recirculation of a draft EIR for public comment and response is required where the record shows that a potentially significant impact, or the efficacy of mitigation, was not evaluated in the draft EIR. *Vineyard, supra*, 40 Cal.4th at 447-448 (potential impact to salmon); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120 (water supply mitigation). The new information triggering the obligation to recirculate may appear in the FEIR or in post-FEIR material. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95; *Save our Peninsula Committee v. Monterey County Board of Supervisors* ("*Save Our Peninsula*") (2001) 87 Cal.App.4th 99, 131. The purpose of recirculation is to provide the public the same opportunity to evaluate the new information and the validity of the EIR's conclusions as it had for information in the draft EIR. *Save Our Peninsula, supra*, 87 Cal.App.4th at 131; *Sutter Sensible Planning v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822; *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* ("*Laurel Heights II*")(1993) 6 Cal.4th 1112, 1132.

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[13] Marina Coast Water District ("MCWD"), Notice of Determination, Regional Urban Water Augmentation Project, June 2, 2005; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 1, December 18, 2006; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 2, Feb. 24, 2009; MCWD, Notice of Determination, Regional Urban Water Augmentation Project, Addendum No. 3, April 19, 2016.

Here, significant new information includes (1) new information showing a new or more severe significant impact resulting from the project (Guidelines, § 15088.5(a)(1), (2); *Laurel Heights II*, *supra*, 6 Cal.4th at 1130) and (2) new information showing that the draft EIR was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded" (CEQA Guidelines, § 15088.5(a)(4); *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052).

As discussed by Mr. Parker, the DSEIR relies on the MCWD Water Supply Assessment contention that the groundwater supply is "reliable," which in turn relies on the contention in the MCWD 2010 UWMP that the Salinas Valley Water Project will result in an average annual basin-wide water surplus of 6,000 acre feet instead of an average annual water deficit.[14] However, the contention that the Salinas Valley Water Project will balance the basin and prevent seawater intrusion is no longer tenable in light of significant new information that does not appear in the draft EIR. In addition to Mr. Parker's comments this information also includes DWR findings, MCWRA groundwater studies, and MCWRA testimony cited by Mr. Parker, including for example:

- DWR, Critically Overdrafted Basins, January 2016 – identifying the Salinas Valley Groundwater Basin as critically overdrafted and therefore requiring an accelerated Groundwater Sustainability Plan under the Sustainable Groundwater Management Act.

- MCWRA, State of the Salinas River Groundwater Basin, January, 2015 – identifying existing pumping from the Basin as unsustainable and recommending pumping <u>reductions</u> in the Pressure Subarea from which this project proposes to <u>increase</u> pumping.

- MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013 – acknowledging the need for additional groundwater management projects to deliver water to replace coastal area pumping.

- Testimony of Robert Johnson, MCWRA, to Monterey County Planning Commission, Oct. 29, 2014 – acknowledging that the demand projections used for the Salinas Valley Water Project understated actual demand, that the Salinas Valley Water project would not be sufficient to halt seawater intrusion, and that additional groundwater management projects are needed.

This information demonstrates, contrary to the out-of-date 2010 UWMP relied upon by the DSEIR, that the Salinas Valley Water Project will <u>not</u> balance the basin hydrologically and will <u>not</u> halt seawater intrusion. Thus, the information demonstrates a new or more severe impact than disclosed by the DSEIR and demonstrates that the

[14] See DSEIR, p. 4.8-34; MCWD, Water Supply Assessment and Written Verification of Supply for Monterey Downs Specific Plan, 2012, pp. 22-23; MCWD, 2010 UWMP, p. 53.

DSEIR was so fundamentally inadequate as to deny the public a meaningful opportunity for comment and response.

10. The SEIR fails to respond adequately to comments regarding water supply issues.

Responses in a final EIR to substantive comments on a DEIR must contain fact-based analysis. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 (duty to provide "good faith, reasoned analysis in response"); Guidelines, § 15088(c) ("Conclusory statements unsupported by factual information will not suffice"). For example, in *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, an agency violated CEQA by providing only conclusory responses to comments. The court held the agency had a duty to address comments "in detail," providing "specific factual information" as had been requested by the commenter. *Id.* at 359. Where comments seek omitted facts or analysis essential to a draft EIR's conclusions, the failure to correct those omissions "renders the EIR defective as an informational document." *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244 (failure to provide reasoned analysis in response to comments pointing out uncertainty of water supply).

An agency must provide specific information to support its conclusions as to the adequacy of water supplies. *People v. County of Kern* (1976) 62 Cal.App.3d 761, 772 (insufficient to claim that "all available data" showed there was sufficient water supply without providing the data). In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* ("SCOPE") (2003) 106 Cal.App.4th 715, 722, responses to comments questioning a water supply analysis were inadequate because they failed to provide any facts, data, or estimates from the Department of Water Resources, the agency that would supply the water. Citing *Cleary, supra*, 118 Cal.App.3d at 357, the court explained:

> Problems raised by the public and responsible experts require a good faith reasoned analysis in response. [Citation.] The requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not "swept under the rug."

Id. at 723.

As Mr. Parker explains, the FSEIR fails to provide good-faith reasoned analysis in response to LandWatch's comments and questions regarding pumping from the180-foot, 400-foot, and 900-foot aquifers under baseline and future conditions. See comment PO 208-5. The FSEIR fails to identify the studies cited by the DSEIR including the "recent stratigraphic analyses" that "have indicated" a hydraulic connection between the 180-foot, 400-foot, and 900-foot aquifers. See comment PO 208-5. The FSEIR fails to respond adequately to LandWatch's comments asking for an explanation of the DSEIR's claims regarding the hydraulic connections between the 180-foot, 400-foot, and 900-foot

aquifers. See comment PO 208-6. The FSEIR fails to provide adequate responses to LandWatch's comments asking whether recharge to the 900-foot aquifer from the seawater-intruded 180-foot and 400-foot aquifers could contaminate the 900-foot aquifer, whether increased pumping in the 900-foot aquifer would increase this risk, and how much pumping from the 900-foot aquifer is sustainable. See PO 208-7 through 208-11.

As discussed above, the FSEIR fails to respond adequately to comments objecting to reliance on the 6,600 afy allocation as the basis to find impacts less than significant. See, e.g., comment PO 208-22. The FSEIR also fails to respond adequately to LandWatch's request for a discussion of the environmental impacts of alternative water supplies. See comment PO 208-25.

11. The SEIR fails to provide an adequate discussion of the effect of not building Phases 4-6.

Where mitigation includes the possibility of not building later phases of a project due to lack of water, an agency must discuss "the environmental impacts of curtailing the project before completion." *Vineyard Citizens*, *supra*, 40 Cal.4th at 444. Here, buildout of only part of the project has the potential to aggravate certain environmental impacts, but the SEIR fails to disclose this.

The FSEIR confirms that phases 1-3 are in fact disproportionately residential compared to full buildout of the project: building only phases 1-3 would yield 47% of the residential plan but only 26% of the jobs-generating commercial uses. FSEIR, p. 11.3-2.

An unbalanced jobs/housing ratio for the project would result in greater per capita impacts from transportation and transportation-related air pollutants and GHG emissions as residents would be required to travel to more distant jobs. It would also frustrate BRP and City policies related to jobs/housing balance and economic development. Evidence for this is as follows:

First, the BRP relies on maintenance of a strong jobs/housing balance to manage travel demand and to minimize transportation-related impacts:

> **3.5.5 Demand Management**
> The proposed roadway network addresses many of the key issues raised and much of the increased transportation demand that will result from the reuse of the former Fort Ord. To supplement the roadway improvements, there are a number of strategies that can be pursued to reduce the demand for vehicle trips. Taking steps to reduce the number of vehicle trips can also lead to reduced infrastructure costs. Land use and transportation strategies are incorporated into the Reuse Plan to reduce vehicle demand and encourage walking and bicycle use.

> **Jobs/Housing Balance**
> Providing a jobs/housing balance is intended to encourage employers to locate in areas where there are significantly more residents than jobs and to add housing development near employment centers. Efforts to create a jobs/housing balance should ensure that the jobs provided are compatible with the skill-levels and income expectations of nearby residents. Developing jobs and housing in proximity to each other provides an opportunity to reduce the travel demands on key regional facilities by reducing the length of the trip and/or shifting a vehicle trip to an alternative mode. The Reuse Plan seeks to achieve a better job/housing balance within the former Fort Ord. The desired result of this balance is the reduced demand on those regional roadways connecting employees living off-base with employment centers on-base.

BRP, p. 120. The BRP seeks to generate 45,000 to 46,000 jobs and 17,000 dwelling units to ensure that there are 2.67 jobs per household (2.06 counting the student population). BRP, p. 92. The BRP also counts on mixed use development to reduce transportation demand. BRP, p. 121.

Second, the DSEIR relies on jobs generated by the project and a mix of office, retail, commercial and residential uses from full buildout of the project to project a reduction of trips by 28% compared to development of just residential or just commercial uses. DSEIR, p. 4.16-63. The FSEIR also argues that this 28% "internal capture" is justified based on the fact that the project would include a mix of jobs and housing. FSEIR, p. 11.4-17. This internal capture would significantly reduce per capita transportation and GHG impacts through reduced vehicle trips compared to a primarily residential development project in which residents had to commute longer distances and to travel longer distances to shop. However, the internal capture rate would be reduced if the project did not provide a robust mix of land use types, including commercial, retail, residential, and recreation and/or if it did not provide as many jobs per unit of housing.

Third, the SEIR assesses the significance of the GHG impact based on a per capita basis. DSEIR, p. 4.6-13 to 4.6-14. Mobile source emissions amount to 29,062 tons of the project's total 49,174 tons of CO2 – about 59% of the total. If internal capture were reduced because the mix of land uses were not as diverse and the jobs/housing ratio were not as high as assumed, then the per capita vehicle trips would increase (even if total trips did not increase), resulting in higher per capita GHG impacts. The DSEIR already finds GHG impacts to be unavoidably significant because GHJG emissions exceed the per capita threshold of significance. An unbalanced jobs/housing ratio resulting from failure to build out Phases 4-6 would further aggravate an already significant GHG impact.

Fourth, the SEIR also identifies an unbalanced jobs/housing ratio as a potential inconsistency with the Seaside General Plan and a source of potential impacts in its analysis of population and housing impacts, impacts that are avoided only because the full project is projected to provide many jobs in proportion to its housing units. DSEIR,

pp. 4.9-20, 4.11-15. Seaside identifies a jobs/housing ratio target of 1.5:1. DSEIR, p. 4.9-20.

Fifth, the BRP also contains goals and policies intended to ensure a strong jobs/housing balance. As noted, the BRP jobs/housing goal is a ratio of 2.67. BRP, p. 92. The BRP's Development and Resource Management Plan ("DRMP") is intended to ensure that development goals are met within resource constraints. The DRMC sets an objective of replacing the 18,000 jobs lost by the base closure by 2015. BRP, p. 199. Critical to meeting that goal are the coordinated Residential Development Program (DRMP § 3.11.5.4(b)) and Industrial and Job Creation Program (DRMC, § 3.11.5.4(c)), which limit residential development until the 18,000 jobs goal is met in order to prevent using up the limited water supply to support unbalanced residential development. BRP, pp. 197-199. A large development project that consumes water supply without doing its fair share to create jobs is inconsistent with the BRP jobs/housing policies.

Because the FSEIR declined to address the issue in response to LandWatch's questions (FSEIR, p. 11.4-1028), we examined the effect of not building the relatively jobs-rich Phases 4-6, which contain the lion's share of the commercial and recreational facilities.

We note that the DSEIR is equivocal as to the actual volumes of jobs and the effect on the jobs/housing ratio. The DSEIR provides two widely varying claims regarding the numbers of jobs, although both claims are advanced to support the contention that buildout of the project would improve Seaside's existing jobs/housing ratio, which is currently housing-rich and jobs-poor. In particular, the DSEIR states the project would create 1,743 new jobs in its analysis of the project's consistency with Seaside General Plan Policy LU 1.2, a policy that requiring the City to encourage development that is job intensive:

> As concluded in Section 4.11, *Population and Housing*, the Project would generate approximately 1,743 new jobs, which would beneficially impact the City's jobs-to-housing ratio, increasing it from 0.67 to 0.75. The Project would be in furtherance of the City meeting its jobs/housing ratio of 1.5:1.

DSEIR, p. 4.9-20, emphasis added. However, Section 4.11actually states that the project would generate 2,758 new jobs:

> "Finally, the Project would generate approximately 2,758 new jobs, which would beneficially impact the City's jobs-to-housing ratio, increasing it from 0.67 to 0.83."

DSEIR, p. 4.11-15, emphasis added.

The difference in the DSEIR's two jobs estimate is equal to the 1,015 projected "equestrian" jobs identified in the fiscal analysis of the project.[15] Of the equestrian jobs, 976 are tied to Phases 4-6 and would not be generated if these Phases were not constructed, especially the Phase 6 Sports Arena and race track which, by itself, is projected to create 950 of the equestrian jobs.[16] Most of the non-equestrian jobs are also tied to Phases 4-6.

In fact, only 620 total jobs, equestrian and non-equestrian, would be generated by phases 1-3; the remaining 1,771 jobs depend on phases 4-6 and would not occur if these phases were not constructed due to a lack of water supply.[17]

Phases 1-3 would include 473 dwelling units from RES-1 and 124 dwelling units from RES-2, for a total of 597 dwelling units.[18] Phases 4-6 would include 426 units from RM and 256 units from RES-3, for a total of 683 units.[19] Thus, the jobs/housing ratio for Phases 1-3 would be 620 jobs/597 housing units, a ratio of 1.04. The jobs/housing ratio for Phases 4-6 would be 1771 jobs/ 683 housing units, a ratio of 2.59. At full buildout, the jobs/housing ratio would be 2,391 on-site jobs/1280 housing units, a ratio of 1.87.

	Phases 1-3	**Phases 4-6**	**Full Buildout**
On site jobs	620	1,771	2,391
Housing units	597	683	1,280
Jobs/housing ratio	1.04	2.59	1.87

Including the 297 jobs generated by the project's economic effects in Seaside rather than on the project site itself (*see* Wildan, Table 28) the jobs/housing ratio at buildout would be 2,658 jobs/1280 housing units, a ratio of 2.08. (Modeling for these off-site jobs assumes that they would be driven by overall economic activity attributed to the project, not to specific activities; and therefore these off-site jobs would presumably be spread among the six phases.)

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15 Willdan, Monterey Downs Fiscal and Economic Analysis, Aug. 2015, p. iv.

16 *Id.* at 17.

17 *Id.*, Table 8. Table 8 reports only on-site employees. Thus, its 2,391 total jobs do not include the 290 jobs from ongoing operations generated in Seaside that are identified in Table 28. These 290 Table 28 jobs in Seaside plus the 2,391 Table 8 jobs within the project account for 2,681 of the 2,758 total jobs reported by the DSEIR at page 4.11-15. It is unclear wat accounts for additional 77 jobs reported by the DSEIR.

18 MDSP, Figure 8-1 (phasing plan); DSEIR, Table 2-2 (land use summary).

19 *Id.*

Notably, the BRP sets a goal for the jobs/housing ratio of 2.67, based on 45,000 to 46,000 jobs and 17,000 housing units. BRP, p. 92. Omitting the CSUMB students, the BRP goal is 2.06. Thus, full buildout of the project, including the 950 equestrian jobs created in phase 6 and the off-site jobs created in Seaside, would be required to meet the BRP goal of 2.06 jobs per housing unit.

In sum, if Phases 4-6 were not build due to a lack of water:

- The project would not meet the BRP jobs/housing goal intended to minimize transportation and other impacts because the 1.04:1 jobs/housing ratio for Phases 1-3 is well below the BRP's target jobs/housing ratio of at least 2.06:1.

- The project would not contribute as projected in the DSEIR in meeting Seaside's jobs/housing policies. A project with a jobs/housing ratio below the City's 1.5:1 target, e.g., the 1.04:1 ratio in Phases 1-3, cannot contribute to attainment of the 1.5:1 ratio called for by Seaside General Plan Policy ED-8.1. Approving a project with a jobs/housing ratio below the 1.5:1 target, especially a project that will account for the lion's share of future growth in Seaside, effectively frustrates attainment of that target ratio. The draft general plan consistency findings for the City Council meeting state that the full project would add 1,280 housing units to Seaside's existing 11,335 units and add 2,758 jobs to Seaside's existing 7,790 jobs, thereby improving the jobs/housing ratio from 0.69:1 to 0.84:1. However, if only phases 1-3 are build, the resulting 8,410 jobs and 11,937 housing units would provide a jobs housing ratio of only 0.70. The post-project jobs/housing ratio would be essentially unchanged if only Phases 1-3 were built.

- Permitting top-heavy residential development would also be inconsistent with Seaside General Plan Policy LU-1 to encourage regional commercial and visitor serving use and its Policies ED-1.1 and ED 5.1 to establish a diverse mix of businesses and tax sources, because the city would have consumed a major portion of its water-constrained development capacity without advancing those policies.

- Failure to meet the BRP jobs/housing goal would be inconsistent with the BRP's DRMP § 3.11.5.4(b), (c) provisions to balance residential and job-creating development to ensure that water remains available for job-creating development.

- And failure to fulfill the DSEIR's own assumptions regarding the mix of development types and the jobs/housing ratio would increase the per capita GHG emissions over the level projected by the DSEIR, aggravating an already significant GHG impact.

The SEIR should have provided an analysis of these entirely foreseeable outcomes.

Furthermore, because there are significant unmitigated impacts, CEQA requires that the City adopt a statement of overriding considerations to approve the project. An analysis of the fiscal effect of building only the first three phases is clearly relevant to any findings regarding fiscal and job impacts since fiscal and job benefits are cited as overriding considerations. However, as discussed, the jobs benefits would be greatly reduced if only phases 1-3 were built. And the economic benefits of the project are critically dependent on building Phases 4-6. For example, without the hotel uses in Phase 4 there would be at most half of the projected transient occupancy taxes and the net impact of the project on Seaside's general fund may be negative instead of positive.[20]

In response to LandWatch's request for an analysis of the effect of building only Phases 1-3, the FSEIR claims that any such analysis would be "speculative" since 1) the project phasing plan is subject to change and 2) the DSEIR conservatively assumes full buildout of all phases. FSEIR, pp. 11.3-1, 11.4-1028. The claim that the phasing plan is subject to change is a red herring. The Specific Plan calls for developing certain specific residential and commercial areas in Phases 1-3. Specific Plan, p. 8-1 and Figure 8.1. This is how the project is described and it is how it should be evaluated in the EIR; otherwise the EIR simply fails to provide an adequate and stable project description as CEQA requires. Guidelines, §15124. Indeed, the EIR's water supply analysis is in fact predicated on the specific phasing plan set out in section 8.2 of the Specific Plan, with demand calculated separately for these phases. Because the DDSEIR treats the phasing plan as adequately settled for <u>some</u> of its analyses, it is unreasonable to characterize the phasing plan as "speculative" when the public asks for additional analysis predicated on that same phasing plan.

The FSEIR's argument that the phasing does not matter because the overall analysis conservatively assumes buildout of all phases simply ignores the question LandWatch posed, which is whether there would be <u>different or more intense impacts in some environmental areas</u> if less than the full project were built. As discussed, a predominately residential project would aggravate the jobs/housing balance and increase the per capita transportation, air pollution, and GHG impacts. These are different and potentially more intense impacts.

The FSEIR states that the city could require changes to the phasing plan if it later concludes that "a different land use mix is required to address environmental issues/constraints including available water supply limits." FSEIR, p. 11.4-1029. If this contention is that the City might <u>later</u> decide to adopt mitigation intended to address impacts from unbalanced development and a poor jobs/housing mix, then it is entirely unsupported by analysis of these impacts in this EIR and constitutes improper deferral of both analysis and mitigation. The FSEIR simply fails to provide any answer to the

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[20] *Id.*, Table 25.

questions raised by LandWatch as to the effects of not building part of the project due to lack of water.

12. The SEIR relies on inadequate fair share payments to mitigate water supply impacts.

Impact fees are permissible mitigation for cumulative impacts as long as a project pays a fair share of a committed project that has been environmentally reviewed and found adequate. However, a mitigation measure calling for payment of unspecified mitigation fees for project that may not be built is not adequate mitigation. LandWatch requested that the SEIR identify the mitigation projects and fair shares that would be required of the project under mitigation Measure W-3. Comment PO 208-30. The DSEIR and FSEIR refer only to the "appropriate FORA fees, a portion of which is allocated for water supply augmentation improvements." DSEIR, p. 4.19-28; FSEIR, p. 11.4-1030. Despite LandWatch's request, the SEIR fails to identify the amount of the fee or the projects for which it will pay.

C. The FSEIR fails to provide good-faith reasoned responses to comments seeking the basis of the DSEIR's GHG mitigation claims.

As LandWatch objected (comments 208-71 to 208-80), the DSEIR's analysis of GHG emissions fails to clarify the specific measures for which mitigation credit is taken and fails to specify the assumptions behind that mitigation credit. LandWatch objected that the reductions were taken through the CalEEMod emissions modeling software, but that the DSEIR fails adequately to describe, specify, quantify, or justify each GHG emission reduction feature for which credit was taken. In response, the FSEIR directs the public to pages 38-39 of CaEEMod 2013 User's Guide and unspecified pages of CAPCOA's 2010 546-page report, Quantifying Greenhouse Gas Mitigation Measures. Here is the FSEIR's response:

> The GHG emission reduction features used in CalEEMod for the Project are specifically listed in DSEIR Appendix 10.2 for each of the Project operations modeling scenario (pages 234-265 of the PDF), and are based on CAPCOA's Quantifying Greenhouse Gas Mitigation Measures document (refer to pages 38 and 39 of the CalEEMod User's Guide Version 2013.2, http://www.aqmd.gov/docs/default-source/caleemod/usersguide.pdf?sfvrsn=2). Definitions of the mitigation measures and terms used in CalEEMod (and in quantifying the mitigated Project GHG emissions) can be found at http://www.capcoa.org/wpcontent/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf.
>
> CalEEMod conservatively programs the reductions from the CAPCOA research and guidance, and prevents double counting. The CalEEMod outputs for mitigated GHG emissions do not provide a breakdown by specific mitigation measures. Rather, the mitigated emissions outputs are displayed by emission

> source (i.e., area, mobile, energy). For example, in the "mobile" category of the modeling outputs, all programmed vehicle trips, VMT and mobile-source GHG emissions reductions from the CAPCOA mitigation measures which are applicable to the Project are clearly listed, and a review of those pages shows that the specific model inputs are the same as those listed in the comment. This methodology discloses the particular GHG emissions reductions claimed for each applicable CAPCOA mitigation measure by emission source, which represents the justification for the modeled reductions which commenter falsely asserts is missing in the DSEIR.
>
> In response to the full paragraph below the bulleted list in this comment, the calculated GHG reduction credits are already built into CalEEMod for each applicable CAPCOA mitigation measure selected. The empirical basis behind the underlying assumptions, parameters or values for these measures and reductions are detailed in the above-referenced CAPCOA document. Therefore, it is inappropriate for this DSEIR to cite such empirical evidence or to "justify" the conclusions already documented in the CAPCOA document that such features "will in fact reduce VMT", vehicle trips or mobile-source GHG emissions, as incorrectly asserted by commenter. This same logic applies to commenter's incorrect assertions in the next paragraph regarding non-mobile-source GHG emissions reductions (i.e., area, energy) for each applicable CAPCOA mitigation measure selected.
>
> In conclusion, commenter fails to provide evidence that any applicable CAPCOA mitigation measure to reduce GHG emissions for the Project is missing from the CalEEMod runs in DSEIR Appendix 10.2. Therefore, since the DSEIR clearly discloses this information, recirculation of the document as suggested by commenter is not warranted.

FSEIR, pp. 11.4-1048 to 11.4-1049.

Preliminarily, we note that neither the DSEIR's discussion of GHG impacts (Section 4.6) nor its Appendix 10.2 analyzing GHG impacts makes any reference whatsoever to the CAPCOA guidance document, Quantifying Greenhouse Gas Mitigation Measures, that the FSEIR identifies for the first time as the source of information justifying the GHG mitigation credits.

The CalEEMod User's Guide does provide at pages 38-39 that the mitigation is based on mitigation measures specified in the CAPCOA report and that the CalEEMod user is supposed to follow the instructions in the CalEEMod "mitigation module" to enter the various data required by the mitigation measures specified in CAPCOA's report. However, neither CalEEMod nor the CAPCOA report provide the information LandWatch requested, which is necessarily specific to this project.

Fact Sheets in Chapter 7 of the CAPCOA report identify a number of specific mitigation measures. The CAPCOA Fact Sheets provide formulae for calculating GHG reductions that are dependent on provision of project-specific assumptions and that result in greatly varying ranges of emission reductions depending on those assumptions. For example, CAPCOA indicates that the GHG reduction credit for the measure identified as "increased density" (CAPCOA mitigation measure "LUT-1") can range from 0.8% to 30% because it depends on three project-specific variables: housing units per acre, jobs per acre, and the selection of one of two different assumptions about the elasticity of VMT with respect to density.

The FSEIR claims that "the emission reduction features used in CalEEMod for the Project are specifically listed in DSEIR Appendix 10.2 for each of the Project operations modeling scenario (pages 234-265 of the PDF)." FSEIR, pp. 11.4-1048. However, the cited pages simply identify the category of emission reduction but fail to set out the critical project-specific assumptions that were used in the analysis. These are the data that LandWatch specifically requested (comment PO 208-79), explaining that the range of effectiveness of the GHG mitigation measures is dependent on accurate assumptions. The CalEEMod user was required to enter these project-specific assumptions, but the CalEEMod output in the DSEIR Appendix 10.2 does not report these assumptions.

MOBILE SOURCE GHG MITIGTION: The table below lists the data required by CAPCOA for the seven mobile source (transportation) mitigation measures that were presumably provided by the air quality analyst pursuant to the data requirements of CalEEMod. See CalEEMod user's Guide, p. 41. The missing information is the data that LandWatch requested and that the FSEIR simply refused to provide:

Mobile source mitigation feature identified in Appendix 10.2	**CAPCOA measure**	**Project-specific data required by CAPCOA and/or CalEEMod, <u>but not provided in DSEIR or FSEIR despite LandWatch's request</u>**	**Project-specific range of effectiveness in reducing GHG emissions**
Increase density	LUT-1	-housing units per acre; -jobs per acre; -elasticity of VMT with respect to density Note: two possible elasticity values from the literature are identified.	0.8% to 30%
Increase diversity	LUT-3	-percentage of each land use type in the project (land use types include residential, retail, park, open space, or office)	9% to 30%
Improve walkability design	LUT-8	-intersections per square mile; -elasticity of VMT with respect to percentage of intersections (Note: two possible elasticity approaches from the literature are identified.)	3% to 21.3%
Increase transit accessibility	LUT-5	-distance to transit station in project; -transit mode share for typical ITE development (Note: this project contains numerous ITE categories so it is unclear which "typical mode share" was assumed, or whether a blended mode share was determined)	0.5% to 24.6%
Integrate below market rate housing	LUT-6	-percentage of units in project that are deed-restricted BMR housing	0.04% to 1.2%
Improve pedestrian network	SDT-1	-information regarding extent of pedestrian accommodation	0% to 2%
Expand transit network	TST-3	-percent increase in transit network coverage; -existing transit mode share; -project location: urban center, urban, or suburban	0.1 to 8.2%

As is evident, the range of effectiveness of the above mobile source measures is critically dependent on the specific assumptions describing the project. The public has no way to evaluate the accuracy of the analysis or to challenge the applicability of the assumptions. Contrary to the FSEIR, the citations to the CalEEMod User's Guide and CAPCOA do not provide the information that LandWatch requested, and it is not provided in Section 4.6 or Appendix 10.2 of the DSEIR..

AREA SOURCE GHG MITIGATION: The picture for the five mitigation credits taken for area sources is even more opaque. The DSEIR identifies four categories of credit for use of low VOC paints and another credit for requiring natural gas hearths as measures for which operational emission reduction credits were taken. The FSEIR states that the CalEEMod credits are based on CAPCOA mitigation measures. However, CAPCOA does not mention low VOC paints, and the CalEEMod User's Guide does not identify a CAPCOA mitigation measure related to low VOC paints. Instead CalEEMod identifies a credit based on unspecified SCAQMD (South Coast Air Quality Management District) assumptions and apparently requiring assumptions regarding paint reapplication rates and VOC contents. CalEEMod User's Guide, p. 32. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

CalEEMod's discussion of its credit for all natural gas hearths states only that the use of natural gas hearths is "consistent with the mitigation number A-1 in the CAPCOA Quantifying GHG mitigation document."[21] CalEEMode User's Guide, p. 42. However, Mitigation number A-1 is for prohibition of gas powered landscaping equipment and CAPCOA does not mention a credit for requiring natural gas hearths. CAPCOA, p. 69. There is no apparent connection between CAPCOA's credit for prohibiting gas powered landscaping equipment and CalEEMod's credit for requiring gas-powered hearths. If there is, neither CAPCOA, the CalEEMod User's Guide, nor the SEIR explain that connection.

Furthermore, neither the SEIR nor CalEEMod nor CAPCOA identify the GHG reduction percentage claimed for these low VOC paints and natural gas hearths.

WATER SUPPLY GHG MITIGATION: The DSEIR claims four credits for low flow bathroom faucets, kitchen faucets, toilets, and showers, which CalEEMod indicates are based on CAPCOA measure WUW-1. This measure has a range of effectiveness of 17-31% and requires specification of the percent flow reduction. CalEEMod User's Guide, p. 43; CAPCOA, p. 348. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

The DSEIR claims another GHG mitigation credit for reclaimed water use. CalEEMod requires specification of the percent of indoor water use and the percent of

[21] The CalEEMod User's Guide provides data entry screens to specify hearths and woodstoves and to override regulatory limits on these, but these screens do not appear to relate to emission credits for requiring all natural gas hearths. CalEEMode User's Guide, pp. 31-32.

outdoor water use. CalEEMod User's Guide, p. 43. This information is not provided in the DSEIR or FSEIR. CAPCOA requires specification of reclaimed water use and total non-potable water use and identifies a range of effectiveness of up to 40%. CAPCOA, p. 332. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request.

Furthermore, the actual commitment to use recycled water for the project is unclear because the SEIR acknowledges that provision of recycled water is uncertain. DSEIR, pp. 4.19-26, 4.19-32, 4.19-33. If a credit is taken for recycled water use in the GHG mitigation analysis, the public has no way to understand how much recycled water is assumed to be used, where it is assumed to be used, and the consistency of those assumptions with the discussions of recycled water elsewhere in the SEIR.

SOLID WASTE GHG MITIGATION: The DSEIR claims a credit for solid waste recycling and composting services. CalEEMod does not indicate what data must be supplied, but states that this credit corresponds to CAPCOA's measure SW-1. CalEEMod User's Guide, p. 43. CAPCOA indicates that this measure requires an estimate of the number of residents, building square footage for office and retail uses, visitors to public venues, employees for other commercial buildings, waste disposal methods, and amount of waste diverted to recycling or composting. CAPCOA, p. 393. This information is not provided in the DSEIR or FSEIR, despite LandWatch's request. It is unclear how CalEEmod determines the credit because the CalEEMod User's Guide referenced by the FSEIR as the source of the information LandWatch requested does not in fact explain the basis of the credit.

CONSTRUCTION GHG MITIGATION: The DSEIR Appendix 10.2 claims a mitigation credit for seven construction measures including:

- Use Cleaner Engines for Construction Equipment
- Use DPF for Construction Equipment
- Replace Ground Cover
- Water Exposed Area
- Water Unpaved Roads
- Reduce Vehicle Speed on Unpaved Roads
- Clean Paved Roads

The CalEEMod User's Guide discussion of construction assumptions does not identify the source of these measures and does not illustrate input screens with mitigation options. See CalEEMod User's Guide, pp. 24-27. None of the seven measures listed in Appendix 10.2 appear to correspond to items in CAPCOA's list of five construction mitigation measures, C-1 to C-5. See CAPCOA, pp. 409-432. In short, the FSEIR's contention that all of the GHG mitigation credits "are based on CAPCOA's Quantifying Greenhouse Gas Mitigation Measures document" is apparently not true. FSEIR, p. 11.4-1048. If there is some relation between the CAPCOA construction mitigation measures and the

CalEEMod construction measures for which credit is taken in Appendix 10.2, it remains unclear.

As with the other CAPCOA mitigation measures, the CAPCOA construction mitigation measures have a wide range of effectiveness depending on the specific assumptions provide, e.g., assumptions about specific carbon-based fuels used, about use of electric or hybrid equipment, idling limitations beyond regulatory requirements, the use of a heavy duty off road vehicle plan, and the use of a construction vehicle inventory tracking system. CAPCOA, pp. 409-432. It is clear that the effectiveness of construction GHG mitigation depends on these specific assumptions. However, the SEIR does not provide this information, despite LandWatch's request.

In sum, the SEIR relies on a study of unmitigated and mitigated GHG impacts to assess the extent of the GHG impact. That study uses a software tool, CalEEMod, that requires specific assumptions about what mitigation will actually be undertaken by the Project in 25 specific contexts related to mobile sources, area sources, water, solid waste, and construction. The effectiveness of the GHG mitigation varies widely based on these specific assumptions. Because the assumptions are not in the DSEIR Appendix 10.2, LandWatch requested them. However, the FSEIR simply failed to provide the requested information.

D. The FSEIR fails to respond adequately to comments proposing additional mitigation for GHG impacts.

The DSEIR concludes that, despite the mitigation measures proposed in the DSEIR, GHG impacts will be significant and unavoidable. DSEIR, p. 4.6-22. Accordingly, LandWatch and the Monterey Bay Unified Air Pollution Control District ("MBUAPCD") proposed a number of additional mitigation measures. While the FSEIR does indicate that some of the measures proposed by LandWatch will be implemented as project features or as a result of Title 24 compliance, the FSEIR fails to respond adequately to other proposed mitigation measures. The FSEIR states that the lead agency need only "focus on mitigation measures that are feasible, practical, and effective." FSEIR, p. 11.4-1051. However, the FSEIR does not demonstrate that the proposed measures that it did not discuss are not feasible, practical, and effective.

For each of the following proposed mitigation measures the FSEIR fails to provide any discussion, much less to demonstrate that the proposed measure is not feasible, practical, and effective:

- Use passive solar design and provide shade on at least 30% of onsite impervious surfaces, including parking areas, driveways, walkways, plazas, patios, etc. (excluding roofs).
- Use light colored "cool" roofs with high-albedo materials (reflectance of at least 0.3) for 30% of the Project's non-roof impervious surfaces.

- Use thermal pool covers and efficient pumps and motors for apartments, commercial pools and spa uses.
- Educate residents, customers and tenants on energy efficiency.
- Design outdoor water features for low flow pumps and places where shading can be provided.
- Use low-impact development practices.
- Provide educational information about water conservation.
- Provide educational information about reducing waste and available recycling services.
- Incorporate public transit into the Project design.
- Provide free or low-cost monthly transit passes for students, employees, residents, and customers.[22]
- Provide secured bicycle parking for all apartments, flats, and commercial uses.
- Provide a low- or zero-emission trolley at the County Walk.
- Provide convenient locations accessible by public transportation for car sharing and car pools for all events.
- Provide housing units for all track workers within walking distance of work.

- Use alternative-fueled (e.g., bio-diesel, electric) construction vehicles/equipment for at least 15% of the fleet.
- Use local building materials where reasonably available (i.e., within the general Monterey Bay area defined as Monterey County, Santa Cruz County, and San Benito County)
- Recycle at least 50% of construction waste or demolition materials.

- Exceed Title 24 building envelope energy efficiency standards (applicable at the time of the building permit issuance) by 20%.
- Install programmable thermostat timers and smart meters.
- Obtain third-party heating, ventilation, and air conditioning commissioning and verification of energy savings.
- Install green roofs.
- Install tankless water heaters.
- HVAC duct sealing.
- Increase roof/ceiling insulation.
- Install high-efficiency area lighting.
- Maximize interior day light.
- Install rainwater collection systems.
- Restrict the use of water for cleaning outdoor surfaces and prohibit systems that apply water to non-vegetated surfaces.

[22] The FSEIR admits that its voluntary approach to transit subsidy is less effective, but does not claim that, or explain why, the more effective mitigation proposed by LandWatch is infeasible.

- Use only electric-powered landscaping equipment (not gas powered).
- Require off-site mitigation including:
    - Paying for energy-efficiency upgrades of existing homes and business.
    - Installing off-site renewable energy.
    - Paying for off-site waste reduction.
    - Off-site mitigation must be maintained in perpetuity to match the length of Project operations to provide ongoing annual emission reductions.
- Carbon Offsets - Purchase offsets from a validated source to offset annual GHG emissions

In addition to ignoring the above proposals, the FSEIR makes no response to MBUAPCD's proposal to require a hotel shuttle to local destinations.

The FSEIR sole response to MBUAPCD's proposal for a three-year funding commitment for a new transit route to serve the Gigling Road transit stop is that the proposal "has been noted." FSEIR, p. 11.4-379. This is not an adequate response. It certainly does not demonstrate that the proposal is not feasible, practical, and effective.

LandWatch and MBUAPCD proposed requiring onsite solar power generation and solar water heating. Responding to MBUAPCD, the FSEIR stated that this mitigation would be "speculative" because the "exact location, size, height, building orientation, etc. of the new buildings on the Project site are unknown at the time." FSEIR, p. 11.4-379. Calling the mitigation "speculative" for this reason is incoherent. In fact, the Specific Plan locates and orients major buildings and lays out illustrative residential lots and building sites in section 2. More fundamentally, the architectural guidelines in section 5 and development guidelines in section 6 of the Specific Plan specify numerous building and site layout features, and could be modified to require accommodation and inclusion of solar electrical and solar water heating panels unless specific, enumerated considerations (e.g., the presence of a heritage tree shading all available roof) made such an accommodation infeasible.

The FSEIR's response improperly assumes that mitigation through solar energy capture must take a back seat to all other considerations and that no mitigation vial solar energy can be required for any building unless that mitigation is feasible for all buildings. This misreads CEQA's mitigation requirements because CEQA requires modification of a proposed project in order to address significant environmental impacts unless the mitigation is in fact infeasible or the mitigation is not required to render impacts less than significant:

> A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

Guidelines, § 15021(a)(2). In determining that mitigation is infeasible, an agency must identify "specific economic, environmental, legal, social, and technological factors." Guidelines, § 15021(a)(3) (emphasis added). The FSEIR has not done so.

E. The analysis and mitigation of transportation impacts is inadequate.

1. The SEIR fails to provide the analysis of claimed internal trips despite LandWatch's request for this information.

An EIR "must contain facts and analysis, not just the agency's bare conclusions or opinions." *Laurel Heights Improvement Assn. v. Regents of University of California* ("*Laurel Heights I*") (1988) 47 Cal.3d 376, 404. Even if an agency's conclusions or opinions are ultimately proven correct, statements unsupported by facts and meaningful analysis are not sufficient: "*the critical point [is] that the public must be equally informed*." *Id*. (emphasis in original). The requisite facts and analysis supporting an agency's conclusions must be in an EIR, not scattered elsewhere throughout an administrative record. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695, 706 ("whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report"); *Vineyard, supra,* 40 Cal.4th at 442 ("To the extent the County, in certifying the FEIR as complete, relied on information not actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA").

As LandWatch objected in its DSEIR comments (PO 208-34), the DSEIR fails to provide the basis for its claim that 28% of vehicle trips would be internal to the project site. Since the 28% reduction in external trips would substantially reduce transportation impacts to facilities outside the project area and would substantially reduce both criteria pollutants (NOx, PM-10, etc) and GHG emissions, the 28% assumption is a critical parameter. LandWatch asked whether this internal trip rate was based on the standard traffic analysis methodology (ITE's Trip Generation Handbook) or some other methodology. And LandWatch asked that the City show its work by providing the facts and analysis behind this 28% internal trip rate assumption.

In response, the FSEIR refers LandWatch to its response to PA 3-1, a comment in which Caltrans also objected that the 28% internal trip rate was unsupported by analysis and appears to be inconsistent with the standard ITE methodology. In response to Caltrans, the FSEIR states that "[t]he requested documentation was provided to the commenter shortly after the request was received by the City, and no further comments were received from Caltrans." But provision of the documentation to Caltrans does not address LandWatch's concerns. Thus, the response to LandWatch that simply references response PA-3 is entirely inadequate, violating CEQA's requirement for good-faith reasoned analysis in response to comments. Guidelines, §15088.

And the FSEIR's claim that Caltrans has accepted the internal capture analysis is not true. Caltrans wrote on August 30, 2016 to reiterate its objection to the "exaggerated internal capture rate" and the use of an unjustified method to determine internal capture.

And even if Caltrans had been persuaded that 28% was justified, based on privately shared data or analysis, it is not sufficient to tell the public only that there is some expert opinion that supports or acquiesces in an EIR's conclusion. Substantial evidence requires an EIR to present the facts and analysis, not just raw opinion.

The FSEIR claims that "the data supporting this traffic impact analysis, including trip capture rates, is included in DSEIR Appendix 10.8, *Traffic Impact Analysis Data*." FSEIR, p. 11.4-1031. This is not true. Appendix 10.8 contains 723 pages of computer output sheets for the Level of Service Computation Reports for the affected intersections under the no-project, with-project, and with-mitigation scenarios under existing, 2018, and 2035 conditions. Nothing in that output for intersection LOS would enable the public to reconstruct the basis of the 28% internal capture analysis. Indeed, if the 28% internal trip claim could have been validated with reference to the materials in the DSEIR, then Caltrans would not have needed to ask for the analysis and the City would not have needed to supply the "requested documentation" to Caltrans in response to its comment.

The FSEIR's response to Caltrans indicates that the trip distribution patterns were developed through customization of the AMBAG travel demand model. This information is clearly not supplied in Appendix 10.8, which provides no information about the AMBAG model.

The FSEIR claims that the ITE methodology would understate internal capture because it omits "site interaction" for the equestrian facilities, the hotels, the tennis club, warehousing, and cemetery land uses. Site interactions must be determined through empirical analyses of similar mixed-use development projects. Thus, ITE's handbook provides internal capture data for various mixed use combinations based on empirical studies that compare stand-alone development trip rates to mixed use trip rates.[23] Additional empirical studies are available that supplement the ITE data sets and that include site interactions for additional uses such as hotels. For example, a 2014 analysis by the Center for Urban Transportation Research ("CUTR") reports data sets that do include hotel uses.[24] But the analysis of capture is based on a number of factors, none of which were revealed to the public here. For example, the CUTR report indicates that site interactions decrease as proximity decreases, so a sprawling 711-acre suburban-style project would have a lower capture rate than a smaller, denser urban mixed-use project,

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[23] Institute of Transportation Engineers, Trip Generation Handbook, 2nd Ed.

[24] Center for Urban Transportation Research, Trip Internalization in Multi-use Developments, April 2014, available at http://www.dot.state.fl.us/research-center/Completed_Proj/Summary_PL/FDOT-BDK84-977-10-rpt.pdf.

all other factors being equal.[25] CUTR indicates that proximity factors should be used in the analysis for any development bigger than 55 acres.[26] However, here the public has no way to evaluate whether or how this was done. What is missing in the Monterey Downs SEIR is any evidence that the internal capture rate is based on empirical data, or, any disclosure of that empirical data.

The FSEIR states that after assigning trips to the roadway network using the AMBAG model "it was determined that approximately 28 percent of the total trips generated by the proposed Specific Plan land uses would travel to another zone within the Specific plan." FSEIR, p. 11.4-17. However, the SEIR does not explain how "it was determined." The FSEIR provides no empirical analysis to the public that would support the validity of the internal capture.

2. The SEIR fails to provide adequate performance standards for Mitigation measure TRA-8.

Mitigation Measure TRA-8 provides for an entirely ad hoc response to special event traffic, including events that may attract thousands of vehicles to the Sports Arena. The requirement to prepare an Events Management Plan does not include any performance standard for acceptable levels of congestion. The FSEIR fails to respond adequately to LandWatch's concern that the measure improperly delegates mitigation to an unelected official without providing a meaningful performance standard. The FSEIR also fails to respond adequately to LandWatch's concern that the traffic control measures all remain optional under the phrasing of Mitigation Measure TRA-8. DSEIR, p. 4.17-85 (the "measures may include. . ."). There is no assurance that any effective or reasonable traffic control measures will be implemented since there is neither a congestion relief performance standard nor a requirement to use any particular traffic control measure.

The FSEIR claims that an Events Management Plan cannot be prepared in advance, but the DSEIR states that the applicant will in fact be required to prepare an "annual special events traffic and emergency services management plan." DSEIR, p. 4.17-83. If such a plan can be prepared a year in advance for the 125 or more days of special events, then it is unreasonable to claim that the SEIR could not provide even the sample plan requested by LandWatch.

3. Recirculation is required because the FSEIR identifies a new significant impact at intersection 49, SR-1 NB Ramps at Reservation Road.

The FSEIR acknowledges that impacts to intersection 49, SR-1 NB Ramps at Reservation Road, will remain significant and unmitigated. FSEIR, p. 11.4-1040 to 11.4-1043. This was not disclosed in the DSEIR. The FSEIR's acknowledgement constitutes

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[25] *Id.* at 82.

[26] *Id*. at 84-85.

significant new information that requires recirculation because it discloses a new significant impact. Guidelines §15088.5(a)(1).

4. The SEIR fails to identify a significant impact at intersection 38, SR 1 SB Ramps at Imjin Parkway.

Recirculation is required because the DSEIR fails to disclose a significant unmitigated impact at intersection 38, SR 1 SB Ramps at Imjin Parkway, under 2018 conditions. The LOS calculations in DSEIR Appendix 10.2 for mitigated conditions under both the existing and 2018 scenarios assume that a signal has been installed at this location pursuant to Mitigation Measure TRA-5. App. 10.2, pdf pages 689, 706. Under existing AM conditions with mitigation, the average delay is 52.6 seconds yielding a LOS D, which the DSEIR treates as a less than significant impact. App. 10.2, pdf page 689; DSEIR, p. 4.17-75 (Table 4.17-14). Under 2018 AM conditions, the average delay is degraded to 62.4 seconds, yielding LOS E. App. 10.2, pdf page 706. Thus, despite the traffic signal mitigation, there would be a significant impact because the LOS E is below the acceptable LOS for Caltrans facilities. Additional mitigation improvements should be proposed for this facility; or, if that is infeasible, the impact should be identified as unavoidable.[27]

The DSEIR unaccountably and erroneously indicates in Table 4.17-20 that the mitigated AM LOS at intersection 38 would be LOS B, based on an average delay of 14.1 seconds. DSEIR, p. 4.17-93. This is an error because it is unsupported by the technical appendix.

5. The SEIR fails to apply the Caltrans LOS standard for determining significance.

As Caltrans objected, the SEIR fails to acknowledge that Caltrans requires maintenance of a Level of Service at the cusp of LOS C and LOS D on SR1 facilities. Comment PA 3-2. The FSEIR claims that a 2006 planning document would justify this approach, but Caltrans has pointed out that this document does not apply to traffic management or operations.[28]

The DSEIR states in the section identifying thresholds of significance for each jurisdiction that an impact to a Caltrans facility would be significant if the project would "result in a LOS lower than the transition between LOC C and LOS D" or if the project

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[27] While the DSEIR identifies the impact under existing conditions as unavoidably significant, it fails to do so under 2018 conditions. DSEIR, pp. 4.17-130 to 4.17-131. Furthermore, the only basis for characterizing the impact as unavoidably significant under existing conditions is the fact that the required mitigation improvements, widening the intersection and installing a traffic signal, are not under the lead agency's jurisdiction. DSEIR, p. 4.17-84.

[28] John Olejnic, Caltrans, to Rick Medina, Seaside, Aug. 30, 2016.

would add a trip to "an existing state highway facility [that] is operating at less than the appropriate target LOS." DSEIR, pp. 4.17-47 to 4.17-48. The DSEIR identifies the "LOS Std." for every intersection or ramp, roadway segment, or freeway segment that is under Caltrans jurisdiction as "C/D," not as "D." DSEIR, Tables 4.17-13, 4.17-14, 4.17-19, 4.17-21, 4.17-25. Despite stating that the threshold of significance is the C/D transition and designating it in the tables, the DSEIR unaccountably fails to acknowledge impacts are significant where the project causes degradation of service to below the C/D transition or where it adds trips to a facility that operates below the C/D transition. Instead, the DSEIR only treats impacts to Caltrans' facilities as sisgnficant if they operate below LOS D. For example, for existing plus project conditions the DSEIR fails to identify a significant impact despite LOS below the C/D transition at intersection 42 in Table 4.17-13, at intersection 38 in Table 4.17-15, at six SR 1 segments in Table 4.17-16, and at ten ramps in Table 4.17-17. The SDEIR similarly fails to identify significant impacts with reference to the stated LOS C/D threshold of significance under interim 2018 and cumulative conditions.

In sum, the SEIR's failure to honor Caltrans' LOS standard in determining significance is unaccountable since 1) it honors and applies the adopted LOS standards of other agencies, including the County of Monterey and the City of Marina, in assessing impacts to their facilities, 2) it expressly identifies the LOS C/D transition as the threshold for significant impacts, and 3) Caltrans has repeatedly and specifically advised Seaside that its standards requires LOS C/D, ever since the scoping meeting for this project.[29] The contradiction in the stated significance thresholds and the threshold actually applied and the failure to approach significance determination consistently among the various jurisdictions vitiates substantial evidence for the SEIR's conclusions. It also demonstrates a results-driven approach to analysis. The SEIR should be revised and recirculated to assess and mitigate impacts with reference to the actual Caltrans standards, as identified in the DSEIR.

6. The FSEIR fails to respond adequately to proposed mitigation in the form of ramp metering.

LandWatch requested that ramp metering be proposed by the SEIR to address significant and unmitigated impacts to freeway ramps. In response, the FSEIR simply refers LandWatch to the discussion in the DSEIR at page 4.17-80, which the FSEIR claims establishes the infeasibility of this mitigation. FSEIR, p. 11.4-1043. However the DSEIR's discussion states only that ramp metering is not currently planned and is not within the jurisdiction of the lead agency to implement. DSEIR, p. 4.17-80.

In fact, contrary to the DSEIR, ramp metering is part of Caltrans planning for SR 1 segment 14, which includes the portions of SR 1 evaluated in the SEIR. Caltrans' Transportation Concept Report for State Route 1 in District 5 identifies ramp metering as

[29] *Id*.

an important part of the Intelligent Transportation Systems ("ITS") strategy to optimize traffic flow that will be managed by Caltrans Traffic Management Center. [30] Caltrans specifically identifies ramp metering as part of the measures it plans to implement to maintain acceptable LOS on SR 1 segment 14:

> a combination of widening, operational improvements, and enhanced alternatives to travel by single occupant vehicles will be required. ITS elements such as loop detection and ramp metering will be a major component of operational improvements.[31]

Caltrans states that Ramp metering is planned specifically for SR 1 "between SR 68 West and Reservation Road," which would include all of the ramps evaluated in the SEIR:

> Intelligent Transportation Systems (ITS) – ITS will play a critical role in managing operations on State Route 1 in Monterey County. ITS projects have been implemented in the County and additional projects have a high priority. When the Central Coast ITS Strategic Plan is fully implemented, the following elements will be available on Route 1 in Monterey County:
>
> - Smart call boxes from San Luis Obispo/Monterey County line to Monterey/Santa Cruz County line
> - Traffic surveillance stations (loop detectors) through Segments 14 (freeway portion) and 15
> - CCTV camera installation ***and freeway control ramp metering between SR 68 West and Reservation Road*** . . .[32]

The DSEIR and FSEIR offer no evidence that ramp metering would not be effective at reducing or avoiding impacts, and it is clear that Caltrans believes that ramp metering would be effective at the ramps under review. The DSEIR and FSEIR provide no evidence that Caltrans would not accept fair share payments toward ramp metering and consider implementing ramp metering if it were proposed in the SEIR; and the fact that Caltrans actually plans to implement metering indicates that Caltrans would be receptive.

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30 Caltrans, Transportation Concept Report for State Route 1 in District 5, April 2006, p. 10-11, available at http://www.dot.ca.gov/dist05/planning/sys_plan_docs/tcr_factsheet_combo/mon_sr1_tcrfs.pdf. Ramp metering is a "traffic management strategy that utilizes a system of traffic signals on freeway entrance and connector ramps to regulate the volume of traffic entering a freeway corridor. This is to maximize the efficiency of the freeway and thereby minimize the total delay in the transportation corridor." *Id.*, Appendix A.

31 *Id.* at 46, emphasis added

32 *Id.* at 44, underlining in original, italics and bolding added.

CEQA does not permit an agency to dismiss mitigation suggestions from the public without good-faith reasoned analysis. The fact that the mitigation is within another agency's jurisdiction is not a sufficient basis to decline to consider it. CEQA specifically requires an agency to make findings as to whether mitigation is "within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency." Public Resources Code, §21081(a)(2). And indeed the DSEIR proposes numerous other traffic improvements that are not within the jurisdiction of the lead agency (e.g., mitigation Measures TRA-2, 4, 5, 6, and 7).

Seaside may require fair share payments toward effective mitigation measures, including ramp metering, and may even provide that if Caltrans declines to implement the measure the fair share funds can be returned. Seaside may also conclude that the impacts for which these mitigation measures are proposed will remain significant and unavoidable due to its lack of jurisdiction to require implementation. But Seaside cannot simply decline to consider mitigation proposed by the public on the grounds that it lacks legal authority to compel that mitigation be implemented or based on the false claim that this mitigation is not currently planned by Caltrans.

F. The analysis and mitigation of noise impact is inadequate.

LandWatch engaged noise consultant Derek Watry to review the discussion of noise in the DSEIR, LandWatch's comments, and the FSEIR's response. His comments are attached and incorporated by reference.

1. The analysis of noise is inadequate under CEQA because it fails to recognize that non-compliance with statistical noise standards may be a significant impact.

Statistical noise standards ("Ln" standards or "Exceedence Level" standards) are standards for the noise levels that may not be exceeded for various periods of time. See DSEIR, p. 4.10-3, Table 4.10-2, Noise Descriptors. For example, BRP Noise Policies B-1, B-2, B-3, and B-5 apply the statistical noise standards from BRP Table 4.5-3, which is reproduced in the DSEIR as Table 4.10-7. See DSEIR, pp. 4.10-9 (Table 4.10-7) and 4.10-10 (BRP noise policies). Under the BRP's statistical noise standards applicable from 7 am to 10 pm, noise may not ever exceed 65 dBA, may not exceed 60 dBA for more than 1 minute, may not exceed 55 dBA for more than 5 minutes, may not exceed 50 dBA for more than 15 minutes, and may not exceed 45 dBA for more than 30 minutes. e.g., for one minute, five minutes, ten minutes, 15 minutes, or 30 minutes. Permissible noise levels are dBA less from 10 pm to 7am. The BRP applies these statistical noise standards at the property line.

As Mr. Watry explains, BRP Noise Policies and programs expressly require compliance with the BRP statistical noise standards. This SEIR identifies exceeding applicable noise standards as a significant impact. DSEIR, p. 4.10-12. The BRP PEIR specifically identifies the expectation that construction noise and stationary noise, including noise from a proposed amphitheater, would be required to comply with the

BRP's statistical noise standards as a basis to conclude that these noise sources would be less than significant. BRP PEIR, pp. 4-139 to 4-140, 4-146, 4-149.

Statistical noise standards may be applied in addition to and independent of 24-hour average noise standards ("CNEL" or "Ldn" standards). See DSEIR, p. 4.10-3, Table 4.10-2, "Community Noise Equivalent level (CNEL)" noise descriptor. The BRP Noise Policies B-1, B-2, B-3, and B-5 do in fact also and independently apply the 24-hour average CNEL noise standards from BRP Table 4.5-3, which is reproduced in the DSEIR as Table 4.10-6. See DSEIR, pp. 4.10-9 (Table 4.10-6) and 4.10-10 (BRP noise policies).

LandWatch's DSEIR comments objected that the DSEIR fails to apply statistical noise standards from the BRP or from any source to determine the significance of noise impacts. The FSEIR responded that these standards are not relevant. FSEIR, p. 11.4-1053. As Mr. Watry explains, that claim is not true.

Statistical noise standards are in fact highly relevant to determining annoyance from noise, particularly when a noise source is not continuous over a 24-hour period but instead consists of short-term, episodic and/or irregular loud noise such as noise from the recreational events at the project. The rationale for applying statistical noise standards in addition to 24-hour noise standards is that irritation can be caused by short periods of relatively loud noise, even if the average noise level complies with standards for longer periods, e.g., a 24-hour average CNEL standards. The BRP includes both 24-hour standards and statistical noise standards for just this reason.

Mr. Watry explains that stationary noise and construction noise from the Project will exceed the BRP's statistical noise standards and that this will substantially adversely affect sensitive receptors adjacent to the project. For example, maximum noise from cheering crowns at the Sports Arena would exceed the BRP allowable maximum noise level at the Oak Oval. Cheering noise that continues for as little as one minute per hour would exceed the BRP statistical noise limits at the Oak Oval and at the nearest residential receptor. Grandstand noise and the swimming pool timing system noise would exceed the BRP's statistical limit for maximum noise levels. Construction noise would exceed the BRP statistical limits.

The SEIR errs by uncritically relying only on 24-hour noise standards to determine significance despite evidence that episodic loud noise events will in fact result in substantial irritation to noise receptors and without any analysis of the effects of shorter-duration noise events on the ambient conditions.[33] *Berkeley Keep Jets Over the*

[33] Although the DSEIR references the City's 65 dBA maximum noise standard in its discussion of the mitigation of stationary noise impacts (DSEIR, p. 4.10-24), that reference is insufficient because (1) the City's maximum noise standard is not the same as the BRP's statistical noise standards, which include a more restrictive 0-minute (maximum) standard and which include standards for intervals greater than 0 minutes (compare DSEIR Table 4.10-4 to Table 4.10-7) , (2) the 65 dBA maximum noise standard was not apparently used to determine the significance of impacts (DSEIR, pp. 4.10-18 to 4.10-24).

Bay Comm. v. Bd. of Port Comm'rs (2001) 91 Cal. App. 4th 1344, 1381–82; *see also Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant"). The SEIR also errs by failing to acknowledge that the project is inconsistent with the BRP policies that mandate compliance with the BRP's statistical noise standards. Guidelines, §15125(d).

2. Analysis of construction noise is inadequate.

The DSEIR announces that that construction impacts would be significant if any of the standards in the City's General Plan or noise ordinance or other applicable plans (e.g., the BRP) were exceeded. DSEIR p. 4.10-12. However, the DSEIR provides no actual quantitative assessment of whether construction activities would exceed any of the applicable standards (i.e., the 24-hour average, maximum, or statistical standards promulgated by either the City or the BRP), despite the express requirement in Seaside's Municipal Code §17.30.060(G)(6) for a quantitative analysis of noise levels post-mitigation. The DSEIR also ignores the effects of construction noise on open space users even though these users are sensitive receptors and will be located immediately adjacent to the project site.

Thus there is no substantial evidence to support a conclusion that construction noise would not exceed applicable standards. However, there is evidence that construction noise would exceed applicable standards.

As Mr. Watry explains, the BRP statistical noise standards are clearly relevant to the significance of construction noise impacts. As explained above, the BRP PEIR specifically referenced the expectation that projects would meet the BRP statistical noise standards as one basis for finding construction noise impact to be less than significant. However the SEIR fails to apply these standards and improperly dismisses their relevance. Mr. Watry demonstrates that construction noise would exceed the BRP statistical noise standards.

Construction noise would also exceed the 65 dBA maximum allowable noise level for residential uses in the City's noise ordinance.

3. Mitigation of construction noise is inadequate.

CEQA requires that mitigation address the significant impacts identified in the EIR and do so with adequate certainty. Guidelines 15126.4(a)(2) (measures must be "fully enforceable"). A threshold of significance is a criterion "non-compliance with which" means the effect is significant and "compliance with which" means it is less than significant, e.g., adequately mitigated. Guidelines, § 15064.7(a). Mitigation must address the significant impact that is "identified in the EIR," and "as identified in the EIR." Guidelines, §§ 15126.4(a)(1)(A), 15091(a)(1). *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-658 holds that an EIR must clearly state

its significance threshold; in particular, it must do so to inform discussion of proposed mitigation measures.

Here, although the DSEIR identifies the noise standards in the City's General Plan, noise ordinance, and/or the BRP as the significance thresholds, Mitigation NOI-1 for construction noise impacts lacks any performance standard that would ensure that the purported significance thresholds are met. As Mr. Watry explains, the provisions of Mitigation NOI-1 simply do not require that construction noise meet any adopted standards, much less the standards that the DSEIR purports to apply to determine significance of impacts. The actual provisions in NOI-1 – notice, complaint resolution, siting stationary equipment, and limiting work to daylight hours – would not ensure that applicable standards are met.

Furthermore, Mr. Watry explains that it is unlikely that construction noise could meet the adopted standards, particularly the statistical noise standards. The nature of the noise sources, e.g, diesel equipment with elevated exhaust stacks, and the area extent of construction activity renders mitigation by noise barrier infeasible. The SEIR itself provides no evidence that mitigation could feasibly meet adopted standards, despite the Seaside noise ordinance that requires a quantitative demonstration of the efficacy of mitigation. Because mitigation is not demonstrably feasible, its formulation cannot be deferred. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-96. The SEIR must be revised to formulate mitigation that would meet the applicable Seaside and BRP noise standards.

4. The SEIR improperly concludes that impacts are less than significant if mitigation is not feasible.

The FSEIR improperly injects a consideration of feasibility into the determination of significance by implying that construction noise would be less than significant because the proposed mitigation "would minimize construction noise to the maximum extent feasible." FSEIR, p. 11.4-1056. CEQA neither requires nor allows lead agencies to consider costs or feasibility in determining the significance of impacts. Guidelines, §§15064, 15064.4, 15064.5, 15065, 15126.2, 15130, 15355, 15382. Under CEQA, feasibility considerations arise only in the context of determining if feasible mitigation measure are available after significance is determined (Public Resources Code, §21081(a)(3), Guidelines, §§15091(a)(3), 15364), and the determination of "acceptable" environmental harm arises only in the final step of the CEQA analysis in the context of a statement of overriding considerations. *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368-369; Public Resources Code, §21081(b).

The FSEIR also improperly injects the issue of feasibility into its determination of the significance of stationary noise impacts. The FSEIR argues that BRP Noise Policy B-1 requires that BRP's 24-hour and statistical noise standards be met only "where feasible and practical." FSEIR, p. 11.4-1056. The FSEIR then argues that application of the

BRP's "statistical noise Ln standards are not practicable for use in the Project's context." FSEIR, p. 11.4-1056. It would be error to reject use of the BRP's statistical noise standards to determine significance based on a determination that the project cannot feasibly meet those standards.

The FSEIR also improperly injects the issue of infeasibility into the determination of the significance of noise from the City Corporation Yard and fire station. Siren and horn noise from fire trucks (at least 101 dBA Lmax at 50 feet – see DSEIR, p. 4.10-20) would exceed the City's 65 dBA maximum exterior noise standard (DSEIR, Table 4.10-7). Low speed truck maneuvering in the City Corporation Yard would generate 75 dBA Lmax at 50 feet, which would also exceed the City's 65 dBA Lmax standard. DSEIR, p. 4.10-20. The FSEIR argues that "such noise sources are exempt from the City's Noise Ordinance (pursuant to SMC Section 9.12.040) and therefore by extension, CEQA significance thresholds do not apply." FSEIR, p. 11.4-1057, emphasis added. While legal considerations may justify a conclusion that mitigation is legally infeasible (Guidelines, § 15364), the significance of the unmitigated impact cannot be denied on the basis that mitigation is infeasible.

In sum, if the project cannot meet applicable noise standards, the City should identify the impact as significant and unmitigated. CEQA does not permit the City to conclude that noise is less than significant simply because mitigation is infeasible.

5. Analysis of stationary noise impact is inadequate because it fails to employ a consistent threshold of significance, fails to compare projected noise to any of these thresholds, and fails to consider relevant noise events.

There are three fundamental flaws in the SEIR's evaluation of stationary noise sources.

First, the SEIR fails to set out significance thresholds for stationary noise sources coherently. Determining significance of impacts requires "careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data." Guidelines, §15064(b). An EIR must clearly identify and apply standards of significance. *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655. As Mr. Watry documents, the DSEIR identifies several completely different thresholds:

- The threshold identification at DSEIR p. 4.10-12 says stationary noise (i.e., noise discussed in Impact Statement 4.10-3) is a significant impact only if the project causes a substantial permanent increase in ambient noise.

- The discussion of threshold of significance at DSEIR p.4.10-13 to 4.10-14 states that stationary noise would be significant if it cause an exceedance

of Seaside's Municipal Code standards at Tables 3-2 and 3-3.[34] These tables provide absolute noise standards, not noise standards expressed as an allowable increase. For example, these noise standards permit a maximum exterior noise level of 65 dBA for residential uses and a normally acceptable 24-hour average exterior residential noise level of 55 dB CNEL.

- The discussion of stationary source impacts actually purports to determines significance of noise from residential uses, non-residential mechanical equipment, equestrian event noise, swim center, and swim event center and pool activity based on whether it exceeds the BRP absolute standards of 50 to 55 dBA for residential uses, not, as stated earlier, based on whether it exceeds Seaside's absolute standards. See DSEIR pp. 4.10-19 to 4.10-24. The BRP standard referenced is apparently from DSEIR Table 4.10-6, BRP's land use compatibility matrix, which specifies normally acceptable noise for single family residential use at 50-55 CNEL or Ldn. The confusion as to whether significance is determined by using Seaside's standards or the BRP standards is consequential because those standards differ. For example, the BRP has a 50 CNEL normally acceptable standard for passively used open space but the City has no standard for that use. And the BRP has a less restrictive standard than the City for multi-family residential use.

In short, the SEIR errs because it is impossible for the public to understand what threshold the SEIR applies to determine significance of stationary sources.

Second, the SEIR fails to provide any actual analysis that would support the determination of significance using the 24-hour average thresholds of significance identified as applicable standards. The SEIR identifies various 24-hour noise standards as applicable; however, for a number of critical noise sources (e.g., crowd noise, musical events), the SEIR does not actually determine the 24-hour average noise that the project would produce. For example, there is no analysis of the projected 24-hour average noise produced by events in Planning Areas REC-2, C-1, or REC-1. Instead, the DSEIR's discussion of significance repeatedly and erroneously compares peak or short term noise generated by the project to 24-hours standards.

In fact, the project description is not sufficient to enable the determination of 24-hour average noise impacts. Planning Areas REC-2, C-1, and REC-1 would permit noise from many different sources, such as musical events, equestrian events, swim meets, dog shows, and other sporting events. As Mr. Watry explains, the SEIR lacks an adequate description of the average noise generated by, or the duration of, the events in these areas

[34] In the Municipal Code at §17.030.060(E) these are currently identified as Tables 3-3 and 3-4. They are reproduced in the DSEIR as Tables 4.10-4 and 4.10-5.

to support determination of 24-hour average noise levels.[35] The FSEIR admits that "the exact activities associated with these potential uses is not known at this time . . .." FSEIR, pp. 11.4-1057 to 11.4-1058. Thus, the EIR is inadequate because it fails to provide a project description that is sufficient to enable analysis of impacts (Guidelines, §15024) and fails to provide an adequate determination of the significance of impacts (Guidelines, §§ 15064, 15126.2). Furthermore, as Mr. Watry explains, the analysis also confusingly compares peak noise levels to noise standards measured by a 24-hour average noise level.

Third, the discussion fails to apply statistical noise standards from the BRP or any standard that would determine significance of annoyance from high volume, transient noise events. Mr. Watry explains that short duration noise, e.g., crowd noise, would in fact exceed the BRP's statistical noise standards and would be a substantial source of irritation to sensitive receptors, including open space users. Thus, the SEIR errs by uncritically relying only on 24-hour noise standards to determine significance despite evidence that episodic loud noise events will in fact result in substantial irritation to noise receptors and without any analysis of the effects of shorter-duration noise events on the ambient conditions. *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1381–82; *see also Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant").

The SEIR's errors are prejudicial because the public has no clear picture of the SEIR's thresholds and no clear description of the project's actual noise generation and because it is clear that applicable noise standards would be exceeded.

6. Mitigation of stationary noise impacts is inadequate.

CEQA requires an EIR to describe "feasible measures which could minimize significant adverse impacts." Guidelines, § 15126.4(a)(1). Mitigation must be fully enforceable and certain. Guidelines, § 15126.4(a)(2). Here, the SEIR fails to discuss or propose effective, enforceable mitigation for stationary source noise.

First, the mitigation in NOI-2 calls for meeting "the 65 dBA standard in the Fort Ord Reuse Plan, and Seaside Municipal Code Sections 9.12 (Noise Regulations) and 17.30.060 (Noise Standards)." DSEIR, p. 4.10-24. As Mr. Watry explains, this reference to "the 65 dBA standard" is entirely ambiguous and therefore not enforceable with any certainty. NOI-2 fails to specify whether the standard is a 24-hour average standard (i.e., a CNEL of Ldn metric) or a standard for the maximum noise level in an instant (e.g., the BRP statistical noise standard for zero minutes in Table 4.10-7). If it is a 24-hour CNEL

[35] The project description also fails to provide information sufficient to determine noise using statistical noise standards, e.g., to determine if crowd noise would exceed the 1 minute, 5 minute, 15 minute or 30 minute standards.

standard, then NOI-2 fails to explain how it is related to or derived from the actual standards in the Seaside noise regulations and the BRP. These standards include Seaside's "Noise/Land Use Compatibility Matrix" (DSEIR Table 4.10-5), Seaside's "Maximum Interior and Exterior Noise Standards" (DSEIR Table 4.10-4) or BRP's "Land Use Compatibility Criteria for Exterior Community Noise" (DSEIR, Table 4.10-6). NOI-2 implies that the project must meet both Seaside and BRP standards; however, the Seaside and BRP CNEL standards are not uniform with respect to allowable noise levels or even with respect to classification of land uses. It is simply unclear what standard must be met.

Second, the "65 dBA standard" referenced in NOI-2 is not the standard that the DSEIR used to determine the significance of impacts. The entire discussion of the significance of stationary noise was based on a determination whether project noise would exceed the BRP's 24-hour standard of 50-55 CNEL, which was repeatedly referenced in that discussion. DSEIR, pp. 4.10-19 (claiming non-residential stationary noise is "below the BRP's noise standards," referencing Table 4.10-6, and "therefore impacts would be less than significant"), 4.10-21 (referencing BRP's residential noise standard of 50 to 55 dBA in discussing significance of REC-2 Planning Area noise), 4.10-22 (claiming swim center noise is less than significant because it is within "BRP's standard of 50 to 55 dBA (exterior) for residential uses.") Indeed, the BRP's normally acceptable CNEL noise standard was also used to assess the significance of traffic noise impacts. FSEIR, p. 11.4-1054 (referencing the BRP's normally acceptable noise limit for multi-family housing of 60 CNEL). Using a different standard to determine the significance of impacts than is used to determine the efficacy of mitigation violates both common sense and CEQA because mitigation must address the significant impact that is "identified in the EIR," and "as identified in the EIR." Guidelines, §§ 15126.4(a)(1)(A), 15091(a)(1).

Third, NOI-2 fails to specify that compliance is required with BRP's 50 dBA CNEL standard for open space uses, not just its standard for residential uses. See DSEIR, p. 4.10-9 (Table 4.10-6, BRP noise standards). As Mr. Watry explains, compliance may not be possible, especially if the FSEIR is correct that this standard is already exceeded in open space areas.

Fourth, NOI-2 fails to specify that compliance with the mitigation must be determined at the property line, as is required by both the BRP standards and the Seaside Municipal Code. DSEIR, p. 4.10-9; BRP, pp. 411-412; Seaside Municipal Code, § 17.30.060(H).

Fifth, NOI-2 fails to specify that, even if the project meets 24-hour average noise standards, it must also mitigate short-term loud noise events by complying with the BRP's statistical noise standards. See DSEIR, p. 4.10-p. Table 4.10-7.

Sixth, as Mr. Watry explains, effective mitigation is uncertain, e.g., mitigation for crowd noise. Mr. Watry explains that mitigation of via a barrier or berm is not described

and that obtaining the necessary noise attenuation by barrier for the noise sources at REC-2 and C-1 is simply implausible. Indeed, the FSEIR admits that the effectiveness of mitigation is unknown:

> The DSEIR identifies Mitigation Measures NOI-2 and NOI-3 that require noise management and attenuation associated with the sports arena and swim center that is proportional to the noise generated at these facilities. As the exact activities associated with these potential uses is not known at this time, it is not possible for the DSEIR to quantify the measurable extent to which implementation of such performance standards would reduce noise events to less than significant levels. The mitigation measures include performance standards to ensure that exceedances of noise standards would not occur. The listed performance standards are comprehensive but are not intended to be exhaustive, nor does CEQA require such standards.

FSEIR, pp. 11.4-1057 to 11.4-1058, emphasis added. Where mitigation is not known to be feasible, CEQA does not permit deferral of its formulation, regardless whether performance standards are proposed. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-96. Accordingly, it is improper to defer the formulation of the Noise Management Plan called for by NOI-2. The Noise Management Program must be specified now and the SEIR must demonstrate that it would be effective with reference to unambiguously identified performance standards.

Furthermore, the FSEIR's statement that post-mitigation noise levels cannot be determined is an admission that the City is failing to comply with the City noise ordinance at SMC § 17.30.060(G)(5), (6) and BRP Noise Policy B-3, both of which mandate that he City identify mitigation and assess post-mitigation noise levels.

Seventh, the mitigation proposed for the swim center under NOI-3 is inadequate because it does not address the admittedly significant impact from the Time System.

7. The analysis and mitigation of impacts to open space use is inadequate.

The BRP FEIR acknowledges that open space, park, and recreation areas are noise-sensitive areas. BRP PEIR, p. 4-132. It is clear that the open space in the project vicinity is in fact extensively used for passive recreation by numerous members of the public, many of whom have objected to the project's impacts, including the noise impacts. See comment letters by Elizabeth Murray, Fort Ord Recreation Trails Friends, Suzanne Worcester, Eric Petersen, Monterey Off-road Cycling Association, Susan Schiavone, Robert McGinley, Cameron Binkley, Tim Townsend, Cosma Bua.

The BRP requires protection of open spaces via a 50 dBA CNEL/Ldn noise standard specifically applicable to passively used open space; via statistical noise standards applicable at the property line of noise-generating uses; and via Policy B-8, barring a 3 dB Ldn/CNEL increase where noise levels are already over the 50 dBA

standard. See DSEIR, pp. 4.10-8 to 4.10-11. Inconsistency with these policies should be identified as a significant environmental impact and as, discussed below, as a reason that the project should not be approved based on inconsistency with the Fort Ord Reuse Act.

First, the proposed mitigation of stationary noise in NOI-2 that identifies only a "65 dBA standard" clearly fails to mandate compliance with the BRP's 50 dBA CNEL/Ldn open space noise standard.

Second, as Mr. Watry explains, responding to LandWatch's request for baseline open space noise levels, the FSEIR states that the baseline CNEL noise level for passively used open space is within a decibel of the 52.3 dBA Leq noise level measured at the baseline measurement location #2.[36] FSEIR, p. 11.4-1052. Thus, according to the SEIR, the noise level for open space already exceeds the BRP's 50 Ldn/CNEL standard.[37] Thus, BRP Policy B-8 would come into play, and would bar any noise increase over 3 dBA Ldn/CNEL. The SEIR fails to provide any assessment to determine whether project noise would increase noise by 3 dBA at the property line; thus, there is no substantial evidence that the project would comply with BRP Noise Policy B-8. Non-compliance with a policy intended to protect noise-sensitive open space uses would be a significant impact.

Third, the analysis of stationary noise impacts fails to disclose that the project will cause noise in excess of the BRP's statistical noise standards in the open space areas

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[36] Baseline information must be presented in the draft EIR, not later in the EIR process. Guidelines, § 15120(c) (draft EIR must contain information required by Guidelines, § 15125); *Save Our Peninsula v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 120-124, 128; *Communities for a Better Env't v. City of Richmond* ("*CBE v. Richmond*")(2010) 184 Cal. App. 4th 70, 89. However, here, the DSEIR fails to provide any assessment of the existing noise levels in open space areas that would be affected by the project. This information was not provided until the FSEIR, responding to LandWatch's objection, claimed that noise levels measured on a roadway at 8th and Gigling was representative of open space noise levels. FSEIR, p. 11.4-1052.

[37] There is reason to doubt the FSEIR's claim that the measurement of noise at location # 2 is in fact typical of open space noise levels. DSEIR Appendix A-7 indicates and demonstrates by photograph that the noise measurement was taken on the shoulder of 8th Avenue over a ten minute period and that the dominant noise source was passing cars. The open space adjacent to REC-2 and REC-1 would not be proximate to existing vehicle traffic.

If the baseline measurement is not accurate, then the SEIR violates CEQA because an EIR must describe the existing environmental setting so that it considers impacts "in the full environmental context." Guidelines, § 15125(a), (c). An accurate baseline is critical because impact assessment must be based on "changes in the existing physical conditions in the affected area." Guidelines, § 15126.2(a); *see Neighbors For Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

Without accurate baseline noise levels for open space areas, it is impossible to determine whether and to what extent the project would cause noise increases, which may be significant impacts under CEQA. Nor is it possible to determine if the project would be consistent with BRP Noise Policy B-8, which bars a 3 dB increase in noise to open space areas that are already over the normally acceptable level of 50 dBA CNEL. DSEIR, pp. 4.10-9, 4.10-11.

adjacent to REC-2, as Mr. Watry demonstrates. The proposed mitigation in NOI-2 fails to mandate compliance with statistical noise standards.

Fourth, even if the mitigation were revised to require compliance with the BRP's open space noise standards, there is no evidence that mitigation is feasible and substantial evidence to the contrary. Again, the deferral of the formulation of the Noise Management Program called for by NOI-2 in the face of uncertainty violates CEQA.

8. The SEIR fails to identify a substantial increase in traffic noise as a significant impact.

The DSEIR's significance thresholds for both project-specific and cumulative impacts depend on a determination of the project-caused traffic noise increase and a determination whether the resulting combined noise from the Project and other development would exceed noise standards for the receiving property use. In particular, the DSEIR finds project-specific impacts to be significant only if total noise (existing traffic noise plus project traffic noise) exceeds "the applicable exterior standard at a noise sensitive land use" and the Project itself contributes 3 dB to that noise level. DSEIR p. 4.10-13. The DSEIR's two-step cumulative analysis first determines whether all future projects combined with the Monterey Downs project will cause a 3 dB increase and result in a noise level over the applicable standard. If so, the second step determines whether the Monterey Downs project contributes at least 1 dB to the future noise level. DSEIR p. 4.10-13.

Thus, in both analyses, it is necessary to determine whether traffic noise levels at the receiving property will exceed the applicable absolute noise thresholds for the receiving property's land use.

This approach to significance determination is inadequate because it fails to acknowledge that there may be a significant impact due to a substantial noise increase even if the resulting absolute noise does not exceed the applicable standard. An agency may not take refuge in a project's compliance with some regulatory standard when there is evidence that, notwithstanding that compliance, impacts are significant. *Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 ("a threshold of significance cannot be applied in such a way that would foreclose consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant"). The possibility that a noise increase may be significant even if the absolute regulatory standard is not exceeded is expressly recognized in the CEQA Guidelines, quoted by the DSEIR, which identify a significant impact if a project either causes a substantial increase in ambient noise or causes noise in excess of applicable standards. DSEIR, p. 4.10-12. The possibility is also recognized by

BRP Noise Policy B-6, which bars a noise increase over 5 dBA Ldn/CNEL even where noise is within the normally acceptable range.[38] DSEIR, p. 4.10-10.

As Mr. Watry explains, and as LandWatch objected in comment PO 208-91, the project will cause a significant impact and a violation of BRP Policy B-6 by increasing noise by more than 5 dBA at 7th Avenue between Gigling and Colonel Durham and at 8th Street between Inter Garrison and 6th. DSEIR, pp. 4.10-25, 4.10-26 to 4.10-27 (Table 4.10-11).

The FSEIR's response to LandWatch's objection is disingenuous. It claims that existing noise barriers would attenuate the traffic noise. FSEIR, p. 11.4-1054. As Mr. Watry explains, the presence of barriers does not affect the analysis: the increase in noise with and without the project would be the same regardless of the presence of barriers.

The FSEIR response is also disingenuous in claiming that interior noise levels would be maintained in residences on these road segments. FSEIR, p. 11.4-1054. The absolute level of interior noise levels is simply not relevant to the issue LandWatch raised, which is the increase in exterior noise levels. Impacts to exterior noise levels are an independent issue, as is evident from the fact that both Seaside and the BRP provide distinct standards for exterior and interior noise levels.

Finally, the FSEIR's observation that noise was modeled at 100 feet from the roadway centerline instead of the property line is also not relevant to this issue. As discussed below, both the Seaside noise ordinance and the BRP mandate noise analysis be at the property line. Regardless, even if it were correct to assess noise impacts at 100 feet instead of at the property line, here the noise increases modeled at 100 feet do exceed 5 dBA CNEL/Ldn in violation of BRP Policy B-6.

9. The SEIR's failures to measure noise impacts at the property line as mandated by the BRP and Seaside noise ordinance results in a failure to disclose a significant impact and a violation of BRP Policy B-6.

The traffic noise analysis assesses noise at 100 feet from the roadway centerline rather than at the property line of the receiving use. Thus, as LandWatch objected (PO 208-106) and Mr. Watry explains, the DSEIR errs by failing to honor the explicit requirements in both the Seaside noise ordinance and the BRP policies that noise be measured and controlled at the property line. SMC, § 17.30.060(E)(1)(a), (H); BRP Noise Policies B-6, B-7, B-8. The express purpose of the requirement to determine impacts at the property line is to protect outdoor uses. SMC, § 17.30.060(F) (obligation

[38] The policy bars an increase over 3 dBA Ldn/CNEL if noise is over the normally acceptable range.

to mitigate transportation noise impacts in order to "maintain outdoor and indoor noise levels" in compliance with standards).

As Mr. Watry explains, the error results in a failure to disclose a significant impact. The DSEIR's criteria for a project-specific impact is a 3 dBA CNEL increase where noise would exceed the applicable standard. On Gigling Road between 6th and 7th Avenues, noise would exceed the 60 dBA CNEL standard at the receiving residential use property line, even though it would not exceed the 60 dBA CNEL at standard at 100 feet from the roadway centerline, and the project would cause more than a 3 dBA CNEL increase. This should be identified as a significant impact. It should also be identified as an inconsistency with BRP Policy B-6, which bars a 3 dBA increase where noise exceeds the BRP's normally acceptable residential use standard "measured at the property line." DSEIR, p. 4.10-10.

10. The SEIR is informationally inadequate because it fails to identify land use noise thresholds and applicable standards for roadway segments affected by project; and because of this the SEIR fails to disclose considerable contribution to a significant cumulative impact on 2nd Avenue.

As LandWatch objected, the traffic noise analysis fails to identify the type of receiving land use (e.g., single family residential, multi-family residential, commercial) at each affected roadway segment, and this matters because the analysis purports to apply a different noise standard based on the type of land use. Comment PO 208-107. Nothing in DSEIR Tables 4.10-11, 4.10-12, or 4.10-13 listing noise levels and determining significance of impacts for various roadway segments identifies the adjacent land uses for these segments or the applicable noise standard. It is thus impossible for the public to see what noise impacts would occur at each type of land use or what noise standard the DSEIR actually applies.

The FSEIR claims that the DSEIR "considers the specific noise standards to each relevant land use" and that "the analysis reviewed the distance of the receivers to the roadway and the location of existing barriers to determine if an impact would actually occur." FSEIR p. 11.4-1058. If this level of analysis was actually undertaken, it does not appear anywhere in the DSEIR.

For example, the FSEIR claims that the DSEIR applies a 55 dBA standard for single family residential uses and a 60 dBA standard for multi-family residential use. FSEIR p. 11.4-1058 (Response PO 208-108.) However, Tables 4.10-11, 4.10-12, and 4.10-13 do not provide any indication of the actual uses for the affected segments that would allow the public to verify this claim.

The FSEIR failed to provide the requested information even though it claims that this information was developed in the noise analysis. The FSEIR claims that that the

noise analysis "considers the specific noise standards to each relevant land use" and that it "reviewed the distance of the receivers to the roadway and the location of existing barriers to determine if an impact would actually occur." FSEIR p. 11.4-1058. If the specific land uses and applicable noise standards were in fact determined in the noise analysis, then there was no reason for the FSEIR to have failed to provide this available information in response to LandWatch's request. Instead of providing the information for each roadway segment, the FSEIR provides only two cursory examples, claiming that residential uses on two segments have barriers; the FSEIR then claims that other sensitive receptors are "generally" located more than 100 feet from the centerline. FSEIR p. 11.4-1054. This is not responsive to the request for specific land uses and applicable standards.[39]

Mr. Watry explains that there is at least one roadway segment where the SEIR's lack of care in analysis and its failure to respond to comments with available information is prejudicial, because the SEIR fails to disclose that the project would make a considerable contribution to a significant cumulative impact based on the SEIR's own criteria. Noise levels on 2nd Avenue between Inter Garrison Road and 8th Street would meet the DSEIR's criteria for a considerable contribution to a significant cumulative impact because 1) the cumulative noise level would exceed the applicable 60 dBA CNEL standard for multi-family residential use and educational use; 2) the cumulative increase is greater than 3 dBA; and 3) the project adds more than 1 dBA. This is just one example of a prejudicial failure to provide adequate disclosure. Because the SEIR fails to identify receiving land uses and applicable standards for each affected segment, the public cannot determine if there are more.

11. Seaside may not approve the Project because it is inconsistent with Base Reuse Plan noise policies.

Under the Fort Ord Reuse Act, Seaside may not approve a development project that is not consistent with the BRP. Gov. Code, § 67675.8(b)(1). The project is not consistent with BRP noise policies as discussed above and detailed below.

The determinations of consistency with the BRP is not the same determination as the determination of significance under CEQA. Where a plan calls for the use of a particular method of analysis and compliance with particular standards, an agency must actually use the required analysis and standards in determining consistency. *Endangered Habitats League, Inc. v. Cty. of Orange* (2005) 131 Cal. App. 4th 777, 783 (agency may not substitute VC method for determining traffic impacts where plan calls for use of the HCM method). The EIR does not provide this analysis.

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[39] Furthermore, it appears that the FSEIR may be claiming that applicable noise standards are met because residential structures are "generally" located more than 100 feet from the centerline. As discussed, this would not demonstrate that the exterior standard is met at the property line and that outdoor uses are protected. And even if it were appropriate to evaluate impacts at 100 feet from the centerline, the FSEIR's assertion that the protected use (presumably the residence itself) is "generally" more than 100 feet from the centerline suggests that either (1) there are exceptions or (2) the analysis did not in fact verify this claim.

a. The project is inconsistent with BRP noise policies requiring projects to evaluate and to meet *statistical* noise standards; and unless and until Seaside adopts the required BRP Noise Programs it may not approve this project.

The project is inconsistent with the BRP because 1) it does not comply with the BRP's statistical noise standards and 2) the City has failed to adopt those standards.

Mr. Watry has explained that construction noise and stationary noise from the project will violate the statistical noise standards, and that proposed mitigation will not ensure that the project will meet the statistical noise standards. Compliance with these standards is unambiguously required by BRP Noise Policy A-1 and Noise Program A-1.2, which specifically require Seaside to enact the BRP's statistical noise standards (the standards shown in Table 4.5-4) into its noise ordinance and to apply those standards in the Former Fort Ord area.[40] BRP, pp. 412-413. Seaside has not enacted these standards; the only standards in Seaside's noise ordinance are 24-hour CNEL or Ldn standards. Seaside Municipal Code, § 17.30.060(E), Tables 3-3 and 3-4.

Furthermore, FORA bars approval of development entitlements for this project unless and until Seaside actually adopts the Noise Programs as specified in the BRP, i.e., adopts a noise ordinance that contains the statistical noise standards mandated by the BRP:

> No development entitlement shall be approved or conditionally approved within the jurisdiction of any land use agency until the land use agency has taken appropriate action, in the discretion of the land use agency, to adopt the programs specified in the Reuse Plan, the Habitat Management Plan, the Development and Resource Management Plan, the Reuse Plan Environmental Impact Report Mitigation and Monitoring Plan and this Master Resolution applicable to such development entitlement.

Fort Ord Reuse Authority Master Resolution, § 8.02.040.

Contrary to the FSEIR, these standards are clearly relevant to determining significant impacts under CEQA. And, regardless of CEQA's provisions, the Fort Ord Reuse Act makes adoption and application of these standards in the Fort Ord area mandatory as provided by the BRP provisions.

In addition to Noise Policy A-1 and Noise Program A-1.2, Noise Policy B-1 mandates compliance with the statistical noise standards in Table 4.5-4 for existing residences and other existing noise-sensitive uses where feasible and practical. BRP, p. 414. Noise Policy B-2 mandates that new development not adversely affect any existing or proposed uses by complying with the statistical noise standards in Table 4.5-4 for all

[40] The BRP adopts identical standards and policies for Seaside and the County of Monterey, so the entire project areas is subject to the same requirements. BRP, pp. 413-417.

new development. BRP, p. 414. This means that new development may not adversely affect existing uses and that it may not generate noise levels that would adversely affect other portions of the new development. Noise Policy B-5 requires that if it is not feasible or practical to meet the statistical noise standards, the City must either provide noise barriers for new development or ensure that interior standards are met.

The SEIR has not evaluated impacts in terms of statistical noise standards and has not determined feasibility of compliance with these standards. This violates Noise Policy B-3, which requires analysis of impacts and mitigation with reference to statistical noise standards before accepting development applications as complete. The project is not in compliance with the analysis requirements in Noise Policy B-3, and the City cannot conclude that it is in compliance with Noise Policies B-1 and B-2, until the City completes the required analysis and considers feasible mitigation and alternatives.

b. Seaside has failed to adopt the *BRP*'s 24-hour noise standards in its noise ordinance as mandated by BRP Noise Policy A-1 and may not approve the project until it has done so.

BRP Noise Policy A-1 and Programs A-1.1 and A-1.2 mandate that Seaside adopt by ordinance and apply the 24-hour noise standards set out in BRP Table 4.5-3. *See* BRP, pp. 411, 413. Seaside has not done so because the 24-hour noise standards in its ordinance differ from the BRP's standards. *Compare* Seaside Municipal Code, §17.30.060(E), Table 3-4 to BRP Table 4.5-3 (or *compare* DSEIR, Table 4.10-5 to Table 4.10-6, which contain these differing noise standards). For example, Seaside's noise ordinance lacks any standard for passively used open space, whereas the BRP provides that at most a 50 dBA noise level is "normally acceptable." Seaside's ordinance provides that 65 dBA is "conditionally acceptable" for single family residential use, whereas the BRP provides that at most 60 dBA is "conditionally acceptable" for that use.

As discussed, the SEIR is unclear as to the noise standards it uses to determine the significance of project noise impacts and to require mitigation under CEQA, referencing both the Seaside General Plan and noise ordinance standards and the BRP noise standards.[41] DSEIR, pp. 4.10-13 to 4.10-14, 4.10-19 to 4.10-24. Thus, it is impossible to determine to what standards the project would be held or even whether proposed mitigation is feasible. Not only does this violate CEQA, but there can be no substantial evidence that the project would be consistent with the BRP Noise Policy A-1 and Program A-1.1, which require application of the BRP noise standards.

Again, FORA bars approval of development entitlements for this project unless and until Seaside actually adopts the Noise Programs as specified in the BRP, i.e., adopts a noise ordinance that contains the 24-hour noise standards mandated by the BRP. Fort Ord Reuse Authority Master Resolution, § 8.02.040.

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[41] The Seaside General Plan Noise standards are substantially similar to the standards in its noise ordinance. *See* Seaside 2004 General Plan, p. N-5.

c. The project is inconsistent with the BRP policies requiring protection of open space uses from noise.

The BRP contains several policies that mandate evaluation of noise impacts to open space uses and compliance with noise standards for open space receptors. BRP Noise Policies A-1, B-1, B-2, and B-5 require compliance with the 24-hour average noise standards for open space specified in BRP Table 4.5-3 (reproduced in DSEIR as Table 4.10-6). See BRP, pp. 411, 413-414.

As discussed, Seaside has failed to comply with BRP Noise Policy A-1 and Programs A-1.1 and A-1.2 mandating inclusion of the BRP's 24-hour noise standards in the Seaside noise ordinance and application of that standard to projects in Fort Ord. As a result, the Seaside noise ordinance omits the BRP's 50 dBA CNEL standard for passively used open space.

Furthermore, as Mr. Watry explains, the SEIR fails to provide an adequate assessment of the project's compliance with BRP open space noise standards by 1) failing to assess compliance with BRP statistical noise standards, 2) failing to determine 24-hour average noise levels at affected open space proximate to the project and failing to assess compliance with the BRP's 50 CNEL normally acceptable noise standard for open space use, and 3) failing to specify that mitigation must meet relevant noise standards for open space, e.g., the BRP 24-hour average and statistical noise standards. The failure of assessment and mitigation is not only a violation of CEQA, but also of BRP Policy B-3, which requires that an acoustical study be submitted prior to accepting a development application as complete that evaluates a project's compliance with Table 4.5-3 and Table 4.5-4 noise standards and proposes necessary mitigation.

Mr. Watry has explained that construction noise and stationary noise from the project will in fact exceed the statistical noise standards in BRP Table 4.5-4, and that there is no assurance that proposed mitigation will ensure that the project will meet these statistical noise standards or even meet applicable 24-hour average standards. In light of the City's failure to evaluate open space noise impacts and the evidence that the project will not meet open space noise standards, there can be no substantial evidence that the project is consistent with BRP Policies A-1, B-1, B-2, and B-5.

Finally, BRP Noise Policy B-8 bars any noise increase of 3 dBA Ldn or more at the property line where ambient noise already exceeds the normally acceptable open space standard of 50 dBA. BRP, p. 415. The FSEIR indicates that open space noise already exceeds that standard, by claiming that monitored noise at Site 2 represents existing ambient open space noise levels. FSEIR, p. 11.4-1052. As Mr. Watry explains, the SEIR fails to make any determination whether noise levels would increase by 3 dBA at open space locations adjacent to the project or to impose mitigation that would ensure compliance. Thus, there can be no substantial evidence that the project complies with BRP Noise Policy B-8.

d. The project is inconsistent with BRP Policy B-6.

BRP Noise Policy B-6 bars a 5 dBA Ldn noise increase to residential uses caused by new development where ambient noise levels for those residential uses are not above the normally acceptable level in BRP Table 4.4-3. BRP, p. 414. BRP Table 4.4-3 provides that the normally acceptable noise level for single family residential uses is 50-55 dBA Ldn and for multi-family residential use it is 50 to 60 Ldn. BRP, p. 411.

Traffic noise from the project will increase noise by more than 5 dBA at a number of locations, even though the SEIR does not conclude that noise will exceed the 60 dBA Ldn standard. For example:

- noise on 7th Avenue between Gigling Road and Colonel Durham Street will increase by 6.3 dBA under existing with project conditions (DSEIR, Table 4.10-11);

- noise on 8th Street between Inter Garison Road and 6th Avenue will increase by 5.1 dBA under existing with project conditions (DSEIR, Table 4.10-11);

- noise on 7th Avenue between Gigling Road and Colonel Durham Street will increase by 6.4 dBA under 2035 with project conditions (DSEIR, Table 4.10-12).

These noise increases violate BRP Policy B-6.

As Mr. Watry explains, the FSEIR's argument that the noise determination in the DSEIR is 100 feet from the roadway and that there are intervening structures is simply irrelevant. BRP Noise Policy B-6 requires measurement at the property line, and if the noise increase exceeds 5 dBA at 100 feet, the increase will exceed 5 dBA at locations closer to the source. Furthermore, the effect of intervening structures on total noise levels would be the same for both pre-and post-project noise, so the increase in noise would still be 5 dBA regardless of intervening structures.

The FSEIR's argument that provision of interior noise mitigation as required by BRP Noise Policy B-5 would somehow ensure compliance with Policy Noise B-6 is also irrelevant. The two BRP policies are distinct and independent requirements, and are intended to attain different standards. Provision of interior noise mitigation would do nothing to ensure that exterior noise standards are met at the property line.

e. The project is inconsistent with both BRP policies and the Seaside Municipal Code provisions that require noise to be assessed and standards to be met at the property line.

Compliance with exterior noise standards must be determined based on noise levels "measured at the property line of the noise-sensitive land use receiving the noise" under SMC, § 17.30.060(H); *see also* SMC, § 17.30.060E(1)(a) (no use may generate noise in excess of standards "as the noise is measured at the property line of a noise sensitive land use identified in Tables 3-3 and 3-4"). BRP's statistical noise standards and its 24-hour average noise standards, compliance with which is mandated by BRP Noise Policies A-1, B-1, B-2, B-3, and B-5, are expressly "applicable at the property line." BRP PEIR, pp. 411-412, Tables 4.5-3 and 4.5-4. BRP Noise Policies B-6, B-7, and B-8, which bar certain noise increases depending on ambient conditions, are all enforceable as "measured at the property line." BRP, pp. 414-415.

As Mr. Watry explains, the purpose of determining compliance at the property line is in part to protect noise-sensitive outdoor land uses that cannot be protected by building insulation or HVAC systems. Despite this, the SEIR fails to determine traffic noise impacts at the property line of the receiving land uses.

12. The SEIR fails to acknowledge that it would be inconsistent with Municipal Code section 17.30.060(F) to site new noise-sensitive uses where traffic noise causes an exceedance of City standards.

LandWatch objected that the DSEIR fails to acknowledge that Seaside Municipal Code section 17.30.060(F) bars any new noise-sensitive uses in areas where the standards in Table 3-4 (reprinted as DSEIR Table 4.10-5) are or would be exceeded unless mitigation ensures meeting both indoor and outdoor standards, as determined at the property line. Comments PO 208-92, 208-110. Portions of the project would be sited in areas that exceed or will exceed the Table 3-4 standards at the property line. For example, the project would include residential uses on Gigling Road between 8th Avenue and 7th Avenue. DSEIR, Figure 2-16. Traffic noise at 57.9 CNEL at 100 feet from the roadway centerline would exceed the City's 55 CNEL normally acceptable residential standard on that segment. DSEIR, Table 4.10-12; SMC §17.30.060(E) (Table 3-4). Regardless whether this is deemed a significant impact under CEQA, the City must acknowledge that it is an inconsistency with its noise ordinance.

The FSEIR responds by arguing that the noise levels are determined at 100 feet and that there are intervening barriers and that sensitive uses are "generally" located more than 100 feet from the centerline. FSEIR, p. 11.4-1054. This misreads the ordinance, which clearly states that "exterior noise levels shall be measures at the property line of the noise-sensitive land use receiving the noise" in order to "maintain outdoor and indoor noise levels on the receptor site in compliance with Tables 3-3 and 3-4." SMC, § 17.30.060(H), (F).

G. The elimination of references to horse racing as an allowed use in the specific plan does not ensure that horse racing will not be permitted.

At the eleventh hour, staff now proposes to eliminate horse-racing as an allowed use from the specific plan. The specific plan would still permit construction of horse-racing facilities, including the track (now termed a "training track") and the grandstand. Nothing in the proposed conditions of approval would actually ban horse-racing or preclude identifying it as an allowed use in a future interpretation or revision of the specific plan. The applicant would remain free to condition sales of residential properties on acceptance of this potential future use.

The City has prepared an SEIR that assumes that horse-racing would be an allowed use. If horse-racing were identified as an allowed use in a future interpretation or revision of the specific plan, the applicant would likely argue that certification of the SEIR would obviate the need for additional environmental review.

Not only could the City easily identify horse-racing as an allowed use in a future interpretation or revision of the specific plan, regulation of horse-racing could be found to be preempted by statute and state regulation and not subject to a municipal veto. Indeed, a city official has acknowledged as much:

> Malin acknowledged, the racing enterprise could be re-inserted into the plan at some point.
>
> "…In both a conceptual and practical sense, horse racing is a legal business. Conceptually, cities can't generally prohibit legal businesses from operating in a community, particularly those that are as much creatures of state regulation as horse racing is. Conceptually, horse racing could come to almost any city with infrastructure that exists (or may be constructed) to support it. Practically speaking, should the project move forward, it would be very difficult to add horse racing back into the project if homes are sold without that use allowed within the first approvals.

Monterey Bay Partisan, Seaside officials want to remove horse racing from Monterey Downs venture, at least for now, Sept. 5, 2016, available at http://www.montereybaypartisan.com/2016/09/05/seaside-officials-want-to-remove-horse-racing-from-monterey-downs-venture-at-least-for-now.

If the City is serious about precluding horse-racing at the site, it should take steps that would inhibit or effectively ban the use. For example, the City could disallow the construction of a "training-track" and grandstand. The City could acknowledge that the horse-racing use would contribute to substantial adverse environmental impacts to traffic and noise and, accordingly, identify a ban on horse-racing as required mitigation. The City could simply ban horse-racing by ordinance.

If the City does not believe it has the authority to ban horse-racing under state law and does not take the other actions that could inhibit horse-racing, then its elimination of references to horse-racing in the specific plan is a hollow and cynical exercise intended to assuage horse-racing opponents without actually addressing their concerns.

H. The elimination of references to horse racing as an allowed use in the specific plan renders the SEIR's project description unstable.

An adequate project description must be stable and accurate in order to support public participation and informed decision making. Guidelines, § 15124; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193, 197-198. An inaccurate project description vitiates the EIR's analysis; that is, a failure of description causes a failure of analysis. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396-397. An inconsistent project description also vitiates adequate analysis. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654-657, 672. A curtailed and shifting project description that precludes informed public participation and decision making is a prejudicial failure to proceed as required by law. *San Joaquin Raptor v. Merced, supra,* 149 Cal.App.4th at 655, 672.

The last-minute elimination of horse-racing from the specific plan renders the project description prejudicially unstable. The analysis of impacts was expressly predicated on the assumption that horse-racing would occur, and, without that use, the SEIR's analyses are no longer justified. For example, as discussed above, 950 of the project's projected 2,391 on-site jobs are identified as equestrian jobs associated with the Phase 6 construction of the horse-racing facilities. There is no analysis that would support a finding that other uses would replace those jobs. Without those jobs, there would only be 1,441 jobs at buildout, resulting in a jobs/housing ratio of 1,441 jobs/1,280 housing units, a ratio of 1.13. SEIR's analyses that are dependent on a strong jobs/housing ratio are invalid. As discussed above, the project would not meet the BRP jobs/housing goal or contribute to meeting the Seaside goal. A reduction in the jobs/housing ratio would result in increased per capita off-site vehicle trips and aggravate the significant per-capita GHG impact.

The elimination of the horse-racing use, if it is in fact eliminated, is significant new information that requires recirculation of a draft EIR to re-assess impacts that are dependent on the DSEIR's assumptions about race track jobs and land uses. Guidelines, § 15088.5(a).

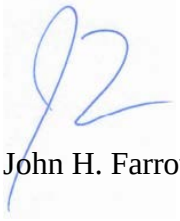
I. The project is inconsistent with the Base Reuse Plan.

Under the Fort Ord Reuse Act, Seaside may not approve a development project that is not consistent with the BRP. Gov. Code, § 67675.8(b)(1). As discussed above, the project is inconsistent with a number BRP noise policies and programs. In addition,

the SEIR admits that it is inconsistent with the BRP Hydrology and Water Quality Policies B-1 and B-2, which policies require additional water supplies and prohibit approval of a development project without an assured long-term water supply. DSEIR, p. 4.9-10; FSEIR 14.4-1020. As discussed above, approval of the project with mitigation that may compel construction of only Phases 1-3 is inconsistent with BRP policies mandating a balanced jobs/housing ratio, including DRMP § 3.11.5.4(b), (c).

Yours sincerely,

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



John H. Farrow

JHF:hs
Cc: Michael Delapa

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EXHIBIT 4

Section 1. Public Services and Utilities

The information in this section describes the condition, capacity, and operating level of the following public services and utilities on Fort Ord and in the jurisdictions surrounding Fort Ord: water supply, wastewater, landfills, schools, law enforcement, fire protection, medical services, recreation, energy, and utilities.

WATER SUPPLY

Fort Ord

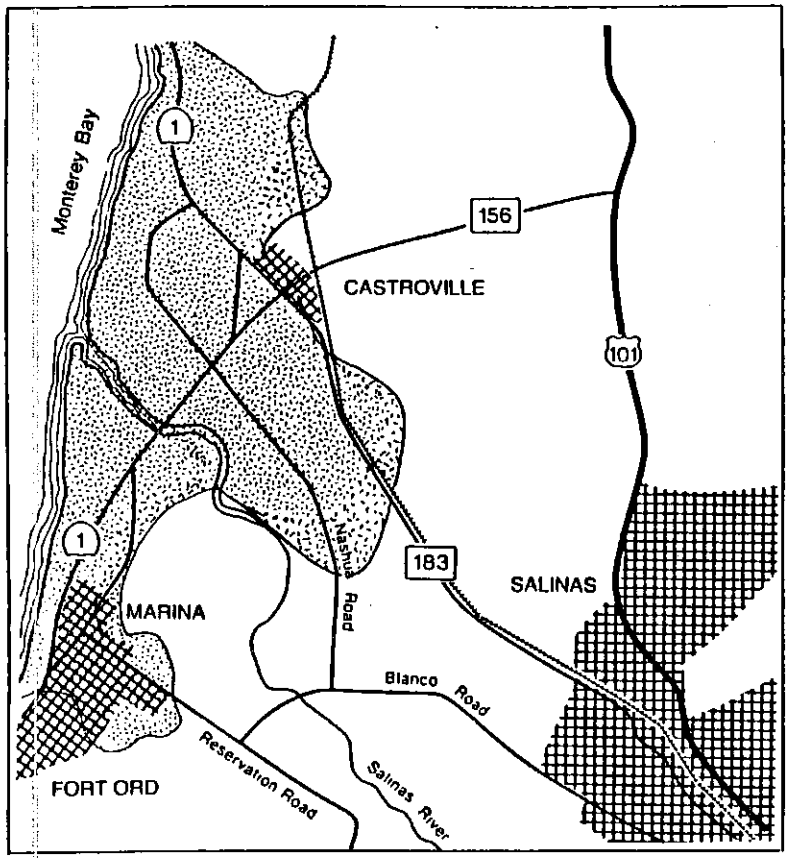
Potable Water System

Water Source. Fort Ord obtains all of its water for use in its potable water system from the Salinas Valley groundwater basin. Concentrations of chlorides (salts) in groundwater have increased in the Fort Ord and Marina areas resulting in the abandonment or deepening of many wells. These increases in chloride concentrations are attributable to seawater intrusion, resulting from groundwater overdraft.

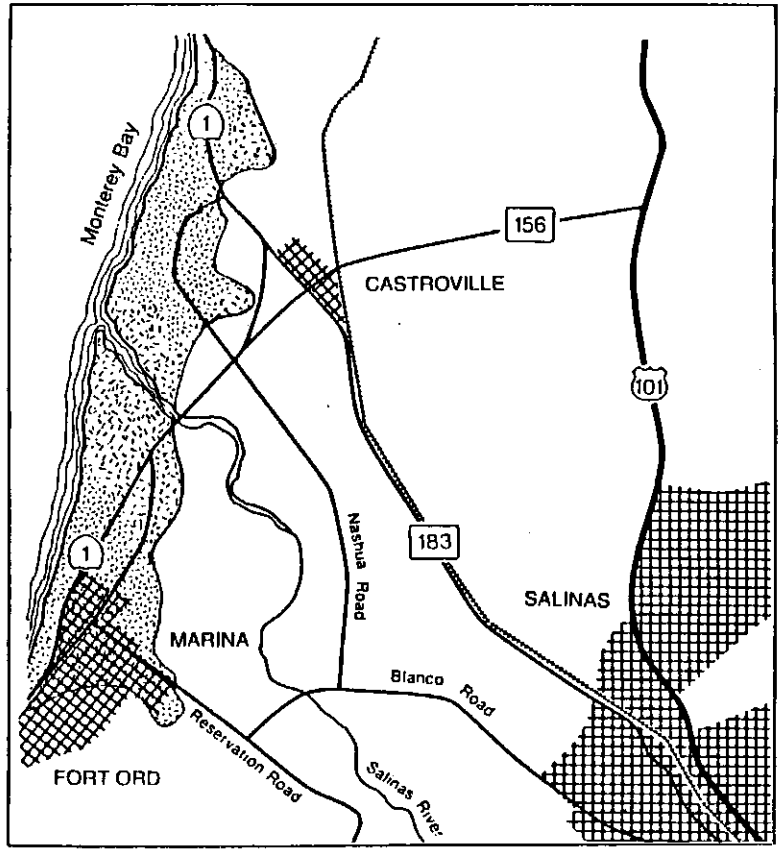
Seawater intrusion has resulted because of a reversal in natural groundwater flow. The coastal groundwater aquifers of the Salinas Valley groundwater basin are hydraulically continuous with the ocean. In its natural state, freshwater migrates seaward. When the pumping rate of these aquifers exceeds the rate of natural replenishment (overdraft), the seaward movement of the freshwater reverses and seawater fills in the aquifer behind the receding freshwater. By 1985, seawater intrusion in the 180-foot aquifer was overlain by 16,000 acres of land, and intrusion into the 400-foot aquifer was overlain by 6,700 acres (Figure 1-1); seawater has been proceeding inland at a rate of 150 acres per year in the 180- and 400-foot groundwater aquifers in the Marina and Fort Ord area (Jones & Stokes Associates 1990).

This seawater intrusion was most responsible for rendering water from 14 on-post wells unusable. Wells 24, 27, and 28, located near Fritzsche Army Airfield (Fritzsche Airfield), also are contaminated with lead and carbon tetrachloride. Wells 27 and 28 were abandoned, and well 24 is on standby active status; however, water from well 24 is used only to supply peak demands because its water must be blended with water from wells 29-32 to be potable. (EA Engineering, Science, and Technology 1991.)

Areas of Seawater Intrusion



180-Foot Aquifer Seawater Intrusion



400-Foot Aquifer Seawater Intrusion

500 mg/l Chlorides
1985 Intrusion

0 1 2
Scale in Miles

Source: Jones & Stokes Associates 1990

Figure 1-1

1-2

Currently, Fort Ord obtains its water from four active wells and one standby well (Figure 1-2), the characteristics of which are listed in Table 1-1 (EA Engineering, Science, and Technology 1991). A study was performed in 1984 by Geotech Consultants to estimate the expected life of wells 29-32. The study was based on five assumptions:

- a well would be considered usable until its chloride concentration reaches 250 milligrams per liter (mg/l), the maximum concentration according to the U.S. Environmental Protection Agency's (EPA's) National Primary Drinking Water Regulation (January 30, 1991);
- the future pumping rate from the four wells would average about 5,200 acre-feet per year (af/yr);
- nearly all the water pumped from the new wells would come from the 400-foot aquifer;
- the physical aquifer parameters would be based primarily on theoretical relationships; and
- no other significant nearby wells would be developed within the 400-foot aquifer.

The study concluded that wells 29-32 would have a useful life of at least 50 years (to 2034). However, water pumping from these wells has exceeded 5,300 af/yr in recent years (Table 1-2) although water conservation measures have reduced water demands. The wells are also perforated in the 180-foot aquifer, though, which may shorten their useful lives to 15 years (Beraz pers. comm.). Based on the groundwater modeling performed as part of this study, 5,000 af/yr was established as a reasonable yield for wells 29-32. Fort Ord would obtain future freshwater supplies from the Salinas Valley Seawater Intrusion Program as described below.

The 900-Foot Aquifer. In addition to the 180-foot and 400-foot aquifers, the 900-foot aquifer has been used only for groundwater by the City of Marina, which has a deep well tapping this water resource. There are no current plans by any jurisdiction to dig additional deep wells to use this aquifer.

Water Rights

Water rights were not specifically addressed in any of the transfer documents during the acquisition of lands for Fort Ord in 1917 (the original purchase date by the government) nor in any of the annexations that occurred afterward.

Appropriated and Riparian Water Rights. California recognizes two doctrines on water rights: appropriative rights and riparian rights. Appropriative water rights are granted

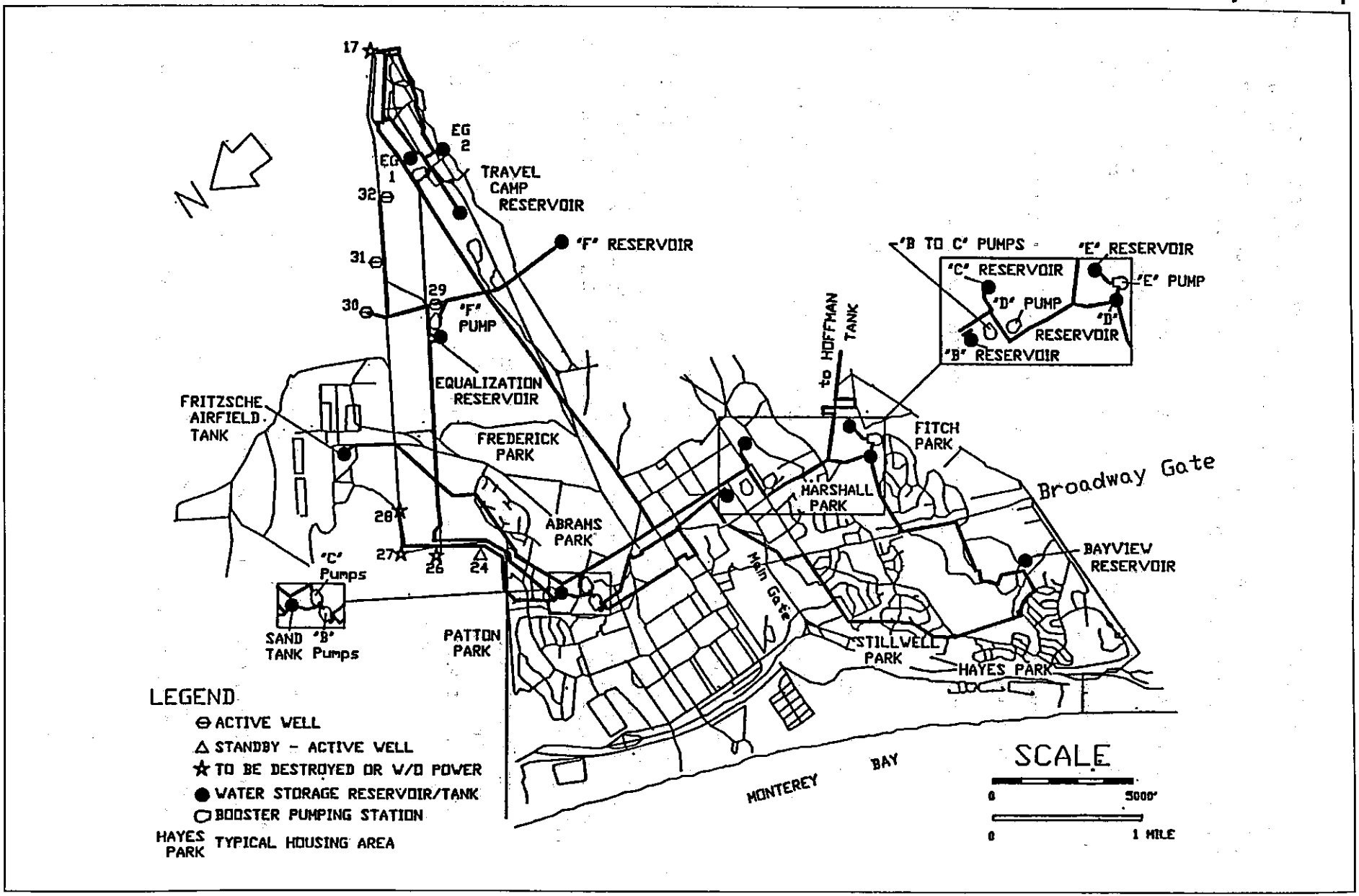

17
EG 2
EG 1
32
TRAVEL CAMP RESERVOIR
"F" RESERVOIR
31
30
29
"F" PUMP
EQUALIZATION RESERVOIR
FRITZSCHE AIRFIELD TANK
FREDERICK PARK
28
27
26
24
"C" Pumps
SAND TANK "B" Pumps
ABRAMS PARK
PATTON PARK
to HOFFMAN TANK
"B TO C" PUMPS
"E" RESERVOIR
"C" RESERVOIR
"E" PUMP
"D" PUMP
"D" RESERVOIR
"B" RESERVOIR
FITCH PARK
HARSHALL PARK
Broadway Gate
BAYVIEW RESERVOIR
Main Gate
STILLWELL PARK
HAYES PARK
MONTEREY BAY
N
LEGEND
ACTIVE WELL
STANDBY - ACTIVE WELL
TO BE DESTROYED OR W/O POWER
WATER STORAGE RESERVOIR/TANK
BOOSTER PUMPING STATION
HAYES PARK TYPICAL HOUSING AREA
SCALE
0 5000'
0 1 MILE

Figure 1-2

Table 1-1. Fort Ord Active Well Characteristics

Well	Production Capacity (gpm)	Depths Screened (feet)	Use
24*	900	176-345	Domestic, military, industrial
29	1,800	315-570	Domestic
30	3,200	315-575	Domestic
31	3,200	285-470	Domestic
32	2,500	260-500	Domestic
GC-1	450	170-200	Golf course, irrigation
Jacks	N/A	N/A	Firefighting, nondomestic
Pilarcitos	N/A	220-360, 500-600	Firefighting, nondomestic

Notes: N/A = not available.
gpm = gallons per minute.

* Standby active status.

Source: EA Engineering, Science and Technology 1991; Beraz pers. comm..

Table 1-2. Fort Ord Groundwater Pumpage (Groundwater Pumped for Potable System) (acre-feet)

	Month												
Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
1980	312	298	340	400	493	716	586	534	501	521	451	414	5,566
1981	392	310	338	470	604	773	735	670	599	553	389	312	6,145
1982	302	294	298	356	546	558	610	598	546	481	327	291	5,207
1983	339	258	302	363	490	605	718	737	620	480	352	302	5,566
1984	348	385	433	549	769	661	806	744	709	518	358	322	6,602
1985	325	332	362	456	697	866	515	475	492	472	359	339	5,690
1986	333	304	336	376	574	600	596	498	481	421	432	430	5,381
1987	381	300	338	379	458	516	530	567	566	419	372	357	5,183
1988	325	323	345	335	358	429	482	490	457	405	382	341	4,672
1989	340	354	346	391	415	517	575	580	456	426	344	352	5,096
1990	380	336	368	403	478	473	547	529	492	472	414	410	5,302

Notes: Source of water for potable system is the Salinas Valley groundwater basin.

All figures are raw production values based on water meter readings provided by Fort Ord.

for a diversion of water for a private use other than to benefit the land adjacent to the water body. Riparian water rights are granted to those who own the land adjacent to a body of water and have the right to use that water.

Fort Ord has not exercised any riparian rights from the Salinas River. A new owner of a riparian parcel would be subject to California State Water Resource Control Board (SWRCB) regulations, and the owner's rights would be superseded by those of all current users of the Salinas River.

Although some of Fort Ord overlies underground aquifers, the usefulness of water rights transferred to a new owner could be in doubt, because the characteristics of the underground aquifer could be in dispute and the aquifer system is threatened by pollution. New owners of the overlying lands would receive the same water rights that Fort Ord has. Those rights derive from the common law concept of using that amount of water that can be reasonably and beneficially used on the overlying land; however, any new owner must be aware that all water rights in California are subject to state regulation.

Reserved Water Rights. The federal government obtains water rights through the reserved water rights doctrine. In 1908, the Supreme Court created the reserved water rights doctrine; when the federal government sets aside public lands to create a federal reservation for a special use, the rights to a sufficient quantity of water required to fulfill the use are reserved by this doctrine. It is unlikely that reserved rights exist because Fort Ord was purchased, not reserved from the public domain.

Transfer of Water Rights. The water rights under which Fort Ord now operates are groundwater rights, which should pass to future nonfederal owners. Because of groundwater overdrafts and seawater intrusion, the value of the rights is questionable. Further, unless covered by recorded documents, each new owner would have only the right to drill and pump on his her own parcel.

Salinas Valley Seawater Intrusion Program. The Salinas Valley Seawater Intrusion Program is a water and distribution project designed to reduce the rate of seawater intrusion into the Salinas Valley groundwater basin and to provide Marina and Fort Ord with a long-term, viable water supply. The proposed project would reduce the rate of seawater intrusion by 53% by relocating coastal groundwater wells inland and using treated wastewater (reclaimed water) for agricultural irrigation. Reclaimed water from the regional wastewater treatment plant would replace approximately 19,000 af of groundwater that is used for agricultural irrigation. Relocating wells would reduce seawater intrusion because pumping inland groundwater would draw much less seawater into the local aquifers than pumping coastal groundwater. (Jones & Stokes Associates 1990.)

The environmental impact report/environmental impact statement (EIR/EIS) phase of the project is almost complete, and if the remaining steps for project approval are accomplished, water from the Salinas Valley Seawater Intrusion Program could be available to the

Fort Ord, Marina, and Castroville areas as early as 1995. The final EIR proposes delivering 6,600 af/yr to Fort Ord. This amount was based on Fort Ord's historic maximum potable water demand of 6,602 af/yr, which was reached in 1984.

Water Treatment. Fort Ord's water treatment plant is located at in the Main Garrison's George Patton Housing Park in Building 4974. The plant consists of a 1 million-gallon reservoir, eight booster pumps, and chlorination and fluoridation facilities. The demand on the water treatment plant has peaked at 13.0 million gallons per day (mgd), but averages 6.0 mgd; therefore, the system has a remaining capacity of approximately 7.0 mgd.

Water Quality. Table 1-3 lists the latest general chemistry analyses for East Garrison wells 17, 24, 29, 30, 31, and 32. The groundwater from these wells is generally of good quality; however, wells 17 and 24 exceed the secondary (recommended) drinking water standard of 500 milligrams per liter (mg/l) for total dissolved solids. Standard additions of chlorine and fluoride are the only treatment required to provide safe potable water.

The 180-foot aquifer in the area of the Main Garrison has been affected by seawater intrusion. In addition, documentation indicates that synthetic chemical compounds have contaminated the groundwater in some parts of Fort Ord. None of the wells that were tested for the potable water system have tested positive for this type of contamination.

An analysis was performed on a water sample from the golf course well in 1991. Results indicated that this well had a total dissolved solids value of 720 mg/l, which exceeds the drinking water standard.

Water Distribution System. The water distribution system on Fort Ord includes pump stations at the well sites and elsewhere in the system storage reservoirs, and a network of distribution mains. The system uses six pump stations and 13 reservoirs to convey water within five pressure zones. A schematic of the Fort Ord potable water distribution system is depicted in Figure 1-3 and is mapped on Figure 1-2. The characteristics of the reservoirs are presented in Table 1-4.

Most of the Fort Ord water mains were installed before 1941 and have been inconsistently maintained. A water system that was installed in 1988 to serve a newly constructed housing area, however, developed approximately 200-300 leaks per year between 1988 and 1990. The system continues to develop leaks and is difficult to maintain because of the hiring freeze imposed on the water, gas, and sewer shop since 1988, and the water maintenance staff has been reduced to two. Because of this reduction in maintenance, the water system now is believed to successfully deliver approximately 98% of water pumped at the wells to customers. Leaks in the system could be resulting in the loss of up to 130 af of water per year.

Table 1-3. Water Quality for Fort Ord Wells and Date Sampled

	Well 17EG April 1990	Well 24 May 1990	Well 29 May 1990	Well 30 May 1990	Well 31 May 1990	Well 32 November 1985	Public Health Standard (maximum)
Constituents (mg/L)							
Dissolved solids	650.00[a]	560.00[a]	370.00	310.00	400.00	431.00	500.00[b]
Hardness	430.00	280.00	190.00	170.00	210.00	142.00	
Calcium	90.00	88.00	54.00	49.00	56.00	64.00	
Magnesium	28.00	15.00	12.00	12.00	17.00	22.00	
Sodium	50.00	60.00	43.00	34.00	46.00	47.00	
Chloride	63.00	170.00	60.00	31.00	47.00	43.00	250.00[b]
Sulfate	170.00	3.70	69.00	68.00	89.00	101.00	250.00[b]
Fluoride	0.45	0.12	0.16	0.17	0.17	0.27	1.40-2.40[c]
Nitrate	<1.00	27.00	3.30	7.50	1.20	0.40	45.00[c]
Constituents (μm/L)							
Iron	<10.00	110.00	95.00	10.00	<10.00	<110.00	300.00[b]
Manganese	520.00	<10.00	<10.00	<10.00	<5.00	95.00	50.00[b]
Arsenic	<10.00	6.10	4.90	4.50	4.80	<5.00	50.00[c]
Barium	<100.00	68.00	15.00	29.00	34.00	58.00	1,000.00[c]
Cadmium	<1.00	<1.00	<1.00	<1.00	<1.00	<0.50	10.00[c]
Chromium	<5.00	18.00	<5.00	25.00	24.00	<25.00	50.00[c]
Lead	16.00	<5.00	<5.00	<5.00	<5.00	<1.00	50.00[c]
Mercury	<0.20	<0.20	<0.20	<0.20	<0.20	<0.20	2.00[c]
Selenium	<10.00	<5.00	<5.00	<5.00	<5.00	<1.00	10.00[c]
Silver	<10.00	<10.00	<10.00	<10.00	<10.00	<25.00	50.00[c]

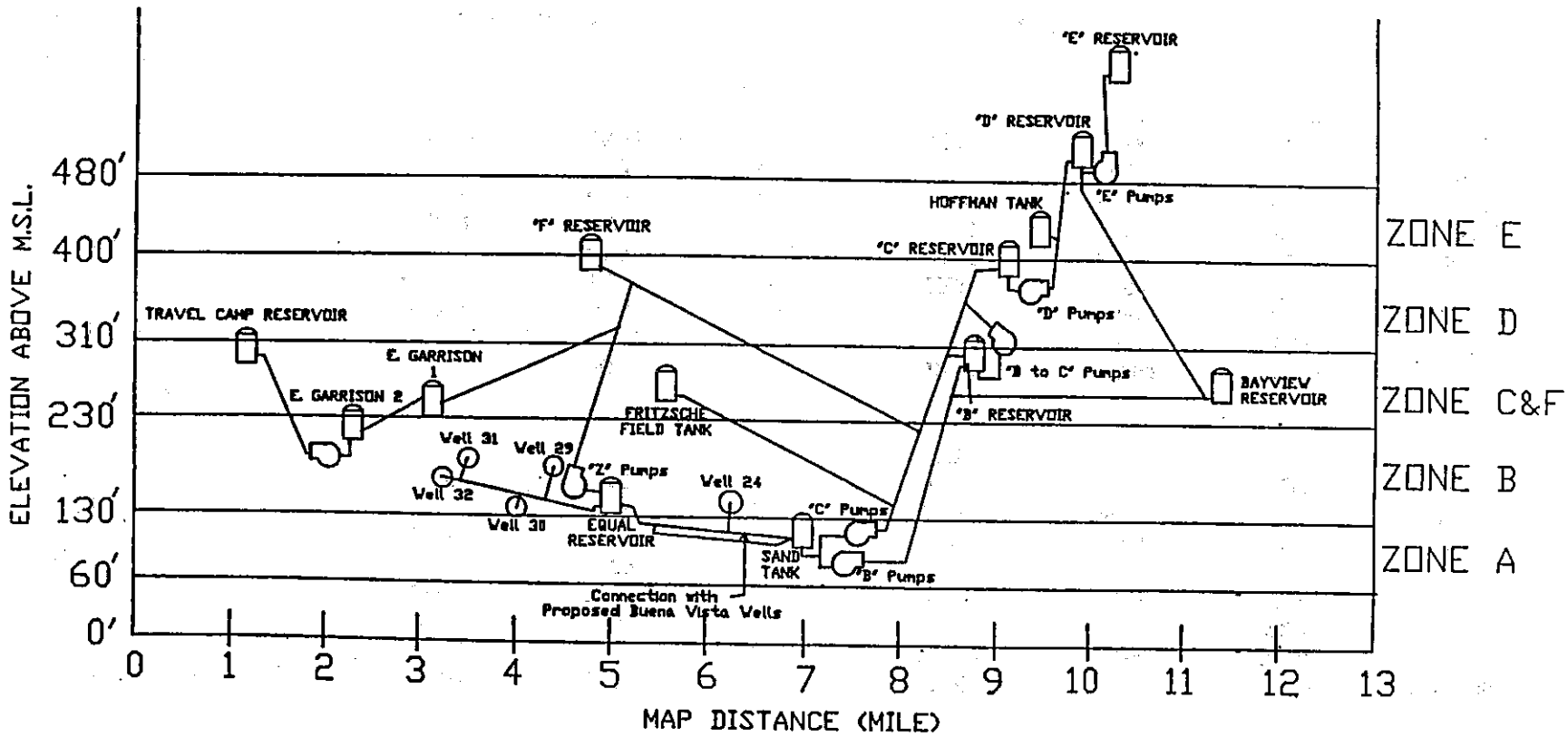
Note: allowable fluoride varies with temperature between 0.8 and 2.4 mg/l, but optimum is about 1.0 mg/l.

[a] Exceeds recommended standard.

[b] Secondary (recommended) drinking water regulation.

[c] Primary (mandatory) drinking water regulation.

Source: Monterey Regional Water Pollution Control Agency 1992.


ELEVATION ABOVE M.S.L.
480'
400'
310'
230'
130'
60'
0'
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1
2
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6
7
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10
11
12
13
MAP DISTANCE (MILE)
"E" RESERVOIR
"D" RESERVOIR
"E" Pumps
HOFFMAN TANK
"F" RESERVOIR
"C" RESERVOIR
"D" Pumps
TRAVEL CAMP RESERVOIR
"B to C" Pumps
BAYVIEW RESERVOIR
E. GARRISON
E. GARRISON 2
"B" RESERVOIR
FRITZSCHE FIELD TANK
Well 31
Well 29
"F" Pumps
Well 24
Well 32
Well 30
"C" Pumps
EQUAL RESERVOIR
SAND TANK
"B" Pumps
Connection with Proposed Buena Vista Wells
ZONE E
ZONE D
ZONE C&F
ZONE B
ZONE A

Figure 1-3

Table 1-4. Fort Ord Potable Water System Storage Reservoir Characteristics

Name	Zone	Type	Capacity (gallons)	Year Built	High-Water Elevation (feet)	Location
Equalization Reservoir	None	Ground, steel	69,000	Unknown	None	Near well A
Sand Tank	None	Ground, reservoir	1,000,000	1954	132	South of Patton Park
Reservoir B	B	Ground, concrete	2,000,000	1954	314	Near Durham Street and 6th Avenue
Bayview Reservoir	B	Ground, steel	200,000	1952-1954	285	Near Hayes Park
Fritzsche Airfield	C	Elevated, steel	300,000	1959	278	Fritzsche Airfield
Reservoir C	C	Ground, concrete	2,000,000	1964	400	Near Gigling Road
Reservoir F	C/F	Ground, concrete	2,000,000	1990	400	Near East Garrison
East Garrison 1	C/F	Ground, steel	200,000	1976	245	West of East Garrison Disposal Yard
East Garrison 2	C/F	Ground, concrete	200,000	1940	237	Southwest of East Garrison Disposal Yard
Travel Camp	C/F	Ground, steel	65,000	Unknown	300	Near East Garrison
Hoffman Tank	D	Ground, steel	60,000	1952-1954	439	Near Eucalyptus Road
Reservoir D	D	Ground, concrete	2,000,000	1954	501	Near Fitch Park
Reservoir E	E	Elevated, steel	250,000	1959	580	Near Fitch Park

Note: Total capacity of storage reservoirs = 10.344 million gallons.

Nonpotable Water System

The nonpotable water system at Fort Ord consists of one well (GC-1) (Table 1-1) that provides water for golf course irrigation. In contrast to the potable water system wells, GC-1 taps the Seaside groundwater basin. The well is located in Hayes Park and has a capacity of 450 gallons per minute (gpm). The pump delivers water either to the golf course reservoir, which has a capacity of 2 million gallons, or to the golf course directly. The amount of groundwater pumped monthly for nonpotable uses is presented in Table 1-5.

Water Conservation

In April 1991, Monterey Peninsula Water Management District (MPWMD) adopted a water conservation ordinance with the stated goal of reducing water use by 10%. Although Fort Ord obtains water from its own wells and is not included in the MPWMD, Fort Ord observes the following provisions of the ordinance:

- leaks must be repaired promptly;
- vehicles and buildings only may be washed using a hose equipped with an automatic shutoff nozzle;
- outdoor paved surfaces may not be hosed;
- decorative fountains must recirculate their water;
- all public buildings and restaurants must display placards or decals promoting water conservation;
- all restaurants shall serve water only on request;
- government agencies and schools shall minimize water use in training exercises;
- no potable water may be used for compaction or dust control if nonpotable is reasonably available. (Jones & Stokes Associates 1991a.)

Fort Ord also has its own water conservation policy, approved by the base commander in 1990, which contains the following provisions:

- landscape irrigation for nonfamily housing units is allowed Monday and Thursday between 6 a.m. and 10 a.m. only;
- landscape irrigation for family housing units is allowed during specific 2 hour periods during 2 days per week only;

Table 1-5. Fort Ord Groundwater Pumpage (Groundwater Pumped for Nonpotable System) (acre-feet)

	Month												
Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
1986	2	10	15	29	15	52	60	53	38	49	38	16	377
1987	7	15	6	49	52	56	52	54	55	35	10	1	392
1988	6	33	30	38	51	55	59	55	40	37	9	7	420
1989	1	5	8	46	51	50	56	58	32	29	47	41	424

Notes: Source of water for nonpotable system is the Seaside groundwater basin.

All figures are raw production values based on water meter readings provided by Fort Ord.

- activated sprinklers may be left in each location for only 20 minutes;
- landscape irrigation must stop when all areas have been watered;
- landscape irrigation is prohibited within 2 days after rainfall;
- irrigation water may not be allowed to move offsite;
- plants should be mulched to reduce evaporation; and
- water supply systems on the post must be checked for leaks, and leaking in-home fixtures must be reported. (Monterey Peninsula Water Management District Ordinance No. 54)

Water use per person on Fort Ord has steadily declined since 1980, except during 1984. In 1980, water consumption for the effective base population was 226 gallons per capita day (gpcd). By 1990, that number had declined to 119 gpcd. Some of this decrease in water demand could be attributed to water conservation efforts.

Monterey County

California-American Water Company

California-American Water Company (Cal-Am) provides water service to Toro Park, east of Fort Ord, and other unincorporated areas from over 30 groundwater wells and two reservoirs on the Carmel River (Haas pers. comm.). MPWMD, whose boundary includes Cal-Am's service area, limited Cal-Am's water production level to 16,744 af/yr in 1990; because of this limit, Cal-Am is under a water connection moratorium. MPWMD's regulation of water use in western Monterey County is further described below. (Monterey County Local Agency Formation Commission 1991.)

Monterey Peninsula Water Management District

MPWMD was created by the California legislature in 1977 following the drought of 1976-1977 and ratified by the voters of the Monterey Peninsula in 1978. The district encompasses approximately 140 square miles, including the Monterey Peninsula and contiguous unincorporated Monterey County. (City of Seaside 1990.)

The district has three main responsibilities:

- manage the development of potable water supplies and delivery of water to customers in the Monterey Peninsula area,
- protect the Monterey Peninsula area from drought effects, and
- protect the quality of the Monterey Peninsula area water resources and the wildlife that depend on them. (City of Seaside 1990.)

MPWMD's most significant responsibility is to protect Monterey Peninsula water quality because of the susceptibility of the groundwater aquifers to seawater intrusion. To accomplish this duty, MPWMD has authority over establishing or expanding local water distribution systems.

In 1981, MPWMD adopted a program to allocate the Monterey Peninsula water resources to the various jurisdictions in the area. When the allocation program was originally adopted, it divided 18,600 af of Cal-Am water among six urban areas in the Monterey Peninsula area and the unincorporated area. The amount of available water supply was determined by projecting water demands in 2000 and considering the safe yield of the groundwater aquifer. (City of Seaside 1990.)

In 1990, MPWMD revised its water production allocations to include 16,744 af/yr for Cal-Am and 3,137 af/yr for non-Cal-Am water agencies. Additional water supplies could become available for MPWMD allocation when Cal-Am finishes developing the Paralta well in Seaside; until then, however, MPWMD has enacted a moratorium on all new water permits within its boundaries. The development of a secure, long-term water supply is the district's main goal and to this end it is pursuing the construction of a dam on the Carmel River. The district also is considering new wells, desalination, and wastewater reclamation alternatives to expand its water supplies. (Monterey County Local Agency Formation Commission 1991.)

City of Marina

The Marina County Water District (MCWD) is responsible for providing the City of Marina with water service. MCWD obtains all of its water from three deep wells (Nos. 10, 11, and 12) and two standby wells (Nos. 8A and 9). The district distributes water to its customers using a system of two storage tanks, a large booster pumping station, and 32 miles of pipelines. (Monterey County Local Agency Formation Commission 1991.) The system serves a population of approximately 6,973 that demands approximately 2,500 af of water per year (Walsh and Felton pers. comms.), and the district also has an agreement to provide

Fort Ord with a reserve water supply. (Monterey County Local Agency Formation Commission 1991.)

Seawater intrusion also has affected MCWD's water supply. Since 1956, the district has acquired or drilled 14 wells but has abandoned most of these because of mechanical failure or unacceptable concentrations of chlorides and/or nitrates. (Monterey County Local Agency Formation Commission 1991.) Although the district has successfully solved its seawater intrusion problem in the short term by tapping the deep groundwater aquifer, MCWD is interested obtaining a more secure water supply through the Salinas Valley Seawater Intrusion Program, which is described above under "Fort Ord".

City of Seaside

Water is supplied to the City of Seaside from two sources. Cal-Am generally serves the southern two-thirds of the city and the Seaside Public Works Department (SPWD) serves the northern third.

Seaside Public Works Department

SPWD serves the northern part of Seaside, which includes approximately 3,000 people that have an average water demand of 0.22 mgd. To serve this demand, SPWD obtains water from three wells, Nos. 1, 2, and 3; the characteristics of these wells are presented in Table 1-6. The department's system also includes two 500,000-gallon storage tanks, which gives this portion of the city almost 5 days of stored water supply (Robinson pers. comm.). The department's system is also within MPWMD and receives a groundwater allocation. Like other areas within the water district, SPWD is under a water connection moratorium.

California-American Water Company

Cal-Am serves the remaining southern two-thirds of Seaside. MPWMD has allocated 2,750 af of Cal-Am's annual water supply to Seaside; this area also is under a water connection moratorium. When Cal-Am finishes developing the Paralta well, which is located in the Seaside area, another 386 af of water will be available for allocation by MPWMD. This would also increase the safe yield of groundwater in the Seaside area to 3,750 af/yr. Refer to "Monterey County" for more discussion of Cal-Am. (Haas pers. comm.)

Table 1-6. City of Seaside Well Characteristics

Well Number	Depth (feet)	Production Capacity (gpm)
1	269	235
2	274	235
3	550	550

Source: Robinson pers. comm.

EXHIBIT 5

AGREEMENT NO. A-06404

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE
MONTEREY COUNTY WATER RESOURCES AGENCY
CONCERNING
ANNEXATION OF FORT ORD INTO ZONES 2 AND 2A
OF THE
MONTEREY COUNTY WATER RESOURCES AGENCY

This Agreement is entered into this 21st day of September, 1993, by and between the Government of the United States of America ("Government"), represented by the United States Army, and the Monterey County Water Resources Agency ("MCWRA"), a political subdivision of the State of California, represented by the Monterey County Board of Supervisors.

1. Purpose and Authority:

a. Purpose: The purpose of this agreement is to provide the terms and conditions under which the Fort Ord Lands will be annexed into the Zones.

b. Authority:

(1) By California law, the MCWRA is responsible for managing the surface water and groundwater resources in the Salinas Valley and providing flood control and water conservation services throughout Monterey County. The authority for the MCWRA to enter into this agreement is cited in California Water Code, Appendix 52-43 (Appendix "A"). The MCWRA has the authority to annex the Fort Ord Lands overlying the Seaside Basin based on a Memorandum Of Agreement between the MCWRA, the MPWMD, and the Pajaro Valley Water Management Agency, dated May 10, 1993 (Appendix "B").

(2) The authority for the Government to enter into this agreement was provided in Public Law 101-510 (National Defense Authorization Act for Fiscal Year 1991), Section 2101, dated November 5, 1990 and amended by Public Law 102-190 (National Defense Authorization Act for Fiscal Years 1992 and 1993), Section 2702, dated December 5, 1991. The funding for the Government to enter into this agreement was provided by Public Law 101-519 (Military Construction Appropriations Act, 1991), dated November 5, 1990.

2. Definitions:

a. United States Army Engineer District, Sacramento, California ("Corps"): A field operating agency of the Army Corps of Engineers, a major command of the Army; the agency that will execute this agreement on behalf of the Government;

b. Fort Ord: An existing Army installation in north Monterey County currently operating under the Army Forces Command; Fort Ord will realign to an enclave under provisions of Public Law 101-510 (Defense Base Closure and Realignment Act of 1990); on October 1, 1994, this installation will no longer be known as Fort Ord and will instead be known as the Presidio of Monterey Annex under the Army Training and Doctrine Command; disposal of excess Fort Ord property pursuant to Public Law 101-510 could begin before October 1, 1994 provided the Army has issued a Record of Decision on the Environmental Impact Statement for the Disposal and Reuse of Fort Ord; parts of Fort Ord were leased on a long term basis prior to the realignment decision;

c. Presidio of Monterey Annex ("POM Annex"): The proposed residual military mission enclave remaining on Fort Ord after its realignment; this annex shall continue operations in support of the Department of Defense and other federal agencies in the Monterey Peninsula area; the boundaries of the POM Annex should be finalized by early 1994;

d. Presidio of Monterey ("POM"): An existing Army installation in Monterey County operating under the Army Forces Command; on October 1, 1994, will be under the Army Training and Doctrine Command; POM is the home of the Defense Language Institute; POM will also be responsible for the proposed POM Annex;

e. Reserve Center ("RC"): An existing Army Reserve Center located on 12 acres of Fort Ord not contiguous to the POM Annex; the RC will remain after the realignment of Fort Ord;

f. Fort Ord Lands: A term denoting all lands within the existing boundaries of Fort Ord including: property needed to support the Army's future mission requirements (POM Annex and RC); property under a long term lease; property awaiting disposal either in a caretaker status or under an interim lease; and property already disposed;

g. Salinas Basin: The Salinas River Groundwater Basin; the Salinas Basin generally underlies the northwestern portion of Fort Ord;

h. Seaside Basin: The Seaside Groundwater Basin; the Seaside Basin generally underlies the southwestern portion of Fort Ord;

i. Monterey Peninsula Water Management District ("MPWMD"): A California Special District created by the State Legislature in 1978 having water management authority over the Seaside Basin;

j. Project: A future, long term, reliable, potable water system for the POM Annex/RC and other areas; the Project will provide at least 6,600 acre-feet per year which will permit all Salinas Basin wells on Fort Ord Lands to be shut down except during

emergencies; stopping all pumping from the Salinas Basin on Fort Ord Lands is necessary to mitigate seawater intrusion; the MCWRA is currently developing such a Project to supply water to the Fort Ord Lands, Marina, Salinas, Toro Park, and perhaps other areas in north Monterey County; it is also possible that another water agency, district, utility, or purveyor could develop a smaller scale Project to supply water for just the Fort Ord Lands;

k. Project Implementation: The potable water system cited in paragraph 2.j. shall be considered "implemented" upon both the completion of construction and the delivery of potable water to POM Annex/RC from the completed water system;

l. Zones: Zones 2 and 2A of the MCWRA which are the zones of benefit for the MCWRA Nacimiento and San Antonio Dams, respectively.

3. Problem and Scope:

a. Fort Ord overlies two groundwater basins, the Salinas Basin and the Seaside Basin. See Appendix "C" for a map. Most of the installation's facilities and all of its potable wells overlie the Salinas Basin. The portion of the installation which overlies the Seaside basin has less development consisting mostly of family housing and recreational facilities. Fort Ord's only active well in the Seaside Basin is a non-potable well to irrigate the golf courses. Fort Ord's peak annual withdrawal from the Salinas basin from 1980 to 1992 was 6,600 acre-feet in 1984; and the peak withdrawal from the Seaside Basin from 1986 to 1989 was 424 acre-feet in 1989.

b. The Salinas Basin has had a problem with seawater intrusion since the 1940's. Seawater intrusion occurs when groundwater levels fall below sea level. This is caused by pumping more water out of an aquifer than is being recharged into it. Pumping by Fort Ord has contributed to this problem, but only to a limited extent as the Fort Ord pumping from the Salinas Basin from 1988 to 1992 averaged only 5,200 acre-feet per year and the estimated Salinas Basin overdraft (amount that pumping exceeds recharge) is about 50,000 acre-feet per year. Seawater intrusion has forced the abandonment of many wells along the coast, and required Fort Ord to relocate their well field inland in 1986. In contrast to the Salinas Basin, the Seaside Basin appears to be in a nearly balanced condition.

c. Because of the magnitude of the seawater intrusion problem, a regional solution is needed. Without a regional solution, Fort Ord's remaining potable wells will eventually become contaminated by seawater. The MCWRA is developing a Project to provide a regional water supply system. The MCWRA is also developing the Castroville Sewage Reclamation/Irrigation Project. Both of these projects are intended to mitigate the effects of seawater intrusion in the Salinas Basin.

d. As long as there is an Army enclave on Fort Ord Lands, the Army will need a reliable potable water supply. In view of the limited life of Fort Ord's remaining potable wells, annexation is prudent because it will permit access to water produced by a future MCWRA project. Additionally, annexation will facilitate the disposal and reuse of Fort Ord Lands, and enhance the market value of any property which is sold. This is because, without annexation, the existing Salinas Basin overdraft could significantly limit the water rights of Fort Ord Lands except for the POM Annex/RC.

e. There have been questions raised over Fort Ord's right to withdraw groundwater from the Salinas Basin. Fort Ord/POM Annex/RC claim certain legal rights to the use of water from the Salinas Basin due to their federal status. However, the MCWRA claims limited regulatory authority over Fort Ord/POM Annex/RC's use of Salinas Basin water with respect to withdrawals of polluted or contaminated groundwater; and the MCWRA also claims ownership rights over water used by Fort Ord/POM Annex/RC which is released into the Salinas Basin from the Nacimiento and San Antonio Dams. Annexation and the terms of this agreement will clarify the water rights of both parties.

4. Terms and Conditions:

a. Execution of this agreement, which includes the Annexation Assembly and Evaluation Report (Appendix "D"), shall be deemed to be a petition by the Government, as the present owner of all Fort Ord Lands, to permit the annexation of the Fort Ord Lands by the MCWRA into Zones 2 and 2A. The MCWRA shall thereafter promptly commence proceedings for such annexation, and will diligently and in good faith pursue such annexation proceedings to completion.

b. The parties have discussed and agreed on payment of a fee by the Government totaling $7,400,000, as authorized by Public Law 101-510 and appropriated by Public Law 101-519. The basis for this fee is discussed in section IV.F.1. of the attached Annexation

Assembly and Evaluation Report. Fort Ord will be annexed into the Zones in consideration of the payment of the fee. The Government shall have no further financial responsibility or obligation of any kind to the MCWRA with respect to existing water project costs, e.g., Nacimiento and San Antonio Reservoirs. Further, the MCWRA releases the Government from any and all claims related to Fort Ord's groundwater withdrawals from the Salinas Basin prior to this agreement, and from any claims related to any Government action that may have caused or contributed to seawater intrusion in the Salinas Basin.

c. After execution of this agreement and until Project Implementation, Fort Ord/POM Annex/RC may withdraw a maximum of 6,600 acre-feet of water per year from the Salinas Basin, provided no more than 5,200 acre-feet per year are withdrawn from the 180-foot aquifer and 400-foot aquifer. The 6,600 and 5,200 acre-feet thresholds correspond to the annual peak (1984) and recent average (1988-1992) amounts of potable water Fort Ord has withdrawn from the Salinas Basin (does not include pumpage from the non-potable golf course well in the Seaside Basin). Groundwater withdrawals from the Salinas Basin by Fort Ord/POM Annex/RC for the purpose of environmental restoration shall not count toward the 6,600 and 5,200 acre-feet thresholds. Additionally, groundwater withdrawals from the non-potable golf course well shall not count toward the 6,600 and 5,200 acre-feet thresholds because this well is located in the Seaside Basin. The MCWRA agrees not to object to any Fort Ord/POM Annex/RC withdrawal under 6,600 acre-feet per year, except in compliance with California Water Code Appendix, Chapter 52, Section 22. If the MCWRA is concerned about a withdrawal, the MCWRA will first notify the Fort Ord/POM Annex Commander. The parties agree to make every effort to first resolve seawater intrusion disputes through mutual agreement. In any event, the MCWRA, after notice from the Fort Ord/POM Annex Commander, will not object to withdrawals in support of war, national emergency, contingency operation, troop mobilization, or unexpected mission requirements, and such withdrawals shall not count toward the 6,600 and 5,200 acre-feet thresholds. The Government will develop a water conservation program at Fort Ord/POM Annex/RC and will institute, in its discretion, measures to conserve water. The Government will participate in MCWRA water conservation initiatives and programs as mutually agreed by the parties.

d. Until Project Implementation, Fort Ord/POM Annex shall have exclusive ownership and operation of potable wells #24, #29, #30, #31, #32, Jacks well, and Pilarcitos well in the Salinas Basin, and the non-potable golf course well #1 in the Seaside Basin. See Appendix "C" for the locations of these wells. Jacks well, Pilarcitos well, and well #24 are inactive; well #32 has

recently failed; and the rest are active. The MCWRA agrees not to object to Fort Ord/POM Annex/RC replacing any existing well or adding any new well on Fort Ord Lands subject to the conditions described in paragraph 4.c. above. Also until Project Implementation, Fort Ord/POM Annex/RC shall be the sole user of the aforementioned wells, provided that the Government, in its sole discretion, may permit the use of the Salinas Basin wells by others for use on Fort Ord Lands, or may provide water from the Salinas Basin wells to others on Fort Ord Lands in connection with any reuse plans. The Government shall retain all reasonable and necessary utilities and reserve all necessary easements to operate and maintain all Fort Ord/POM Annex/RC wells. After Project Implementation, Fort Ord/POM Annex shall retain ownership of the aforementioned wells, and the Government agrees to stop pumping from the Salinas Basin wells except for an emergency such as fire fighting or a situation as described at the end of paragraph 4.c. above. Project Implementation shall be no cause to curtail or stop pumping from any Seaside Basin well on Fort Ord Lands.

e. The Government will not pay any MCWRA assessments (such as standby charges, water delivery charges, water project assessments, etc.) until a MCWRA developed Project is implemented. This applies to not only the portions of Fort Ord retained by the Army, but also to any other portions of Fort Ord transferred to federal entities. See paragraphs 4.j.(3) and 4.j.(4) for a discussion of these future assessments.

f. The annexation into the Zones shall provide the Government with appropriate representation in Zone administration and decision making.

g. Should future litigation, regulation or other unforeseen action diminish the total water supply available to the MCWRA, the MCWRA agrees that it will consult with the Fort Ord/POM Annex Commander. Also, in such an event, the MCWRA agrees to exercise its powers in a manner such that Fort Ord/POM Annex/RC shall be no more severely affected in a proportional sense than the other members of the Zones.

h. If prior to Project Implementation, any Fort Ord/POM Annex well (including any located in the Seaside Basin) becomes contaminated with seawater, or is adversely affected by regulatory or legal action, the MCWRA: shall cooperate with the Government in finding an interim water supply; shall assist the Government in any permit processes necessary to obtain such an interim water supply; and shall provide the same services to the Government as it would to any other municipal water supplier in the Zones under similar circumstances. The Government will bear the costs of obtaining

such an interim water supply. Such costs will not include the cost of MCWRA staff time in providing services to the Government hereunder. The MCWRA will continue to monitor the rate of seawater intrusion, and will keep the Fort Ord/POM Annex Commander informed as to: the rate of seawater intrusion; the progress of plans for its Project; and the estimated remaining life of the Fort Ord/POM Annex wells. The MCWRA shall pass to the Fort Ord/POM Annex Commander any information they may obtain related to the continuing yield of Fort Ord/POM Annex wells located in the Seaside Basin.

i. As part of the disposal of Fort Ord, the Government is considering transferring the ownership and operation of the Fort Ord wells and water distribution system to a successor water purveyor, utility, or agency. Under such a transfer, the MCWRA agrees that the Government, in its sole discretion, may transfer its applicable water rights under this agreement to the successor water purveyor, utility, or agency. The MCWRA also agrees not to object to such a successor obtaining or developing a water supply from outside the Salinas Basin for the Fort Ord Lands.

j. If the opportunity arises and it is in the Government's best interests, the Government, in its sole discretion, may participate in a Project developed by an organization other than the MCWRA. In any event, Government participation in a MCWRA developed Project would be contingent on the following:

(1) The MCWRA shall, upon Project Implementation, continue to provide water and related services to Fort Ord/POM Annex/RC and shall provide for Government representation in MCWRA decisions affecting Fort Ord/POM Annex/RC, and in MCWRA's administration of the Project.

(2) The water allocation to be made available to POM Annex/RC from the Project shall be based only on the water needed to support the Army's future, long term mission requirements, or as otherwise agreed to by the parties. By the time of Project Implementation, all excess Fort Ord Lands should have been disposed. The water allocation to be made available to the disposed property from the Project shall be an issue between these property owners and the MCWRA.

(3) The capital cost for the Project shall be distributed among all properties within the Zones in an equitable manner. The Government would favorably consider a funding plan similar to the MCWRA's proposed funding plan for the Castroville Sewage Reclamation/Irrigation project in which approximately 50 percent of the capital cost is funded by the MCWRA members receiving the water, and 50 percent is funded by other members in

the Zones. An acceptable funding plan will also require that the capital cost paid by each member receiving water from the Project generally be proportional to their water allocation from the system. In any funding plan, the Government will reserve the right to pay the capital cost through either periodic assessments, or by a lump sum amount. The Government does not intend to be a party to any agreement in which military appropriations fund an inequitable portion of the capital cost of the Project. The $7,400,000 annexation fee shall not count toward the Government's share of the Project's capital cost.

(4) The MCWRA's cost to operate and maintain (O&M) the Project should be distributed on the basis of water usage or allocation. If the MCWRA proposes to distribute O&M costs on the basis of property area, then the Government only intends to pay such an assessment and any applicable standby charges on the Fort Ord Lands needed to support Army missions, i.e., POM Annex and RC. The Government will not pay O&M assessments or standby charges for any Fort Ord property in a caretaker status awaiting disposal. Any federal entities which have acquired portions of Fort Ord will not pay standby charges on property which is unsuitable for development.

(5) Prior to either the initiation or commitment of any military appropriations to the Project by the Government, the MCWRA shall complete all appropriate feasibility studies and environmental reviews. With respect to only Fort Ord Lands under Army control, participation in the Project, or any other water supply project is subject to compliance with applicable federal laws and regulations, e.g., Army Regulation 420-41 and Federal acquisition regulations; and subject to final review and approval by the Government.

(6) As Fort Ord/POM Annex/RC will, upon Project Implementation, rely on the MCWRA's ability to provide potable water, the MCWRA shall defend the rights of Fort Ord/POM Annex/RC to a water supply upon implementation of the Project as though those rights were its own.

5. Funding:

a. The Government hereby obligates, pursuant to section 2702 of Public Law 102-190, $7,400,000 for the annexation fee, the basis of which is set forth in Appendix D, section IV.F.1. Upon completion of the annexation, the Government shall make payment to the MCWRA in the amount of $7,400,000.

b. The $7,400,000 annexation fee shall be the maximum Government payment in consideration for the annexation of the Fort Ord Lands and the execution of this agreement.

c. The parties recognize that this agreement is subject to the availability of funds provided by Congress.

6. Duration of Agreement:

a. If the Government decides to participate in a Project developed by an organization other than the MCWRA pursuant to paragraph 4.j. of this agreement, the MCWRA agrees to either terminate this agreement or negotiate modifications to it if so requested by the Government.

b. In the event the Army ends its presence at Fort Ord, the MCWRA agrees to either terminate this agreement or negotiate modifications to it if so requested by the Government.

c. If Fort Ord has not been annexed to the Zones by September 30, 1995, the MCWRA agrees to either terminate this agreement or negotiate modifications to it if so requested by the Government.

d. If the MCWRA has not achieved reasonable progress by December 31, 1999, toward implementation of a MCWRA developed project; or a MCWRA developed Project has not been implemented by December 31, 1999, and the Government is not convinced that the MCWRA can achieve Project Implementation within a time frame deemed reasonable by the Government, then the MCWRA agrees to either terminate this agreement or negotiate modifications to it if so requested by the Government.

e. In the event this Agreement is terminated before the annexation has been completed, the MCWRA, in its sole discretion, may continue with the annexation; however, in such circumstance, the Government shall not make any payment for such annexation. In the event this agreement is terminated after the Fort Ord Lands have been annexed into the Zones, the Government will not demand return of the payment. In the event this agreement is terminated by the Government pursuant to any of the above conditions, the MCWRA agrees not to file any claim against the Government related to the termination.

SUBJECT: Annexation of Fort Ord into Zones 2 and 2A of the Monterey County Water Resources Agency

7. Binding on Successors: This agreement shall be binding upon and shall inure to the benefit of the non-federal successors and assigns of the Government's interest in the property now known and referred to as Fort Ord, California, except that this agreement shall not exempt any such non-federal successor or assign, whether of fee title or some lesser interest in the property, from any ordinance or other regulation enacted by the MCWRA or from any assessment, charge, tax, or other monetary exaction levied by the MCWRA. All such non-federal successors and assigns shall be subject to regulation and be subject to assessment, charge, tax, or other monetary exaction to the extent allowed by law at the time such enactment or levy is in effect.

FOR THE UNITED STATES OF AMERICA

Acting Assistant Secretary of the Army for Installations, Logistics and Environment

9/10/93
Date

FOR THE MONTEREY COUNTY WATER RESOURCES AGENCY

Monterey County Board of Supervisors

September 21, 1993
Date

Appendices:

A - California Water Code, Appendix 52-43
B - Addendum No. 1 to the Memorandum Of Agreement Between the MCWRA, the Monterey Peninsula Water Management District, and the Pajaro Valley Water Management Agency
C - Location of the Existing Wells
D - Annexation Assembly and Evaluation Report

§ 52–43. Annexation to zones

Sec. 43. (a) In addition, or as an alternative, to the procedures for amending zones described in Section 7, any territory in the agency lying within the watershed within which a zone is situated may be annexed to that zone pursuant to this section. Territory which is in, or annexed to, one zone may be annexed to another zone pursuant to this section.

(b) The following applies with respect to the annexation of new territory to any zone pursuant to this section:

(1) (A) A petition for annexation by election signed by 25 percent of the freeholders residing in the territory proposed to be annexed as shown by the last equalized assessment roll of the county shall be presented to the board.

(B) The petition shall designate specifically the boundaries of the territory proposed to be annexed and its assessed valuation as shown by the last equalized assessment roll and shall ask that the territory be annexed to the zone. The petition shall be accompanied by a bond in the sum of not less than one hundred dollars ($100), to be approved by the board and filed with the clerk of the board as security for the payment by the petitioners of the reasonable cost of the election on annexation, in the event that at the election less than a majority of the votes cast are in favor of annexation. The petition shall be verified by the affidavit of one of the petitioners.

(C) The petitioner shall be published by the petitioners for at least two weeks preceding its hearing in a newspaper of general circulation published in the zone, if there is one, or, if not, in a newspaper of general circulation published in the agency, together with a notice stating the number of signers of the petition, the time when the petition will be presented to the board and that all persons interested may appear and be heard. It shall not be necessary to publish the names of the signers.

(D) At the time specified for the hearing, the board shall hear the petition and may adjourn the hearing from time to time. Upon final hearing of the petition, the board, if it approves the petition as originally presented or in a modified form, shall make an order describing the exterior boundaries of the territory proposed to be annexed and ordering that an election be held in such territory for the purpose of determining whether or not the territory shall be annexed to the zone. The order shall fix the day of the election, which shall be within 60 days from the date of the order, and shall show the boundaries of the territory proposed to be annexed to the zone and shall set forth the measure to be submitted to the voters of such territory and shall designate the precincts, polling places and election officers for such election and state the times between which the polls shall be open. The order shall be published pursuant to Section 6066 of the Government Code. This order shall be entered in the minutes and is conclusive evidence of a due presentation of a proper petition, and of the fact that each of the petitioners was, at the time of the signing and presentation of the petition, qualified to sign.

(E) The election shall be held and conducted as provided in Chapter 1 (commencing with section 22000) of Part 1 of Division 12 of the Elections Code and sample ballots and polling place cards shall be mailed as provided in section 10012 of the Elections Code. If a majority of the votes in the territory proposed to be annexed at an election called therein by the board for that purpose are in favor of the annexation, the clerk of the board shall make and cause to be entered in the minutes and endorsed on the petition an order approving the petition and the petition shall be filed. The entry is conclusive evidence of the fact and regularity of all prior proceedings of every kind required by law and of the facts stated in the entry. The board at its next regular meeting after the entry shall, by an order, alter the boundaries of the zone and annex to it the territory described in the petition. The order of the board is conclusive evidence of the validity of all prior proceedings leading up to the annexation and recited in the order, and from and after the order the territory is part of the zone. If, at the election, less a majority of the votes in a territory proposed to be annexed are in favor of the annexation of the territory to the zone, the signers of the petition shall, within 10 days after the canvassing of the votes of the election, pay to the board the reasonable cost of the election and, if not paid within 10 days, the board may sue on the bond to recover the cost of the election. If the result of the election is against annexation, the board shall, by order, disapprove the petition and enter the order in its minutes. No other proceeding shall be taken in relation thereto until the expiration of six months from the presentation of the petition, except to collect the costs of the election.

(2) (A) A petition for annexation without election signed by the owners of real property in the territory proposed to be annexed which real property represents at least 75 percent of the total assessed valuation of real property in the territory as shown by the last equalized county assessment roll, shall be presented to the board.

(B) The petition shall designate specifically the boundaries of the territory and the assessed valuation of real property therein as shown by the last equalized county assessment roll and shall show the amount of real property owned by each of the petitioners and its assessed valuation as shown by the last equalized county assessment roll. The petition shall ask that the territory be annexed to the zone. The petition shall be verified by the affidavit of one of the petitioners.

(C) The petition shall be published by petitioners at least two weeks preceding the hearing in a newspaper of general circulation published in the zone, if there is one, or, if not, in a newspaper of general circulation published in the agency. With the petition there shall be published a notice stating the number of signers of the petition, the time when the petition will be presented to the board and stating that all persons interested may appear and be heard. It shall not be necessary to publish the names of the signers. A printed copy of the petition and notice as so published shall be mailed pursuant to Sections 53520 to 53523, inclusive, of the Government Code.

(D) At the time designated the board shall hear the petition and any person interested, and may adjourn the hearing from time to time. Upon the hearing of the petition, the board shall determine whether or not it is in the best interests of the zone and the territory that the territory be annexed to the zone and the board may modify the boundaries of the territory proposed to be annexed as set forth in the petition by decreasing the area of the territory. If the board upon final hearing determines that it is in the best interests of the zone and of the territory proposed to be annexed that the territory be annexed, it shall make an order describing the boundaries of the territory proposed to be annexed and shall alter the boundaries of the zone and annex to it the territory described in the petition and the territory is then a part of the zone.

(3) A petition for annexation without election signed by 100 percent of the owners of real property in the territory proposed to be annexed may be presented to the board. The petition shall designate specifically the boundaries of the territory and shall ask that the territory be annexed to the zone. The petition shall be verified by the affidavit of one of the petitioners. The board shall determine, upon reviewing the petition, whether or not it is in the best interest of the zone and the territory that the territory be annexed to the zone. The board may modify the boundaries of the territory proposed to be annexed as stated in the petition by decreasing the area of the territory. If the board determines that it is in the best interest of the zone and of the territory proposed to be annexed that the territory be annexed, the board shall make an order describing the boundaries of the territory proposed to be annexed and shall alter the boundaries of the zone and annex to it the territory described in the petition, and the territory is then a part of the zone.

(4) No petition or request for annexation pursuant to paragraphs (1) to (3), inclusive, may be accepted by the board if a zone annexation petition involving any of the same territory is pending before it for annexation to the same zone.

(5) An order for annexation may be by ordinance or resolution. Whenever any new territory is annexed to a zone, the territory thereupon becomes subject to all the liabilities and entitled to all the benefits of the zone. Any order for annexation may provide for, or be made subject to, the payment of a fixed or determinable amount of money for the acquisition, transfer, use, or right of use of all or any part of the existing property, real or personal, of the zone. The board may provide that payment of the amounts shall be either: (1) in lump sums or (2) in semiannual installments with interest thereon at a rate not to exceed 12 percent over a period not to exceed 10 years beginning on July 1 following the next succeeding March 1. If the payment is in semiannual installments, the board shall provide in the ordinance that the total of each sum to be paid by each parcel shall constitute a lien on the parcel as of noon on the next succeeding March 1, the same as the lien for general agency and zone taxes; that the semiannual installments shall be paid and collected at the same time and in the same manner and by the same persons as, and together with and not separately from, general agency and zone taxes and shall be delinquent at the same time and thereafter subject to the same thereafter sell, lease, or otherwise dispose of the property in the manner prescribed by law for counties.

(Stats.1990, c. 1159 (S.B.2580), § 41.)

Historical and Statutory Notes

Derivation: Former § 52-31, enacted by Stats.1947, c. 699, § 31.

A

ADDENDUM NO. 1 TO MEMORANDUM OF AGREEMENT BETWEEN THE MONTEREY COUNTY WATER RESOURCES AGENCY, THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND THE PAJARO VALLEY WATER MANAGEMENT AGENCY

This is Addendum No. 1 to the memorandum of agreement (MOA) between and among the Monterey County Water Resources Agency (MCWRA), the Monterey Peninsula Water Management District (MPWMD) and the Pajaro Valley Water Management Agency (PVWMA), dated December 15, 1991. The date of this addendum for reference purposes is September 28, 1992.

RECITALS

This addendum to the MOA is entered into in light of the following facts:

A. MCWRA is developing a Seawater Intrusion Program (SIP) to mitigate the effects of seawater intrusion into the groundwater basin along the coast under Ft. Ord, Marina, and the Castroville area. This program has been in the planning stages for several years. As part of this program, it has been proposed that pumping from existing groundwater wells supplying Fort Ord and the Marina County Water District (MCWD) be curtailed or eliminated, the construction of additional wells in the seawater intrusion area be limited or prohibited, and a replacement potable water supply be provided to Fort Ord and the MCWD by MCWRA, from wells to be constructed in the Salinas Valley. In order to control pumping from existing wells, MCWRA may acquire the existing wells. MCWRA may at some time seek to levy assessments within the subject area, to impose charges for water provided to the subject area, and to raise revenues from within the subject area in other ways, in order to operate, maintain, and improve the SIP in that area. MCWRA decisions on whether to proceed with this project will be made in the future.

B. MPWMD has an interest in this part of the SIP, in that part of Fort Ord and adjacent areas are within MPWMD's boundaries. Nevertheless, MPWMD does not wish to participate in the SIP, and does not wish to impede its implementation.

C. The impending closure of Ft. Ord calls for additional coordination among the three parties to this MOA.

D. The Board of Directors and/or Board of Supervisors of the Monterey County Water Resources Agency has requested changes in the original MOA.

APPENDIX B

AGREEMENTS

1. Consent to project within territory of Ft. Ord. The parties hereto agree that MCWRA may carry out the SIP within the territory presently occupied by Fort Ord and northwards along the coast, may acquire existing wells drawing water from the Salinas Valley and other property within the territory, may provide water to the territory in connection with the SIP, and may exercise any regulatory authority within that territory as may be needed in connection with the SIP and may levy assessments and impose charges in connection with the SIP for water provided within such territory, without any further compliance with the terms of the MOA, notwithstanding that any part of such territory may be located within the boundaries of MPWMD.

2. Future expansion of MPWMD boundaries. If MPWMD boundaries are expanded to include additional territory involved in the SIP, MPWMD will not object to the continued operation of the SIP in that area.

3. Coordination of programs and activities in connection with closure of Fort Ord. The MCWRA, PVWMA, and MPWMD will coordinate programs related to the closure of Fort Ord and will cooperate in the implementation of future developments within the Fort Ord area. In anticipation that a portion of the future water delivery system to the Fort Ord area will be located within the MPWMD area and that the water supply for that system will be developed from the MCWRA area which is outside of the MPWMD area, the MPWMD and the MCWRA will comply with one another's ordinances as follows:

(a) The MCWRA shall have exclusive authority to regulate water delivery systems that deliver water to the area that is both within the present Fort Ord boundaries and within the MPWMD boundaries in existence at the time of the regulation, and the MPWMD will comply with any such ordinance enacted by the MCWRA.

(b) The MPWMD shall have exclusive authority to regulate the management of the Seaside groundwater basin within the present Fort Ord boundaries, and the MCWRA will comply with any such ordinance enacted by the MPWMD.

(c) This Memorandum of Agreement does not commit the MCWRA to provide any specific quantity of water to Fort Ord or to any portion of it, nor does it commit the MCWRA to provide any water to Fort Ord from the Salinas Valley Groundwater Basin. It also does not give to an other agency the authority to compel provision of water to Fort Ord.

4. Deletion of paragraph 18. Paragraph 18 is deleted from the original MOA.

(MOA.ADD - 3/15/93)

B

5. Deletion of paragraph 19. Paragraph 19 is deleted from the original MOA.

IN WITNESS WHEREOF, the parties execute this memorandum of agreement as follows:

MONTEREY COUNTY WATER RESOURCES AGENCY:

Dated: May 25, 1993 By _____
Chair, Board of Supervisors

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT:

Dated: 15 APRIL 1993 By _____
Chair, Board of Directors

PAJARO VALLEY WATER MANAGEMENT AGENCY:

Dated: 7/14/93 By _____
Chair, Board of Directors

* *

Approved as to form:

_____
Counsel for MCWRA

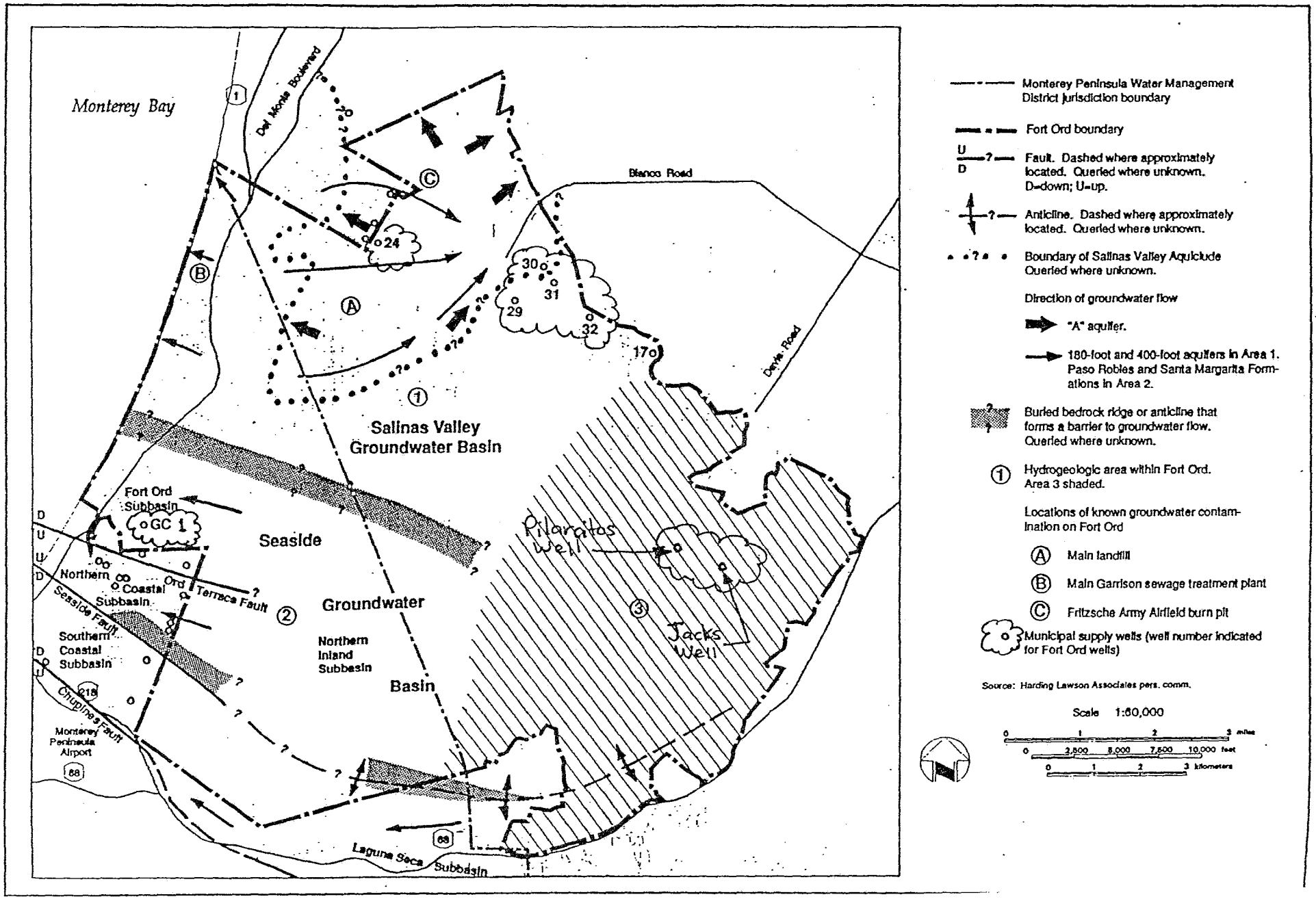
Dated: 5/6/93

Approved as to form:

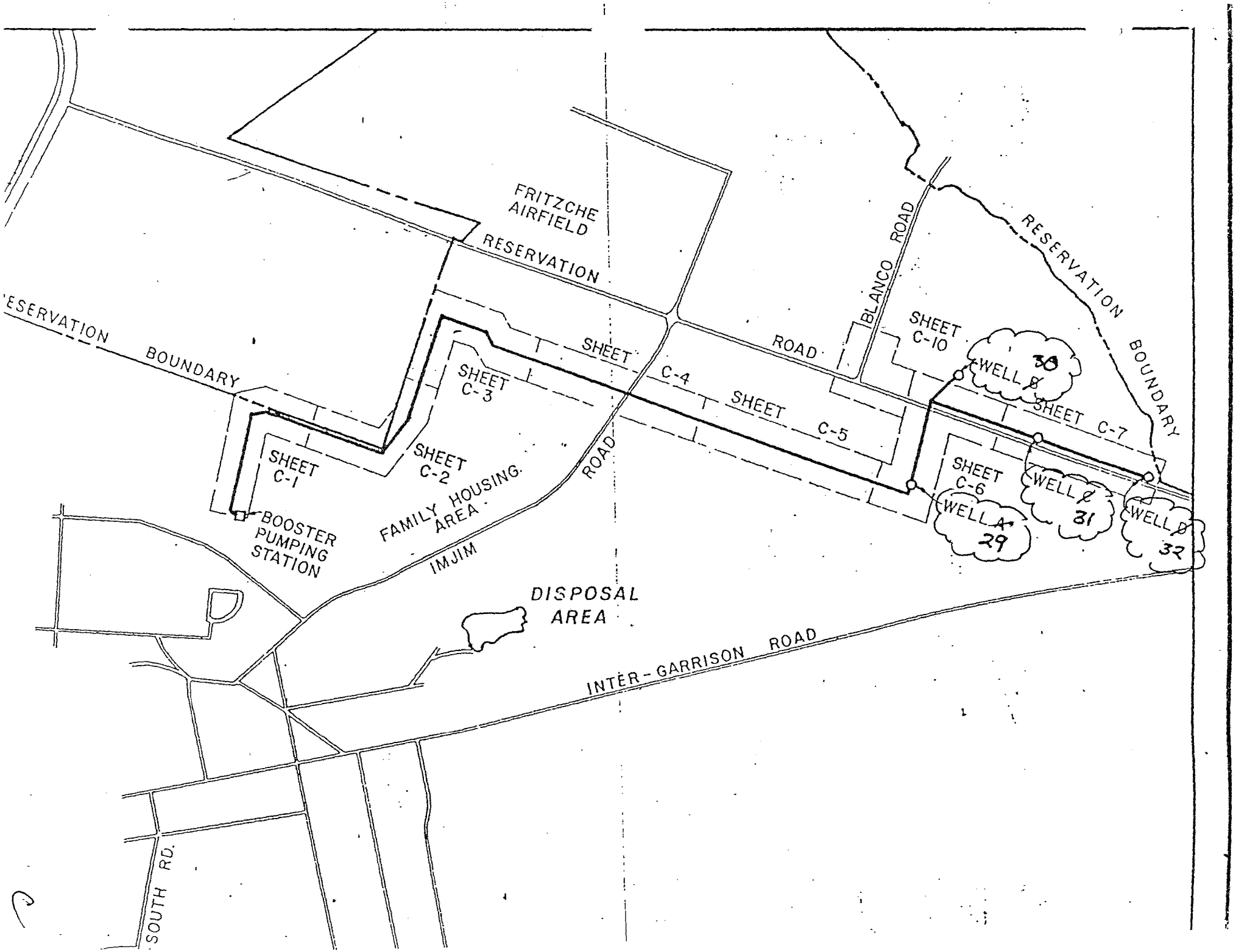
_____
Counsel for MPWMD and PVWMA

Dated: April 7, 1993

Hydrogeologic Conditions in the Fort Ord Vicinity



APPENDIX C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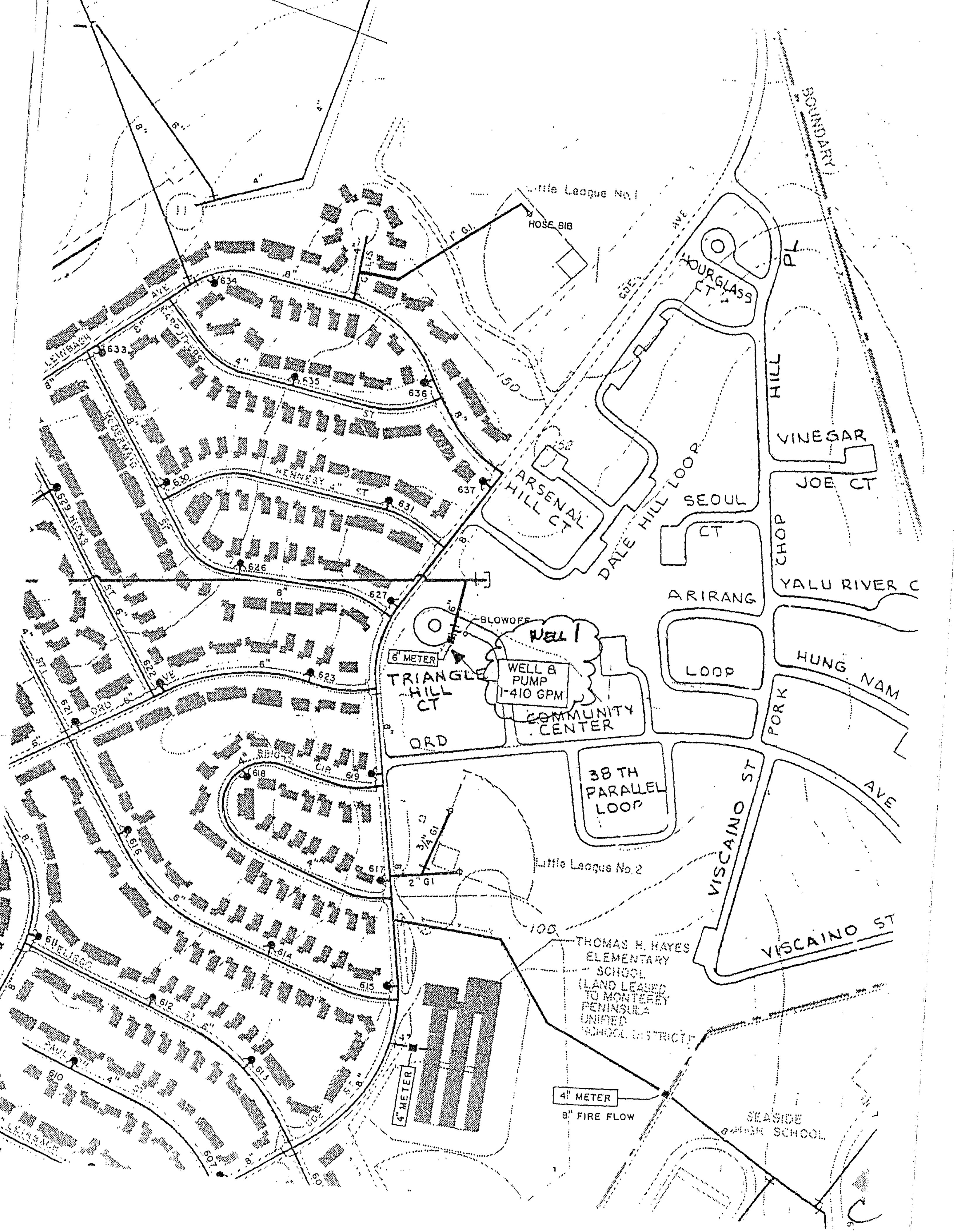
RESERVATION
RESERVATION BOUNDARY
BLANCO ROAD
RESERVATION BOUNDARY
SHEET C-10
WELL 30
ROAD
SHEET C-4
SHEET C-5
SHEET C-7
SHEET C-3
SHEET C-2
SHEET C-1
SHEET C-6
WELL 31
WELL 29
WELL 32
BOOSTER PUMPING STATION
FAMILY HOUSING AREA
IMJIM ROAD
DISPOSAL AREA
INTER-GARRISON ROAD
SOUTH RD.


BOUNDARY
Little League No.1
HOSE BIB
1" GI
HOURGLASS CT
PL
HILL
CHOP
VINEGAR
JOE CT
ARSENAL HILL CT
DALE HILL LOOP
SEOUL
CT
YALU RIVER C
ARIRANG
LOOP
HUNG NAM
PORK
AVE
BLOWOFF
WELL 1
6" METER
TRIANGLE HILL CT
WELL & PUMP
1-410 GPM
COMMUNITY CENTER
ORD
38 TH PARALLEL LOOP
VISCAINO ST
VISCAINO ST
3/4" GI
2" GI
Little League No.2
100
150
THOMAS H. HAYES
ELEMENTARY
SCHOOL
(LAND LEASED
TO MONTEREY
PENINSULA
UNIFIED
SCHOOL DISTRICT)
4" METER
4" METER
8" FIRE FLOW
SEASIDE
HIGH SCHOOL
LEINBACH AVE
HENNEBY ST
HICKS
ORD
BRIGGS CIR
ELLIS
PAUL
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ANNEXATION ASSEMBLY AND EVALUATION REPORT FOR THE ANNEXATION OF FORT ORD BY THE MONTEREY COUNTY WATER RESOURCES AGENCY 10 SEPTEMBER 1993

I. EXECUTIVE SUMMARY. The purpose of this annexation by the Monterey County Water Resources Agency (MCWRA) is to provide the basis for a long term, reliable, potable water supply to support the Army's residual mission at Fort Ord after it is realigned per the Base Closure and Realignment Act of 1990. Annexation will also facilitate the disposal and reuse of the portions of Fort Ord not needed to support the Army's residual mission. This report provides the background and justification for the annexation, which is contingent on the conditions in the accompanying Agreement. See Exhibit 1 for a regional map showing Fort Ord, and Exhibit 2 for the location of cities surrounding Fort Ord.

II. INTRODUCTION.

A. Overview of Annexation.

1. Fort Ord, like all large communities in North Monterey County, obtains all of its water supply from groundwater. From the map at Exhibit 3, it can be seen that the northwestern part of Fort Ord (Area 1) overlies part of the Salinas Valley Groundwater Basin (Salinas Basin). Within Area 1, there are three aquifers known as the 180-foot, 400-foot, and 900-foot aquifers. These aquifers are not necessarily found in every location of Area 1. Presently, Fort Ord has three active potable wells in the 180-foot and 400-foot aquifers of the Salinas Basin (wells 29, 30, and 31). By California law, the MCWRA has water management authority over the Salinas Basin. The Salinas Basin has been in an overdraft condition for many years.

2. The southwestern part of Fort Ord (Area 2 on the map) overlies the Seaside Groundwater Basin (Seaside Basin), which is divided into several subbasins due to geologic conditions. The part of Fort Ord which overlies the Seaside Basin supplies a substantial amount of recharge to this basin. Presently, Fort Ord has only one active well in the Seaside Basin to irrigate the Fort Ord golf courses (well 1). Due to occasional high salinity, water from this well is considered to be non-potable. By California law, the Monterey Peninsula Water Management District (MPWMD) has water Management authority over the Seaside Basin. In contrast to the Salinas Basin, the Seaside Basin appears to be in a nearly balanced condition.

3. In the eastern part of Fort Ord (Area 3 on the map), the boundary between the Salinas and Seaside Basins is not defined. This is not a significant issue since this area has a low

APPENDIX D

infiltration rate and subsurface permeability. As a result, the area is unsuitable for significant groundwater development, and it probably doesn't contribute a substantial amount of recharge to the western basins.

4. Pumping by Fort Ord has contributed to the Salinas Basin overdraft, but only to a limited extent as the Fort Ord withdrawals from 1988 to 1992 averaged only 5,200 acre-feet per year compared to the estimated Salinas Basin overdraft of about 50,000 acre-feet per year. The overdraft has resulted in the intrusion of seawater into the Salinas Basin which has caused the contamination of many wells along the entire coastal region, including several on Fort Ord. Although recent studies show that the rate of seawater intrusion may have slowed in the Fort Ord area, the seawater is continuing at a rapid pace in the Castroville-Salinas area several miles north of Fort Ord. Exhibit 4 shows the seawater intrusion problem. The MCWRA has requested the annexation of all of Fort Ord as part of its long term effort to halt all pumping along the Salinas Basin coastal region by providing a replacement water supply. In this manner, the seawater intrusion could be stopped and perhaps even reversed.

5. Fort Ord realized that the seawater intrusion would eventually contaminate its remaining wells, so in January 1990 the President requested Congress approve a military construction project for $7,400,000 to "Purchase part of a regional water supply system, as the first phase of a two-phase regional water supply project to provide a dependable long-term water supply for Fort Ord and the cities of Marina and Castroville." The fiscal year 1991 Defense legislation provided a $7,400,000 authorization and appropriation for the annexation of Fort Ord into the MCWRA. Additional funds for the Army's share of the regional water supply project (second phase) were never budgeted because the 1991 Defense Base Realignment and Closure process (BRAC 91) dictated that the 7th Light Infantry Division stationed at Fort Ord relocate to Fort Lewis, Washington. As a consequence, the Army deferred action on the annexation until the future status of Fort Ord was determined, and more information was available on the cost for the Army to participate in a regional water supply project.

6. Pursuant to BRAC 91, part of Fort Ord will be retained to support the Defense Language Institute (DLI) at the nearby Presidio of Monterey (POM). This Fort Ord enclave is designated as the POM Annex. Additionally, a 12 acre Reserve Center within Fort Ord will be retained (not contiguous to the POM Annex). As part of the BRAC 93 process, the Army recommended that the POM and POM Annex be closed, and the DLI be relocated to Fort Huachuca, Arizona. However, the 1993 Defense Base Closure and Realignment Commission's recommendations, which the President endorsed to Congress, call for the DLI to remain at the POM, and for the POM Annex to be downsized to only include housing and the commissary, child care facility, and post exchange. Congress is not expected to disapprove the Commission's recommendations.

7. With a BRAC 93 decision to retain an Army presence at Fort Ord, it is imperative that the Army obtain a reliable water supply to support the residual mission. For the Army to gain access to a regional water supply project being developed by the MCWRA, annexation is required. Annexation will also benefit the Army by facilitating the disposal and reuse of the parts of Fort Ord to be excessed. More detail on these and other benefits is provided in section IV.E. of this report.

B. Area to be Annexed. The area to be annexed is the whole of Fort Ord, California, which is made up of 28,602.84 acres. Refer to Exhibits 14 through 18 for real estate maps of the installation.

C. Purpose of the Area and Mission Objectives. Prior to BRAC 91, Fort Ord's primary purpose was to station the 7th Light Infantry Division. Subsequent to BRAC 93, the installation's primary purpose will be to provide housing and other facilities in support of the nearby POM and Naval Post Graduate School.

D. Present and Future Uses of the Property. Relocation of the 7th Light Infantry Division is in progress with the last units scheduled for departure by December 1993. Pursuant to BRAC 91, the Army is disposing of excess property in accordance with applicable law. To support the residual mission, the POM Annex is presently configured to occupy about 1,500 acres. However, under BRAC 93, the POM Annex is to be downsized by excessing facilities such as both golf courses. The Environmental Impact Statement for the disposal and reuse of Fort Ord, which is nearing completion, has identified the following possible uses for the parts of Fort Ord to be excessed: educational, office park (private and government), commercial, recreational, aviation, natural resource management, and housing.

E. Acquisition Origin of Fort Ord. The original Fort Ord reservation comprising 15,809.50 acres was purchased by the United States from the David Jacks Corporation on 4 August 1917. After 1940, an additional 12,793.34 acres were acquired. The total area is 28,602.84 acres.

F. Political Subdivision Seeking Annexation. The subdivision seeking annexation of all the lands comprising Fort Ord is the MCWRA which, per California law, is responsible for managing the surface water and groundwater resources in the Salinas Valley and providing flood control and water conservation services throughout Monterey County. MCWRA is requesting that Fort Ord be annexed into Zones 2 and 2A. The MCWRA established Zone 2 as the benefit assessment zone in connection with the construction of Nacimiento Reservoir (completed in 1957), and established Zone 2A as the benefit assessment zone in connection with the construction of San Antonio Reservoir (completed in 1967). Since the construction of these reservoirs, the MCWRA has operated a groundwater recharge program for the benefit of Zones 2 and 2A, using waters from the

two reservoirs and other programs to enhance natural percolation in the Salinas Basin. It is appropriate for Fort Ord to be annexed into Zones 2 and 2A because Fort Ord's potable water supply has historically come from the Salinas Basin. Per a Memorandum of Agreement signed in May 1993 between the MPWMD and MCWRA, the MPWMD does not object to the MCWRA annexing that part of Fort Ord overlying the Seaside basin provided that the MPWMD retains water management authority over the portion of the Seaside Basin underlying Fort Ord. Refer to Exhibit 19 for a large map showing the existing boundaries of Fort Ord and Zones 2 and 2A. Note that although a small portion of Fort Ord is currently shown to be within Zones 2 and 2A, the property is not presently annexed. Refer to Exhibit 20 for a large map showing the entire area of Zones 2 and 2A.

III. LEGAL STATUS OF THE PROPERTY

A. Title Held by the Government. The Army has a fee title interest in the property proposed for annexation. This action by the MCWRA will not affect the Army's title.

B. Degree of Legislative Jurisdiction. The degree of jurisdiction over most of the property is exclusive federal jurisdiction. Annexation will not alter this jurisdiction and it will not interfere with official Army activities or functions including those remaining after realignment and closure.

C. Applicable State Annexation Laws and Ordinances. The procedures for annexation are found in California Water Code, Appendix 52-43 (see Appendix A to the Agreement). The Army intends to petition the MCWRA Board of Supervisors for annexation pursuant to section 43.(b)(3). Pursuant to section 43.(b)(5), annexation may require a fee. See section IV.F. of this report for a discussion of the annexation fee.

D. Regulations on Annexation. The following govern the actions of the Army in annexations:

1. Army Regulation 405-25, Annexation (1 April 1974).

2. Engineering Regulation 405-1-12, Chapter 9, Federal Legislative Jurisdiction and Annexation (Change 4, 5 September 1978).

IV. POTENTIAL IMPACT OF ANNEXATION.

A. Source of Utilities. Water is the only utility that will be affected by the proposed annexation. Fort Ord now receives all of its water from wells on Fort Ord that are owned and operated by the Army. Since seawater intrusion is threatening these wells, the Army needs a long term, reliable, replacement water supply. Such

a water supply would likely come from a future MCWRA project; however, the Agreement provides the Army with the flexibility to obtain a replacement water supply from another source if the opportunity arises and it is in the Army's best interests. The replacement water supply system will provide water in bulk to the installation. The Army or a successor entity will continue to be responsible for operating and maintaining the water distribution system on Fort Ord Lands. Paragraph 4.d. of the Agreement addresses the fact that the Army will retain the necessary easements to operate and maintain Army wells.

B. Adverse Impacts on the Mission.

1. Utilities and Services. Annexation will have no impact on Fort Ord utilities and services, or the installation's plan to find a water purveyor to take over the water distribution system.

2. Taxation and Licensing. Municipalities acquire the power to tax private persons and private property by annexation. Military personnel, to some extent, and Government instrumentalities such as Post Exchanges are exempt from such taxation. The Agreement states that the Army will provide the MCWRA with $7,400,000 in consideration for the annexation. However, the Agreement also stipulates that the Army will not pay any MCWRA assessments (including standby charges) until after the POM Annex and Reserve Center gain access to a replacement water supply provided by the MCWRA (see paragraph IV.F.2.). To the extent that federal property may be exempt from local assessments, a utility service contract in accordance with AR 420-41 between the Army and the MCWRA may require the payment of a contractual fee to replace any assessments. Such fee will be mutually agreed upon.

C. Effect on Installation Master Plans. Upon annexation, the MCWRA will acquire some control over Fort Ord's water supply. From a practical standpoint, this control should not prevent the Army from constructing any projects needed to support Fort Ord's residual mission. Additionally, the Agreement provides Fort Ord with special rights to obtain any water needed in the event of war, national emergency, contingency operation, troop mobilization, or unexpected mission requirements.

D. Annexor's Capability to Furnish Benefits.

1. The main benefit the Army expects to receive from the MCWRA is a long term, reliable water supply. Based on its charter, the MCWRA should be the most capable organization to plan, finance, construct, and operate a regional water supply system. The MCWRA's first attempt to develop a water supply system for Fort Ord and Marina was halted in 1992 due to opposition from land owners in and around the proposed Buena Vista well field (located inland from Fort Ord). This project had a capacity of 11,600 acre-feet/year.

2. An alternative project now being studied by the MCWRA consists of dispersed wells along a 20 mile stretch of the Salinas River and storing excess runoff from the Arroyo Seco River (a tributary of the Salinas River) in a shallow aquifer using percolation ponds. Water would then be pumped from the dispersed well system and from the shallow aquifer to replace the potable wells serving Fort Ord, Marina, Salinas, Toro Park, and perhaps other areas in north Monterey County. Water would also be provided to recharge the Salinas Basin near the coast to raise the groundwater level and halt (or even reverse) the seawater intrusion. The Water Transfer Project is being planned for a capacity of about 50,000 acre-feet per year. Construction completion is planned by the year 2000. The MCWRA's current estimated cost of this project is $157 million, which equates to a capital cost of $3,155 per acre-foot per year.

3. There is another MCWRA project to mitigate seawater intrusion which is already under design. The project will upgrade the existing regional sewage treatment plant to tertiary standards, and pipe the effluent to Castroville for crop irrigation. This project should provide about 19,500 acre-feet per year, and is estimated to cost $71 million. When this project comes on line (maybe as early as 1996), the estimated 50,000 acre-feet per year Salinas Basin overdraft will be significantly reduced. This should extend the life of all wells near the coast, including those on Fort Ord. The MCWRA intends to use the Army's $7.4 million annexation fee to complete design of the Castroville Project.

4. Based on the above reasons, it is concluded that the MCWRA is the most capable organization to provide a reliable water supply for the Fort Ord Lands. This is a challenging task as the MCWRA is under considerable pressure to develop a regional water supply project quickly because the wells serving over 100,000 people in the coastal region are being threatened by seawater intrusion. Because of this threat, the State Water Resources Control Board is monitoring the MCWRA's progress in this area. If the MCWRA, for whatever reason, is unable to develop a regional water supply system, then the Agreement permits the Army to obtain a long term water supply for the POM Annex and Reserve Center from another party. Additionally, even if the MCWRA is making progress in developing a regional water supply project, the Agreement provides the Army the option of obtaining a long term water supply for the POM Annex and Reserve Center from another party if it is in the Army's best interests, e.g., the other water source is less costly or available at a more advantageous time.

E. Benefits to Accrue from Annexation. Upon annexation of Fort Ord into Zones 2 and 2A, the MCWRA will not immediately provide any direct governmental service on the installation. The benefits of annexation will accrue initially on an indirect basis, and direct services will be provided later. The benefits to the Army from annexation are as follows:

1. The most important benefit of annexation is that it will allow the Fort Ord Lands to gain access to a regional water supply project being developed by the MCWRA. Fort Ord's existing wells are being threatened by seawater intrusion due to the existing Salinas Basin overdraft. The MCWRA is the most capable, and most likely entity to implement a regional water supply project to support the POM Annex and Reserve Center.

2. Another important benefit is that annexation will facilitate the disposal and reuse of the parts of Fort Ord to be excessed under base closure and realignment. This is the main reason for annexing all Fort Ord Lands at this time instead of waiting to annex just the POM Annex and Reserve Center after the MCWRA has better defined its proposed regional water supply project, i.e., all environmental permits and approvals obtained. Under the Agreement, the new owners of Fort Ord excessed property would have the right to drill and pump on their property subject to the conditions described in paragraph IV.E.3. below, and paragraph 4.c. of the Agreement. Also, property which has already been annexed by the MCWRA will be easier to dispose because of its potential access to a long term water supply project being developed by the MCWRA, and a short term water supply from Fort Ord's existing wells (see paragraph IV.E.3. below). Without annexation, the MCWRA or state regulatory agencies could object to the Army providing water to owners of excessed Fort Ord property, even if only for a short duration. Additionally, these same agencies could severely limit or control pumping by the owners of excessed Fort Ord property due to the Salinas Basin overdraft. Lastly, even if all of these new property owners wanted to be annexed, it would be an administrative burden for the MCWRA compared to annexing just Fort Ord.

3. Until the MCWRA's regional water supply project is implemented, annexation will give the Army the right to withdraw up to 6,600 acre-feet per year from the Salinas Basin underlying Fort Ord Lands, and allow the Army to allocate some of this water for reuse. The Army or its successor water purveyor, utility, or agency may also develop groundwater supplies located outside the Salinas Basin. The amount of water needed to support the Fort Ord residual mission was the subject of a June 1993 Report titled "Water Requirements at Fort Ord Under Base Realignment and Closure", which was prepared under the supervision of the Army Corps of Engineers, Institute for Water Resources (IWR). This report concluded that the POM Annex, as presently configured, would require in fiscal year 1995 1,085 acre-feet of potable water provided that additional water conservation measures are implemented. This report also estimated that 403 acre-feet of non-potable water would be used in fiscal year 1995. The non-potable water is pumped for the golf courses from a well located in the Seaside Basin. These requirements would decrease if the POM Annex is downsized in accordance with BRAC 93. Based on a POM Annex potable water requirement of 1,429 acre-feet per year (IWR estimate plus appropriate adjustments computed by Fort Ord), there could be

up to 5,171 acre-feet per year of water available for reuse and to maintain any undisposed Fort Ord Lands and facilities in a caretaker status. Note that the Agreement only allows 5,200 of the 6,600 acre-feet per year threshold to be pumped from the 180-foot and 400-foot aquifers in the Salinas Basin. Fort Ord's active potable wells draw from the 180-foot aquifer, so a new well into the 900-foot aquifer would be needed to gain access to the additional 1,400 acre-feet per year. The Agreement also states that Fort Ord groundwater withdrawals for environmental restoration will not count toward the 6,600 acre-feet per year threshold because either the withdrawals will be small, or if they are large, the water will probably be disposed in the sanitary sewer system where it will be used by the Castroville Sewage Reclamation/Irrigation Project to help reduce seawater intrusion.

4. There is concern that the Fort Ord wells could become contaminated with seawater before the MCWRA implements their regional water supply project. In this event, annexation would be a benefit to the Army because the MCWRA will provide Fort Ord with the same services as they would provide to any other municipal water supplier in the Zones under this circumstance, i.e., assistance in finding an interim water supply and in obtaining any permits. The Army would bear the cost of obtaining this interim water supply. Under the Agreement, the MCWRA will periodically provide Fort Ord with the estimated remaining life of their wells, and the progress on the MCWRA Water Transfer Project.

5. Annexation will resolve questions concerning Fort Ord's right to withdraw groundwater from the Salinas Basin. The Agreement states that in consideration of the $7,400,000 annexation fee, the MCWRA will release the Government from any financial responsibility for existing MCWRA water projects from which Fort Ord may have benefitted (Nacimiento and San Antonio Reservoirs). Additionally, the Agreement states the MCWRA will release the Government from any claims related to seawater intrusion in the Salinas basin.

6. Under California law, annexation will provide the Fort Ord with the same representation in MCWRA matters as any other property owner in Zones 2 and 2A.

7. Another benefit of annexation is that the enclosed Agreement includes some of the conditions which must be satisfied for the Army to participate in a future MCWRA regional water supply project. The objective of these conditions is to assure that the regional water project costs assigned to the Army are equitable in comparison to the Army's allocation of water from the project. These protections are very important in view of the fact that the Army believed it was being saddled with a disproportionate cost share of the original Buena Vista project, and the fact that the POM Annex will only require a small part of the capacity of MCWRA's proposed regional water project. The Army strongly believes that part of the cost of a regional water project must be funded by all

members of Zones 2 and 2A. The water supply project is just as important to halting seawater intrusion as the Castroville Sewage Reclamation and Irrigation project, and the MCWRA plans to have 50 percent of this project funded by Zone 2 and 2A members not receiving water from the Castroville project.

F. Effect on the Budget of the Installation.

1. Annexation Fee: The Army and the MCWRA have agreed upon an annexation fee of $7,400,000, which was authorized and appropriated by Congress in the fiscal year 1991 Defense legislation. The amount of the fee is related to the benefits provided by MCWRA's existing water projects (Nacimiento and San Antonio Dams) and water management practices which protect the yield of the Salinas Basin. It is from this basin that Fort Ord has historically obtained its potable water supply. The annexation fee is consistent with the current MCWRA Annexation Policy at Exhibit 5. There are two components of the fee - for area and water use. The area component is the area to be annexed in acres times $277. The $277 is the sum of the present worth capital cost of each dam divided by the acreage of its respective zone. The water use component is $783 times the maximum amount of water to be pumped from the Salinas Basin in acre-feet per year. The $783 is the present worth, on a acre-foot per year basis, of past operation and maintenance costs for Zones 2 and 2A. Based on information from current and former Fort Ord personnel, it appears that MCWRA's current annexation policy was in effect when the Congressional budget estimate for the annexation fee was developed in 1989. The area component of the fee was apparently computed by using 8,000 acres multiplied by $277/acre or $2,216,000. Since the existing Fort Ord developed area is about 5,000 acres, the 8,000 acre figure was apparently used to account for future growth. The water use component apparently was developed using the peak withdrawal of 6,600 acre-feet/year (1984) multiplied by $783/acre-foot/year or $5,167,000. The area and water use components total $7,383,800, which was rounded to $7,400,000. The Agreement stipulates that the $7,400,000 fee will be paid to the MCWRA after completeion of the annexation.

2. Annual Assessments: The Agreement stipulates that until the POM Annex and Reserve Center receive water from a MCWRA water supply project, the Army shall not pay any assessments such as standby charges, water delivery charges, or water project assessments. Standby charges, which generally fund the MCWRA administrative costs, vary from year to year and have increased over time. At present, these charges are limited to a maximum of $15 per acre per year for each zone, per the California Water Code, Appendix 52-12. For the POM Annex and the Reserve Center, which after annexation will be in two zones (2 and 2A), this would amount to a maximum of $30 per acre. The Army's potential water project assessments (capital costs) and water delivery charges (operation and maintenance) are discussed in Agreement paragraphs 4.j.(3) and

4.j.(4), respectively. The Agreement stipulates that the Army will not pay any assessments or charges on Fort Ord property in a caretaker status awaiting disposal. Additionally, paragraph 7 of the Agreement provides the MCWRA with expanded authority to collect assessments from Fort Ord property leased to private interests by the Army.

V. POSITION OF COUNTY AND OTHER GOVERNMENT ENTITIES ON ANNEXATION.

A. MCWRA. The MCWRA initiated the annexation of Fort Ord to help solve the Salinas Basin seawater intrusion problem, and guarantee a continuing supply of potable water for Fort Ord. Annexation is a necessary step in this process. The MCWRA is moving toward annexing all property within the Salinas Basin so they can effectively manage the aquifer. With the annexation of Fort Ord and Marina, which are both in progress, all major properties within the Salinas Basin will be annexed.

B. Other Political Subdivisions. Letters were sent by the MCWRA to other communities and agencies that share boundaries with Fort Ord or have an interest in the annexation of Fort Ord by the MCWRA. The respondents, with their comments, are listed below. A sample copy of the letter is attached (Exhibit 6), as well as copies of the responses.

1. City of Monterey, CA; voted not to oppose annexation (Exhibit 7).

2. Monterey County Local Agency Formation Commission; voted to support (Exhibit 8).

3. Marina Coast Water District (formerly known as the Marina County Water District); voted not to oppose annexation (Exhibit 9). The Marina Coast Water District is currently working with the MCWRA to be annexed into zones 2 and 2A because of their concerns over the long term reliability of their existing groundwater supply.

4. Monterey Peninsula Water Management District; approved the annexation (Exhibit 10).

5. City of Del Rey Oaks, CA; voted not to oppose annexation (Exhibit 11).

6. City of Marina, CA; initially voted to table consideration of support or opposition to the annexation. The City of Marina has subsequently agreed not to oppose annexation provided that the Agreement stipulates that Fort Ord may pump up to 6,600 acre-feet of water per year from its wells, and that water not needed for the residual mission can be provided for reuse (Exhibit 12). This provision is contained in paragraph 4.c. of the Agreement.

7. City of Seaside, CA; opposes the annexation (Exhibit 13). It is concluded that in spite of this opposing response, Fort Ord should be annexed by the MCWRA. The first reason is that annexation under the terms of the attached Agreement is in the Army's best interest. The second reason is that the Army concludes there is no reasonable basis for a conflict because the Seaside groundwater supply, which is managed by the MPWMD, will not be affected by the MCWRA's annexation of Fort Ord.

VI. CONCLUSION AND RECOMMENDATIONS. This annexation is in the best interests of the Government, and it is recommended that it be approved contingent on the provisions in the attached Agreement.

EXHIBITS:

1 - Regional map
2 - Vicinity map
3 - Map of the Salinas Valley Groundwater Basin
4 - Figures showing the seawater intrusion problem
5 - MCWRA annexation policy
6 - Typical MCWRA letter sent to local interests to obtain comments on the MCWRA's proposed annexation of Fort Ord
7 - Response, City of Monterey
8 - Response, Monterey County Local Agency Formation Commission
9 - Response, Marina Coast Water District
10 - Response, Monterey Peninsula Management District
11 - Response, City of Del Rey Oaks
12 - Response, City of Marina
13 - Response, City of Seaside
14 - Fort Ord real estate map, entire installation
15 - Fort Ord real estate map, segment 1A
16 - Fort Ord real estate map, segment 1B
17 - Fort Ord real estate map, segment 1C
18 - Fort Ord real estate map, segment 1D
19 - Map showing boundaries of Fort Ord and Zones 2 and 2A
20 - Map showing entire Zones 2 and 2A

REPORT TO THE BOARD OF SUPERVISORS OF THE
MONTEREY COUNTY WATER RESOURCES AGENCY

COPY

SUBJECT	BOARD MEETING DATE	AGENDA NUMBER
APPROVE AND AUTHORIZE THE CHAIR TO SIGN THE AGREEMENT AND ANNEXATION RESOLUTION OUTLINING THE TERMS AND CONDITIONS TO ANNEX FORT ORD INTO MONTEREY COUNTY WATER RESOURCES AGENCY ZONES 2 AND 2A	9-21-93 10:50 AM	
WATER RESOURCES AGENCY		

RECOMMENDATION

Approve and authorize the Chair to sign the Agreement and Annexation Resolution outlining the terms and conditions to annex Fort Ord into Monterey County Water Resource Agency Zones 2 and 2A.

SUMMARY

The United States Army has presented the Monterey County Water Resources Agency (MCWRA) with a petition to be annexed into MCWRA's Zones 2 and 2A. The petition includes an Agreement covering the terms and conditions for the annexation (copy attached). On September 13, 1993 the MCWRA Board of Directors received the Agreement and voted to recommend it be approved by your Board. Since the Agreement has been signed by the authorized representative for the Army, your Board's approval and signature by your Board Chair on the Agreement and Annexation Resolution will complete the annexation action and obligate the Army to a payment of $7.4 million to the MCWRA.

DISCUSSION

✓ On July 10, 1990 the Monterey County Board of Supervisors, acting then for the Monterey County Flood Control and Water Conservation District, authorized the Chair of the Board of Supervisors to sign a Memorandum of Agreement (MOA) that contained the terms and conditions for the annexation of Fort Ord into MCWRA Zones 2 and 2A. The MOA was never co-signed by the Army at that time because it did not address the closure of Fort Ord.

✓ On April, 1993 Army officials on Fort Ord submitted an MOA to the MCWRA for approval. This MOA was approved by the Board of Supervisors on April 20, 1993. When this version of the MOA was received by Army officials in Washington DC, it was rejected on the grounds that it did not sufficiently address the down-sizing of Fort Ord or the Installation's future reuse.

The MOA was changed to an "Agreement" and re-written by Army officials in the Pentagon. The Agreement as is now being presented preserves the key components of the earlier MOA and more completely addresses the Army's declining presence on Fort Ord. It establishes a total cap on groundwater pumping from the Salinas Groundwater Basin, quantifies the amount of water the Army will need for their residual presence and quantifies the amount of water that will be available for civilian reuse.

Approval of the Agreement and the Annexation Resolution by the Board of Supervisors at this time will complete the annexation. The Army will become contractually obligated to pay the agreed annexation fee of $7,400,000 upon being presented with the signed Agreement and Annexation Resolution.

The Agreement consists of the Petition for Annexation and Appendices A, B, C, and D. Exhibits to Appendix D, are available upon request at the offices of the MCWRA.

OTHER AGENCY INVOLVEMENT

In August of 1992 the MCWRA sent a letter to all the Communities surrounding Fort Ord and to other agencies that might be affected by the annexation of the Fort into MCWRA Zones 2 and 2A. The letter indicated the MCWRA's intent to pursue the annexation and it asked the addressees to indicate their support or opposition to the intended action. A summary of the responses is shown on pages 10 and 11 of Appendix D, the Annexation Assembly and Evaluation Report. In addition, on September 9, 1993 the Fort Ord Reuse Group wrote a letter to the Army in support of the annexation.

FINANCING

There is no impact to the General Fund. After annexation, the MCWRA would receive $7.4 million from FY 1991 Military Construction Army appropriated funds. The full amount is scheduled to be applied against the costs of the Castroville Reclamation and Irrigation Project.

William F. Hurst
General Manager

Before the Board of Supervisors in and for the County of Monterey, State of California

COPY

Agreement No. A-06404 --)
Agreement Between the United States of)
America and the Monterey County Water)
Resources Agency Concerning Annexation of)
Fort Ord Into Zones 2 and 2A of the Monterey)
County Water Resources Agency, Approved;)
Chairwoman Authorized to Sign . . . . .)

Upon motion of Supervisor Johnsen, seconded by Supervisor Strasser Kauffman, and carried, the Board hereby approves Agreement No. A-06404 between the United States of America and the Monterey County Water Resources Agency concerning annexation of Fort Ord into Zones 2 and 2A of the Monterey County Water Resources Agency, and authorizes the Chairwoman to sign said agreement.

PASSED AND ADOPTED this 21st day of September, 1993, by the following vote, to-wit:

AYES: Supervisors Salinas, Shipnuck, Perkins, Johnsen and Karas.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 67, on September 21, 1993

Dated: September 21, 1993

ERNEST K. MORISHITA, Clerk of the Board of Supervisors, County of Monterey, State of California.

By Nancy Lukenbill Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No. 93-387 --)
A Resolution of the Board of Supervisors)
of the Monterey County Water Resources)
Agency Making findings for the Annexation)
of Certain Territory, Known as the Ft. Ord)
Annexation, to Zones 2 and 2A of the)
Monterey County Water Resources Agency,)
Setting Forth the Conditions for Said)
Annexation, and Approving Said Annexation.)

WHEREAS,

A. For many years, the territory known as Ft. Ord, in Monterey County, California, has obtained its potable water from the Salinas Valley Groundwater Basin.

B. Much of the water in the Salinas Valley Groundwater Basin is derived from the Groundwater recharge program made possible through the operation of Lake Nacimiento and Lake San Antonio. The dams that impound these lakes were built and are operated by the Monterey County Water Resources Agency (MCWRA). The capital, operating and maintenance expenses of these reservoirs have been paid for by the property owners in MCWRA Zones 2 and 2A.

C. Ft. Ord is not in Zones 2 and 2A, and has never paid any of the assessments for the reservoirs, although it has benefited from the groundwater recharge program maintained by Zones 2 and 2A.

D. Over the years, seawater intrusion has progressively advanced into the northern portions of the Salinas Valley Groundwater Basin, rendering wells useless for potable and agricultural purposes and threatening nearby water supplies. Several wells previously used to supply water to Fort Ord have been lost to seawater intrusion.

E. The MCWRA proposes to develop a seawater intrusion program that would replace groundwater wells in the northern portion of the Salinas Valley. The program would rely on groundwater or surface water developed in Zones 2 and 2A. The program would require that all properties to be benefited by the program be in Zones 2 and 2A.

F. The territory of Fort Ord is not in Zone 2 and 2A. The U. S. Government, as owner of said property, desires that the territory of Fort Ord be annexed to Zones 2 and 2A, in order to compensate Zones 2 and 2A for past benefits received and to insure the territory's right to participate in the seawater

intrusion program, should a water project be built in Zones 2 and 2A for the benefit of this area.

G. The proposed annexation is not a project within the meaning of CEQA because (1) the terms of the annexation limit the use of water on Ft. Ord to present or historical levels of water use, pending the completion of a water supply project for the benefit of this area, and (2) the annexation does not commit the MCWRA or Ft. Ord to the development of any particular water project or to any other action that will result in changes in the environment. Therefore, it can be seen with certainty that there is no possibility that the annexation will result in significant environmental effects.

H. This annexation is conducted pursuant to the Monterey County Water Resources Agency Act, Section 43.

NOW, THEREFORE BE IT RESOLVED:

1. It is in the best interest of Zones 2 and 2A and the territory described in Exhibit A, referred to herein as the Ft. Ord annexation, that the territory described in Exhibit A be annexed to the zones.

2. The boundaries of the territory to be annexed, as set forth in Exhibit A, are appropriate and need not be modified.

3. There are no other annexation petitions pending before the Agency that involve annexation of any of the same territory to the same zones.

4. The territory described in Exhibit A is hereby annexed to Monterey County Water Resources Agency Zones 2 and 2A, subject to the conditions set forth in the annexation agreement, attached hereto as Exhibit B. The annexation fee shall be paid as provided in Exhibit B.

5. The annexation shall take effect immediately upon the adoption of this resolution.

6. On the effective date of the annexation, the territory described in Exhibit A shall be subject to all the liabilities and entitled to all the benefits of the zone, except as otherwise provided in the annexation agreement, attached hereto as Exhibit B.

Upon motion of Supervisor Johnsen, seconded by Supervisor Karas, the foregoing resolution is adopted this 21st day of September, 1993, by the following vote, to-wit:

AYES: Supervisors Salinas, Shipnuck, Perkins, Johnsen and Karas.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 67, on September 21, 1993

Dated: September 21, 1993

ERNEST K. MORISHITA, Clerk of the Board
of Supervisors, County of Monterey,
State of California.

D. Bardell

PETITION FOR ANNEXATION
TO ZONES 2 AND 2A
MONTEREY COUNTY WATER RESOURCE AGENCY
MONTEREY COUNTY, CALIFORNIA

AFFIDAVIT

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the attached Memorandum of Agreement with attachments, when executed by the parties thereto, constitutes a petition for the annexation of the territory of Fort Ord, in Monterey County, California, to Zones 2 and 2A of the Monterey County Water Resource Agency, Monterey County, California, by 100 per cent of the owners of the land described therein, and I am informed and believe that the information contained therein is true and correct.

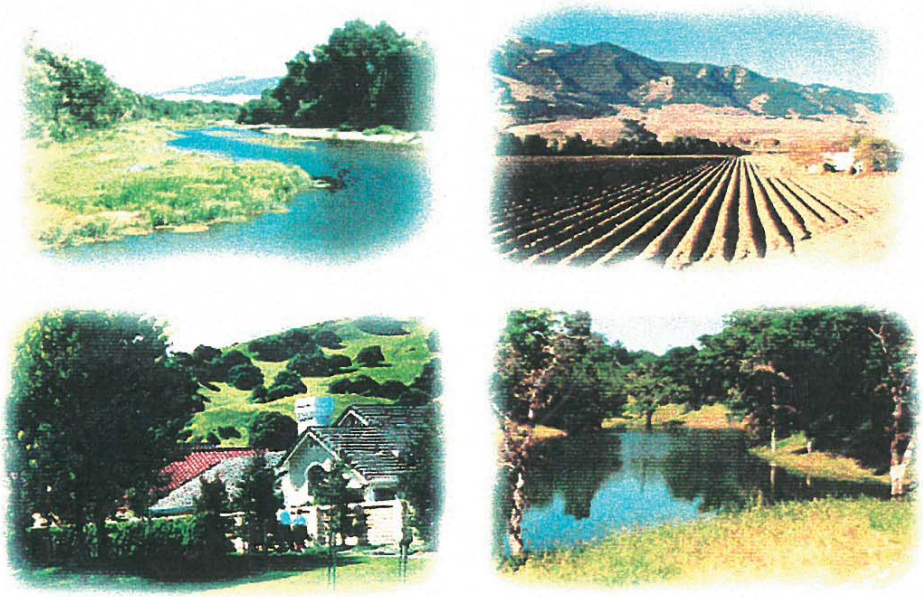
Dated: 9/10/93

Signature

Name: MICHAEL W. OWEN

Title: Acting Assistant Secretary of the Army
(Installations, Logistics and Environment)

EXHIBIT 6



Salinas Valley Water Project
Draft Master Environmental Impact Report

SCH# 97-121020

October 1998

Monterey County Water Resources Agency

Draft
Master Environmental Impact Report

for the

Salinas Valley Water Project

State Clearinghouse #: 97121020

Lead Agency:
Monterey County Water Resources Agency
P.O. Box 930
Salinas, CA 93902

Contact:
Jan Sweigert
Phone: (831) 755-4850

Environmental Consultant:
EDAW, Inc.
10423 Old Placerville Road, Suite 100
Sacramento, CA 95827

Contact:
Gary Jakobs
Allison Stone
(916) 362-3606

Public Review Period: October 28, 1998 to December 28, 1998

1.3 Project History & Background

The SVWP has a long history and the components presented and evaluated in this EIR have evolved from, and represent the culmination of, years of planning, engineering and public involvement. Discussion of this history is provided as an important context in understanding the project and reviewing this EIR.

In 1977, the State Water Resources Control Board (SWRCB) listed the Basin as a candidate for State adjudication; however, no further action was recommended at that time. In 1983, the MCWRA (formerly the Monterey County Flood Control and Water Conservation District) received funding from the SWRCB to evaluate alternatives that would prevent further seawater intrusion. Between 1983 and 1992, numerous studies of the extent of seawater intrusion were conducted and possible solutions were presented. The MCWRA, in conjunction with the Monterey Regional Water Pollution Control Agency (MRWPCA), proceeded to design and construct the Monterey County Water Recycling Projects (MCWRP). The MCWRP address a portion of the seawater intrusion problem, in the Salinas Valley's coastal areas near Castroville, by providing recycled water for agricultural irrigation, which correspondingly reduces the amount of ground water pumping in those areas. The MCWRP began making agricultural deliveries in April 1998.

In 1992, the MCWRA Board of Directors held a daylong workshop to establish the long-term planning goals for the management of water resources in the Basin. These goals led to the development of the Basin Management Planning efforts, which eventually led to the development of the proposed Salinas Valley Water Project. The focus of the planning process was on developing the most cost-effective, environmentally sound approach to meeting the stated objectives of the project (Section 1.1). In 1993, the MCWRA held another all-day workshop to present and screen preliminary alternatives. Over 35 alternatives were considered and evaluated based on their ability to meet the stated engineering/ operational objectives of the project, and their relative economic, legal/regulatory, sociocultural and biophysical characteristics and effects.

Additional information on the planning process and development of the screening criteria is provided in the following publications: the *Salinas River Basin Management Plan (BMP) Alternatives Analysis Report* (EDAW, August 1994), and the *Salinas Valley Basin Management Plan Draft Technical Memorandum BMP Water Supply Alternatives Analysis* (Montgomery Watson, May 1995).

Following this screening process, the alternatives were refined and presented in a series of MCWRA Board of Directors workshops and workshops led by the Board's Basin Management Plan (BMP) Committee. Two primary alternatives were identified for further evaluation in an EIR: Salinas River Well System; and Salinas River Well System with Raise & Widen Nacimiento Dam/Spillway. A Notice of Preparation (NOP) of an EIR based on these two alternatives was published in November 1994. Following circulation of that NOP, substantial public comments and concerns regarding the feasibility of the alternatives were received by the MCWRA. To address these concerns, the Board of Directors directed the MCWRA to put the California Environmental Quality Act (CEQA) process on hold and re-evaluate, in a public forum, a new range of alternatives. In late 1995, a revised, wider range of alternatives was developed and a new NOP was issued in January 1996.

The January 1996 NOP described the proposed evaluation of six alternatives (including the No Project alternative) at a general (programmatic) level. Following receipt of the comment letters on the NOP, it became evident that there remained some public concern about the alternatives and the assumptions used in their development. Specifically, the public questioned the assumptions and methodology used in the

development and application of the Salinas Valley Integrated Ground and Surface Water Model (SVIGSM) as a tool to analyze the impacts of the alternatives. To address these concerns, the MCWRA again placed the CEQA process on hold and initiated a series of workshops to evaluate the SVIGSM. A series of five workshops was conducted during which the MCWRA solicited input from the public, recognized experts and other agencies on details of the model, the assumptions used in its preparation, and its application in the planning process. As a result of this process, input and assumptions used in the development of the model were refined and the model was subsequently recalibrated for use in evaluating the hydrologic and environmental impacts of the Salinas Valley Water Project and its alternatives.

At the public's request, the MCWRA then proceeded to utilize the SVIGSM to conduct a Historic Benefits Analysis (HBA), so that hydrologic, flood control, and related economic benefits to various recipients from the operation of Nacimiento and San Antonio Reservoirs could be quantified. This analysis was completed in April 1998, and provided information on the hydrologic effects of the two reservoirs for future use in the Salinas Valley Water Project.

In 1996, as a separate action, the SWRCB reinforced the urgency of the water problems faced in the Basin by initiating adjudicative proceedings in the Basin and indicated that it considered the problems facing the Basin to be one of "... the most critical water resources issues in California" (SWRCB, 1996). In response to this critical status, the SWRCB has assembled a Salinas Valley Ground Water Basin Adjudication Team whose express mission is to "... protect the ground water and surface water supplies in the Salinas Valley" (SWRCB , 1996). Their stated mission is to be accomplished by: "working with local stakeholders and decision-makers to reach consensus on a solution to the seawater intrusion and nitrate contamination problems in the Salinas Valley; and by performing a Salinas Valley Ground Water Basin adjudication, if necessary, under Sections 2100 et seq., 275, and 100 of the Water Code and Article X, Section 2 of the California Constitution." Adjudication would result in loss of local control and oversight of the water resources in the Basin (for additional information, refer to Chapter 7 under the No Project – State Adjudication Alternative discussion). The SWRCB has initiated the first phase of this process (administrative proceedings) and has indicated that it will stop adjudication only if the following is achieved:

- a viable solution to stop seawater intrusion;
- a workable cost distribution;
- a schedule of implementation; and
- a nitrate management workplan that includes specific goals and timetables (SWRCB, 1996).

Each of the above prerequisites for termination of the adjudication proceedings would be met by the successful implementation of the proposed project.

From the consensus building process and momentum built by the SVIGSM and HBA workshops, the basic configuration of an alternative that met the objectives of the project was identified, and was considered generally acceptable by the community, the MCWRA, and the SWRCB. In October 1997, the MCWRA Board of Directors directed the MCWRA to advance the engineering of that alternative, and evaluate its potential environmental impacts in a project-level EIR. The result of that direction was the development of the SVWP and this EIR.

A revised NOP was issued in December 1997 (Appendix A). A 30-day public comment period was provided, during which the MCWRA received written comments from interested individuals, groups, and other public agencies. During the NOP review period, three public scoping meetings (one for the public agencies and the public, and two for the public) were held to receive public input on the project, refine the scope of the EIR, and answer general questions. Written and oral information received during that period was reviewed by the MCWRA in the preparation of this EIR.

In February 1998 during the preparation of the Draft EIR, the MCWRA Board of Directors created the SVWP Cost Allocation Advisory Committee (CAAC). The CAAC was formed to provide a forum for developing a recommendation to the MCWRA Board of Directors for a framework for allocation of the costs associated with development and implementation of the SVWP. The stated mission of the CAAC is to "Develop a cost allocation framework for the SVWP that is fair, equitable, scientifically based, consistent with Proposition 218, and understandable by the public."

The 18-member committee consists of individuals who represent a wide range of Salinas Valley interests, including urban and agricultural. The CAAC met a total of nine times, and presented its recommendations to the MCWRA Board of Directors in August 1998.

1.4 Intended Use & Type of EIR

According to the California Environmental Quality Act (CEQA), an EIR is required whenever a proposed project has the potential to result in a significant environmental impact. An EIR is an informational document used to inform public agency decision-makers and the general public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency is required to consider the information presented in the EIR when determining whether or not to approve a proposed project.

The SVWP consists of several individual project components that are to be implemented in two major phases: Phase 1 and subsequent phases. Subsequent phases may not be implemented for several years, but are still considered in this document. For this reason, this Draft EIR has been developed to meet the requirements of a Master EIR (see Section 1.4.2) so that further environmental review of the subsequent phases may be tiered off this document.

The level of CEQA review contained in this Draft EIR, the requirements for a Master EIR, public agencies that may use this EIR when taking action on the project, and required permits or other approvals, are described in more detail below.

1.4.1 Environmental Review of Project Phases

In order to streamline the CEQA-review process, the two phases of the SVWP have been reviewed at different levels of detail.

All Phase 1 SVWP components have been reviewed to the extent possible at a project-level detail. Environmental analysis of all Phase 1 components includes the identification of project site setting, impacts, and mitigation measures that address the planning, construction, and operation of the facilities. The precise locations of some facilities have not been established; in these instances the likely locations are evaluated. Once certification of this EIR occurs and mitigation requirements are met, it is intended that

and agricultural water use reductions would be substantial , an overall reduction of 14,000 AFY in basin-wide water use 2030 is projected.

Despite the overall reduction in total Basin water use, the current overdraft of ground water is anticipated to continue into the future. Therefore, additional water would be needed from the proposed project in order to meet the stated objectives of stopping seawater intrusion, balancing the Basin, and meeting existing and future needs.

It is the MCWRA's strategy to target delivery of SVWP water so that it is has the greatest effect on meeting the project's objectives. This would best be accomplished by making deliveries in the northern area of the Basin and correspondingly reducing withdrawals from the 180- and 400-Foot Aquifers in that area. A variety of delivery scenarios were considered by the MCWRA and public, and three primary options were selected for further evaluation in the *Draft Project Plan* and EIR, as described below. For additional information on the implementation of subsequent phases of the project and the process used to refine and further develop these delivery scenarios, refer to Section 3.6.

Subsequent Phase Delivery Scenarios

In subsequent phases of the project, up to 22,000 AFY of water diverted from the Salinas River as a result of the proposed reservoir reoperation, and an incremental amount of up to 1,300 AFY of additional excess flows from the MCWRP (for a total MCWRP volume of 9,600 AFY), would be available for use. Recycled water from the MCWRP would be delivered to agricultural users, as is currently being done and as would also be done under Phase 1. Water diverted from the river could be delivered to urban customers, agricultural customers, or some combination of both. The three future delivery options currently being considered are summarized below.

- Option 1 - Maximize Agricultural Deliveries. This option would meet the project objectives through increased deliveries to agriculture. Under this option, no deliveries would be made to urban customers (which are assumed to remain on their existing ground water supplies).

- Option 2 - Maximize Urban Deliveries. This option would meet the project objectives primarily through deliveries to urban areas in the northern portion of the Basin. Under this option, project water would be delivered to the urban areas of Castroville, Marina, Fort Ord and Salinas.

- Option 3 - Combination of Agricultural and Urban Deliveries. This option would meet the project objectives through a combination of agricultural and urban deliveries. Under this scenario, water would be delivered to agricultural customers in the MCWRP delivery area (and potentially the Boronda Blanco area), and to the urban areas of Castroville, Marina, and Fort Ord.

Each delivery option would require the construction and operation of physical structures, such as pipelines and water treatment plants. The general location of these structures is shown on Figure 3-7 (Location of Proposed Facilities). As discussed in Section 3.4 (Phasing) and Section 1.4 (Intended Use & Type of EIR), the SVWP has a planning horizon of the year 2030 and the subsequent phases of the project would not be implemented for many years. Subsequent phases would be considered by the MCWRA only after implementation and monitoring of Phase 1 occurs. As a result, the design of future phases, including selection and refinement of a particular delivery option could change. Factors that could influence future refinement of the subsequent project phases include the monitoring results of Phase 1, changes in existing conditions within the Basin, and water needs.

EXHIBIT 7

213

DRAFT

ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT

for the

Salinas Valley Water Project

SCH# 2000034007

June 2001

Monterey County Water Resources Agency

and

U.S. Army Corps of Engineers

DRAFT

ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT

for the

Salinas Valley Water Project

SCH# 2000034007

CEQA Lead Agency:

Monterey County
Water Resources Agency
893 Blanco Circle
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EDAW, Inc.
2022 J Street
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Contact:
Gary Jakobs, AICP
Project Manager

June 2001

EDAW

DRAFT
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT (DEIR/DEIS)
SALINAS VALLEY WATER PROJECT
MONTEREY COUNTY, CALIFORNIA

CIRCULATION DATE: JUNE 8, 2001 TO August 28, 2001

Type of Document: Draft EIR/EIS

Federal Lead Agency (in accordance with the National Environmental Policy Act): U.S. Army Engineer District, San Francisco District (USACE)

Non-Federal Lead Agency (in accordance with the California Environmental Quality Act): Monterey County Water Resources Agency (MCWRA)

Proposed Action: The MCWRA is proposing construction of the Salinas Valley Water Project (SVWP) in Monterey and San Luis Obispo counties, California. The SVWP requires permits from the USACE to construct the major component of the project. The SVWP is proposed to halt seawater intrusion into the Salinas Valley groundwater basin, and to help balance the basin. Seawater intrusion has resulted in the loss of use of a large part of the groundwater in the northern Salinas Valley. The proposed action includes the following components: (1) modification of the spillway at Nacimiento Dam; (2) "reoperation" of the Nacimiento and San Antonio reservoirs to store a higher volume of water in the wet season and allow higher releases of water into the Salinas River during the irrigation season; (3) increased recharge of the groundwater basin through the higher irrigation season releases of water from the Nacimiento and San Antonio reservoirs; (4) a seasonal diversion structure to move water from the Salinas River during the irrigation season for delivery to agricultural users through an existing pipeline system known as the "Castroville Seawater Intrusion Project," or CSIP, system; (5) reduction in groundwater pumping in the CSIP area; and (6) a potential expanded distribution system for diverted Salinas River water in the future if monitoring indicates that seawater intrusion has not been halted.

Abstract: The DEIR/DEIS describes the affected environment at the Nacimiento spillway and reservoir, the San Antonio Reservoir, along the Salinas, Nacimiento, and San Antonio rivers, at the Salinas Lagoon, and at locations in the northern Salinas Valley where the proposed action and alternative facilities may be located. The DEIR/DEIS evaluates the direct, indirect, and cumulative impacts of the proposed action and four alternatives to the action, and recommends mitigation measures. Most of the identified impacts can be mitigated to a less-than-significant level. Substantially beneficial impacts would occur to the quality of the groundwater basin by halting seawater intrusion. Unavoidable significant impacts would occur to visual and recreational resources at Nacimiento and San Antonio reservoirs as a result of short- and long-term project operations, and to air quality during construction of facilities.

Public Hearing: A public hearing to receive oral comments on the DEIR/DEIS will be held on August 1, 2001, 1:00 p.m. at the Monterey County Water Resources Agency, 893 Blanco Circle, Salinas, California, 93901-4455.

For further information and to submit written comments (no later than August 28, 2001 **contact:**

District Engineer
Attention: Robert Smith, Regulatory Branch
U.S. Army Corps of Engineers
San Francisco District
333 Market Street
San Francisco, CA 94105-2197
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1.0 INTRODUCTION

This document is a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Salinas Valley Water Project (the "proposed action") (SVWP) as defined by §15222 of the State CEQA Guidelines, and as permitted by §40 1502.25 of the Code of Federal Regulations (CFR). This document has been prepared by the Monterey County Water Resources Agency (MCWRA) and the United States Army Corps of Engineers (USACE) as the local and federal lead agencies for the proposed action, respectively, and has been prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).

This chapter identifies the purpose and objectives of the proposed action, as called for by CEQA, and the need for the proposed action, as called for by NEPA. This chapter also defines the problem that the proposed action is intended to address, and includes discussions of the proposed action's history and background, the intended use and type of EIR/EIS, the environmental effects of the proposed action found not to be significant, the terminology used in the EIR/EIS, and the documents incorporated into this document by reference.

1.1 Objectives and Need for the Proposed Action

MCWRA is the public agency charged with the long-term management and preservation of water resources in the Salinas Valley. As such, MCWRA has analyzed the substantial challenges of managing the Basin's resources and has developed the proposed action as a mechanism for meeting some of these challenges. The purpose of the proposed action is to address the critical issues facing the management and longevity of the Basin's water resources by meeting the following objectives:

1) Stopping seawater intrusion.
2) Providing adequate water supplies to meet current and future (year 2030) needs.
3) Improving the hydrologic balance of the groundwater basin in the Salinas Valley (Basin).

The proposed action is comprised of a series of structural and program-based components. These components will serve, together with the existing Castroville Seawater Intrusion Project, to meet the listed objectives. A description of the SVWP is provided in Chapter 3.0 of this EIR/EIS. These objectives also define the project's need, in conformance with the requirements of NEPA (40 CRF 1502.13).

1.2 Problem Definition

The magnitude and extent of the current threats to the Basin from seawater intrusion and future water supply are described below. Additional technical documentation and data related to these issues are provided in a variety of reports, including: *Water Resources Data Report, Water Year 1994-1995* (MCWRA, 1997); *Nitrates in Ground Water 1987-1993 Salinas Valley* (MCWRA, 1995); and *Salinas Valley Water Project Draft Master Environmental Impact Report* (EDAW, October 1998), available for review along with other data at MCWRA.[1]

[1] All studies referenced by title in the text of this EIR/EIS are available through MCWRA, 893 Blanco Circle, Salinas, California 93901; P.O. Box 930, Salinas, California 93902; (831-755-4860).

1.2.1 Basin Overdraft and Seawater Intrusion

Groundwater is the source for almost all of the water needs in the Salinas Valley (agricultural and urban). In the northern coastal areas of the Basin, most groundwater extraction occurs from two groundwater sources, the 180-Foot and 400-Foot Aquifers. An ongoing imbalance between the rate of groundwater withdrawal and recharge has resulted in overdraft conditions in the Basin that have allowed seawater from Monterey Bay to intrude inland into both of these aquifers. (See Overdraft and Seawater Intrusion Schematic, Figure 1-1.) By 1999, seawater was estimated to affect as much as 24,019 acres overlying the 180-Foot Aquifer in the northern Salinas Valley and 10,504 acres overlying the 400-Foot Aquifer. Table 1-1 depicts the magnitude of this problem over time. As a result, urban and agricultural supply wells have been abandoned or destroyed in some locations. To halt further groundwater degradation and prevent seawater from moving further inland, aquifer pumping and recharge rates must be brought into balance.

Criteria Used to Determine Presence

MCWRA uses the California Safe Drinking Water Act, Secondary Drinking Water Standard upper limit of 500 mg/l for chloride as a measurement of impairment of water, and subsequently as the basis for determining the seawater intrusion front. Native groundwater in the upper aquifer system typically displays chloride ion concentrations of less than 50 mg/l, thus the use of a 500 mg/l value to define the seawater front has proved useful because it has prevented the erroneous inclusion of areas within the aquifer system that may be impacted by sources of chloride ions other than seawater (MCWRA, 1997).

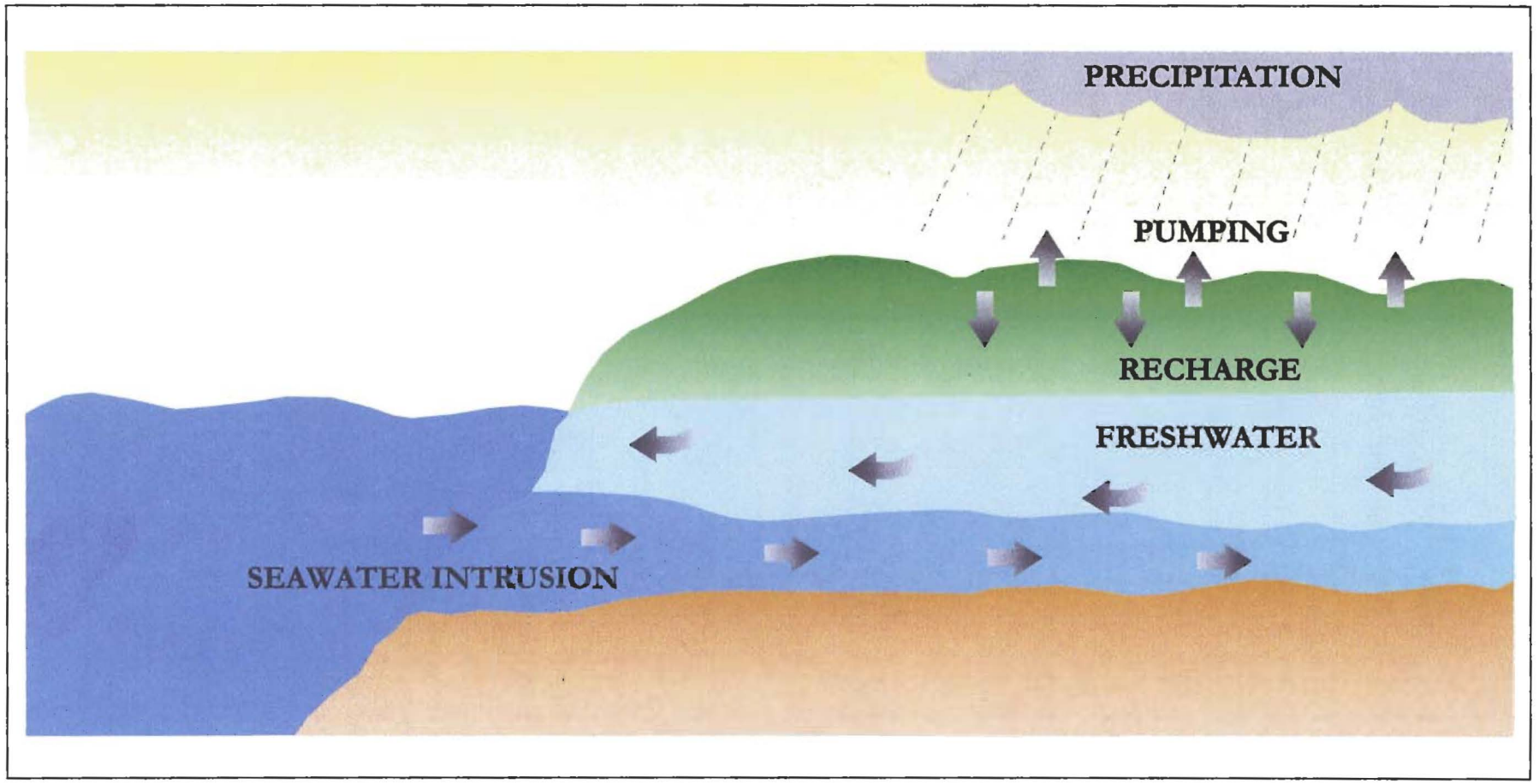
Health Effects/Implications for Water Use

The primary implication of the occurrence of seawater intrusion is the degradation of groundwater, which in turn causes the wells completed in contaminated water to be retired. When seawater intrudes into an aquifer used for public water supply, the high salinity of the seawater can render the water unfit for human consumption and unusable for agricultural purposes.

Extent of Seawater Intrusion Problem

Reports of seawater intrusion into the Basin began as early as 1946 when the then named State Department of Public Works (now Department of Water Resources) published Bulletin 52. Since the original study of seawater intrusion in the Basin, numerous other studies to evaluate the extent, causes, impacts, and possible mitigation have been conducted. The most significant of these studies were those prepared by MCRWA in 1960; the California Department of Water Resources in 1973; Leedshill-Herkenhoff, Inc. in 1985; and David Keith Todd Engineers (Todd) in 1989. Today, MCWRA monitors the movement and extent of seawater intrusion from a series of water quality testing wells.

At the time of the 1946 study, seawater intrusion was documented as extending approximately 1 mile inland and affecting an area of approximately 4,200 acres. Since that time, intrusion within the 180-Foot Aquifer has significantly advanced inland and, in 1999, was estimated to affect as much as 24,000 acres. In the 1989 study, an average easterly advancement rate of approximately 425 feet per year was reported (Staal, 1993). The rate and movement of seawater intrusion varies in response to annual patterns of precipitation; the advancement rate is higher in years of deficient rainfall and lower during periods of above average rainfall. Table 1-1 presents estimated overlying acreage for both the historical seawater intrusion fronts.



Source: EDAW, Inc., 2001.

Salinas Valley Water Project EIR/EIS

Figure 1-1
Overdraft and Seawater Intrusion Schematic
3/2001

Table 1-1
Estimated Acreage Overlying Seawater Intrusion

Water Year	180-Foot Aquifer (acres advanced from last date)	Total Acres	400-Foot Aquifer (acres advanced from last date)	Total Acres
1944	1,833	1,833	No Data	No Data
1959	No Data	1,833	22	22
1965	5,839	7,672	No Data	22
1975	3,973	11,645	3,695	3,717
1985	4,576	16,221	3,804	7,521
1990	No Data	16,221	826	8,347
1993	3,596	19,817	311	8,658
1995	No Observed Change	19,817	407	9,065
1997	1,802	21,619	896	9,961
1999	2,400	24,019	543	10,504

Source: MCWRA, 1997.

The most recent data indicates that in the 180-Foot Aquifer, an estimated 24,019 acres of land overlies groundwater of 500 mg/l or greater chloride concentration. The lack of change in the acreage between 1993 and 1995 should be interpreted to mean a deficiency of data points immediately in advance of the seawater intrusion front, precluding calculation of the new acreage affected. In the 400-Foot Aquifer, an estimated 10,504 acres of land overlies groundwater of 500 mg/l or greater chloride concentration (MWRCA, 2001). Figures 1-2 and 1-3 show the approximate location of the seawater intrusion front for the 180-Foot Aquifer and 400-Foot Aquifer, respectively.

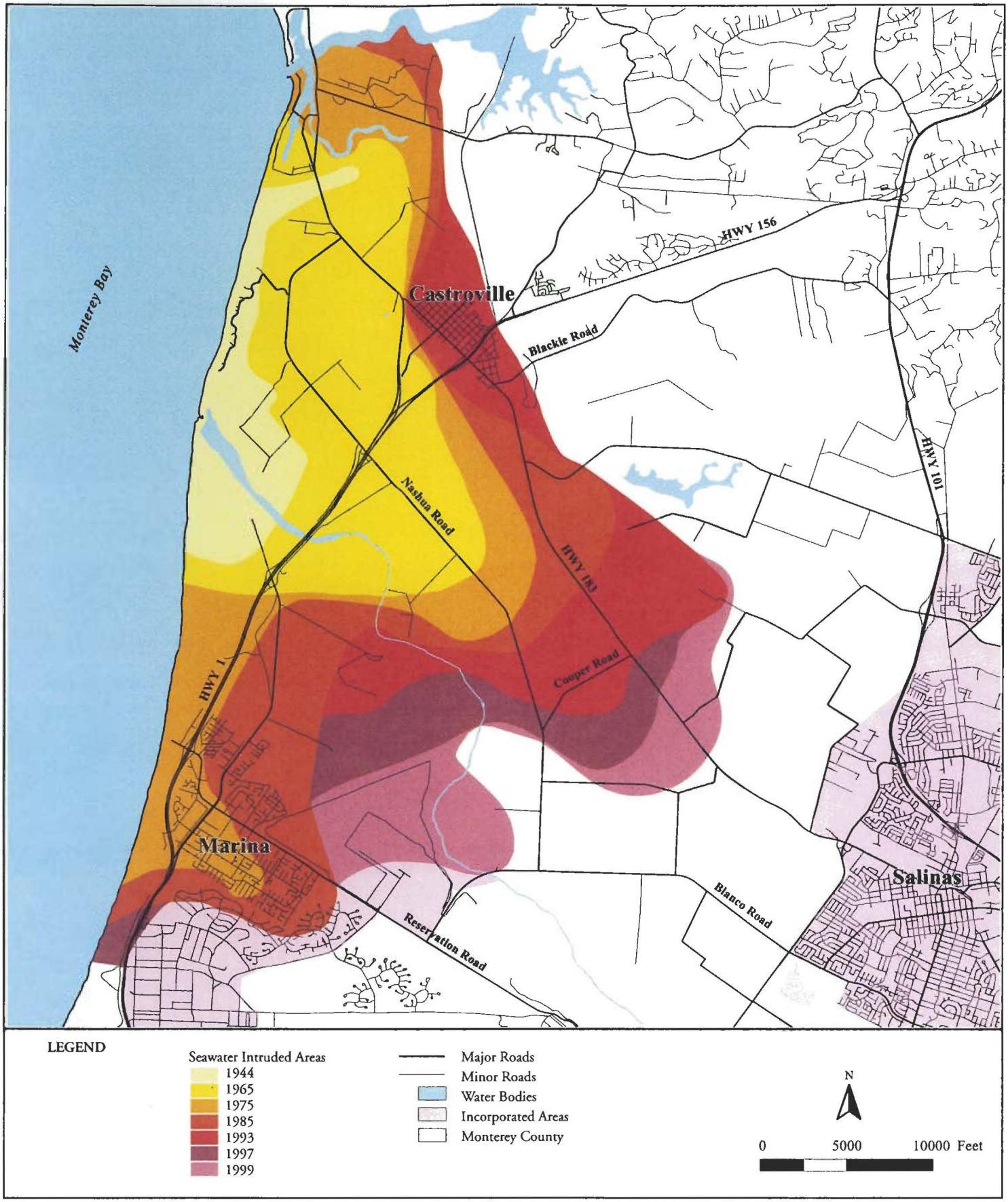
1.2.2 Existing and Future Water Needs

Water needs, both existing and future, were considered an integral part of the development and design of the proposed action. Without the development of additional water supplies to augment existing groundwater supplies, both existing and future water needs (the year 2030 was used for the future planning horizon) would result in further Basin overdraft and seawater intrusion. A variety of factors, including precipitation, reservoir operation, recharge and groundwater pumping all influence the hydrologic and hydraulic performance of the Basin. These factors were also considered in the evaluation of existing and future water needs and development of the SVWP.

Existing and projected 2030 water use, along with the corresponding rate of overdraft and seawater intrusion, is summarized in Table 1-2. For a detailed discussion of these issues, including the methodology and assumptions used in the development of these numbers, refer to technical background reports listed in Section 1.7, Incorporation by Reference.

1.3 History & Background

The SVWP has a long history, and the components presented and evaluated in this EIR/EIS have evolved from, and represent the culmination of, years of planning, engineering and public involvement. Discussion of this history is provided as an important context in understanding the proposed action and in reviewing this EIR/EIS.



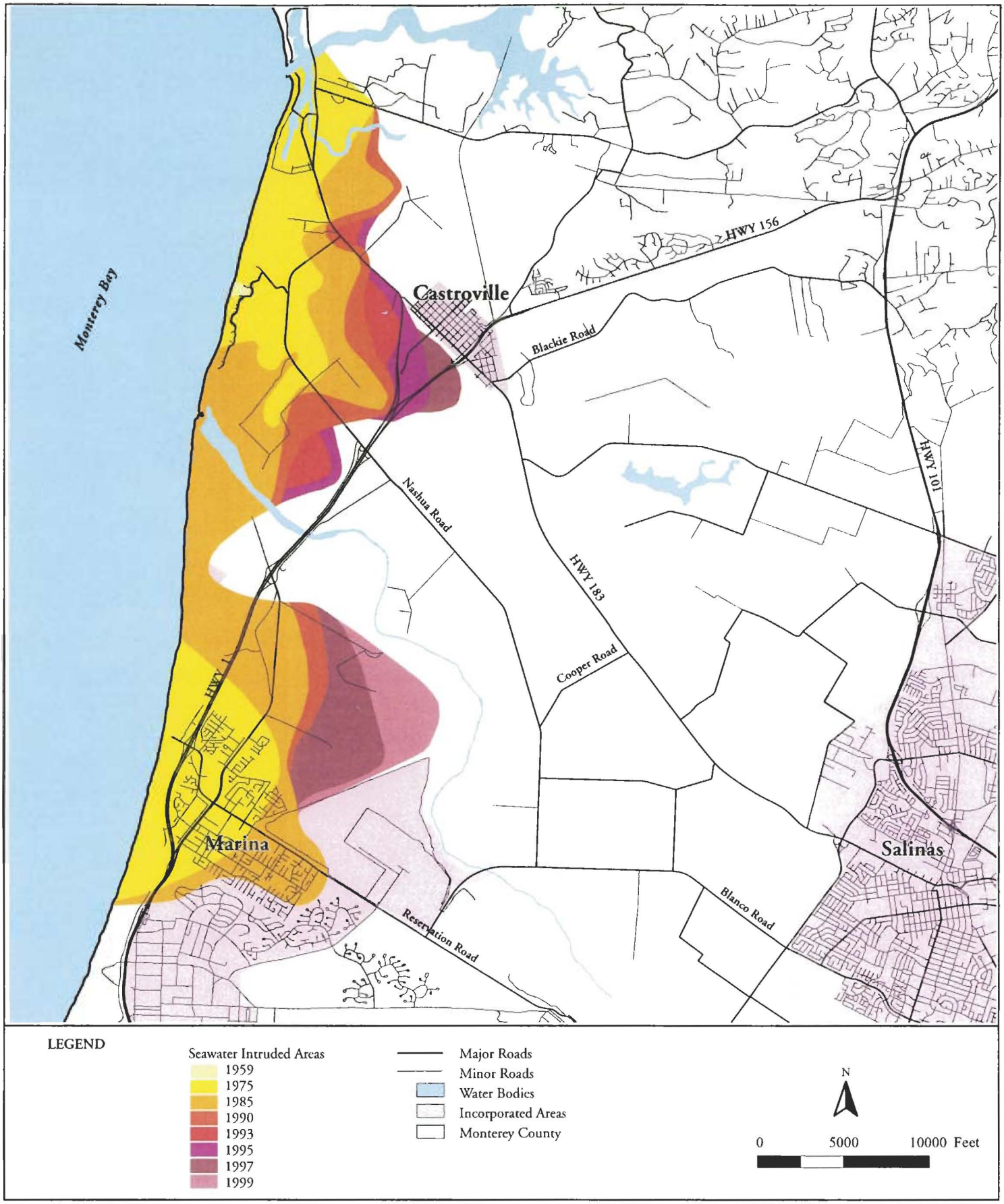
Source: Monterey County Water Resources Agency, 2001.

Figure 1-2

Salinas Valley Water Project EIR/EIS

Seawater Intrusion in the 180-Foot Aquifer

5/2001



Source: Monterey County Water Resources Agency, 2001.

Figure 1-3

Salinas Valley Water Project EIR/EIS

Seawater Intrusion in the 400-Foot Aquifer

5/2001

Table 1-2
Estimated Existing and Future Water Conditions (in AFY) [1]

Parameter	Baseline (1995) Conditions [2]	Projected Future (2030) Baseline Conditions [2]
Groundwater Pumping	463,000	443,000
Urban	45,000	85,000
Agricultural	418,000	358,000
Basin Overdraft (Does not include Seawater Intrusion) [3]	17,000	14,000
Seawater Intrusion [4]	8,900	10,300
Salinas River Outflow to Ocean	238,000	249,000

1 acre-feet per year
2 Baseline (1995) and Future Baseline (2030) Conditions assume that deliveries from MCWRP are being made. Under 1995 conditions, approximately 13,300 AFY are delivered, while under the 2030 conditions, 15,900 AFY is projected for delivery.
3 Basin overdraft is defined as the average annual rate of groundwater extraction over and above the total recharge to the groundwater basin.
4 Seawater intrusion is defined as the average annual rate of subsurface flow from the Monterey Bay into the 180-Foot and 400-Foot aquifers in the Pressure Subarea.
All numbers shown are assuming the SVWP is not in place.
Source: MCWRA, 1997.

Reports of seawater intrusion into the Basin began as early as 1946, when the then-named State Department of Public Works (now the Department of Water Resources) published Bulletin 52. Since Bulletin 52 was published in 1946, as discussed in Section 1.2, intrusion has significantly advanced inland. In 1977, the State Water Resources Control Board (SWRCB) listed the Basin as a candidate for State adjudication; however, no further action was recommended at that time. In 1983, MCWRA (formerly the Monterey County Flood Control and Water Conservation District) received funding from the SWRCB to evaluate alternatives that would prevent further seawater intrusion. Between 1983 and 1992, numerous studies of the extent of seawater intrusion were conducted and possible solutions were presented. MCWRA, in conjunction with the Monterey Regional Water Pollution Control Agency (MRWPCA), proceeded to design and construct the Monterey County Water Recycling Projects (MCWRP). The MCWRP address a portion of the seawater intrusion problem, in the Salinas Valley's coastal areas near Castroville, by providing recycled water for agricultural irrigation, which correspondingly reduces the amount of groundwater pumping in those areas. The MCWRP began making agricultural deliveries in April 1998.

In 1992, the MCWRA Board of Directors held a daylong workshop to establish the long-term planning goals for the management of water resources in the Basin. These goals led to the development of the Basin Management Planning efforts, which eventually led to the development of the proposed Salinas Valley Water Project. The focus of the planning process was on developing the most cost-effective, environmentally sound approach to meeting the stated objectives of the project (Section 1.1). In 1993, MCWRA held another all-day workshop to present and screen preliminary alternatives. Over 35 alternatives were considered and evaluated, based on their ability to meet the stated engineering/

operational objectives of the project, and their relative economic, legal/regulatory, sociocultural and biophysical characteristics and effects.

Additional information on the planning process and development of the screening criteria is provided in the following publications: the *Salinas River Basin Management Plan (BMP) Alternatives Analysis Report* (EDAW, August 1994), and the *Salinas Valley Basin Management Plan Draft Technical Memorandum BMP Water Supply Alternatives Analysis* (Montgomery Watson, May 1995) and the Salinas Valley Water Project Draft Master EIR (SVWP DEIR) (EDAW, 1998).

In 1996, as a separate action, SWRCB reinforced the urgency of the water problems faced in the Basin by initiating adjudicative proceedings in the Basin and indicating that it considered the problems facing the Basin to be one of "... the most critical water resources issues in California" (SWRCB, 1996). In response to this critical status, SWRCB has assembled a Salinas Valley Ground Water Basin Adjudication Team whose express mission is to "... protect the groundwater and surface water supplies in the Salinas Valley" (SWRCB, 1996). Its stated mission is to be accomplished by: "working with local stakeholders and decision-makers to reach consensus on a solution to the seawater intrusion and nitrate contamination problems in the Salinas Valley; and by performing a Salinas Valley Ground Water Basin adjudication, if necessary, under §§2100 et seq., 275, and 100 of the Water Code and Article X, Section 2 of the California Constitution." Adjudication would result in loss of local control and oversight of the water resources in the Basin (for additional information, refer to Chapter 4.0 under the No Project – State Adjudication Alternative discussion). SWRCB has initiated the first phase of this process (administrative proceedings) and has indicated that it will stop adjudication only if the following is achieved:

- a viable solution to stop seawater intrusion;
- a workable cost distribution;
- a schedule of implementation; and
- a nitrate management workplan that includes specific goals and timetables (SWRCB, 1996).

As described in the 1998 SVWP DEIR, alternatives continued to be refined and reconsidered, to the point where NOPs were released in 1994 and 1996, but projects considered in those NOPs did not advance. In 1996, the MCWRA held a series of workshops and developed and refined both the Salinas Valley Integrated Ground and Surface Water Model (SVIGSM) and the Historic Benefits Analysis (HBA). From the consensus building process and momentum built by the SVIGSM and HBA workshops, the basic configuration of an alternative that met the objectives of the project was identified. In October 1997, the MCWRA Board of Directors directed MCWRA to advance the engineering of that alternative, and evaluate its potential environmental impacts in a project-level EIR. The result of that direction was the development of the SVWP, the 1997 NOP, and the 1998 Draft EIR. Project elements included: modification of the Lake Nacimiento Dam spillway and altering the operations of the Reservoir (known as reoperation) to provide for more efficient use; recharge of reoperation-created water into the Salinas Valley groundwater aquifers; diversion of a portion of Salinas River water via a subsurface facility; storage of diverted water and recycled water from the MWPCA plant in a new reservoir; alternative storage of the recycled water within a contained area of the groundwater basin; and treatment and distribution of this water to agricultural and/or municipal uses.

Substantial public concern was raised over project costs, some of the project elements, and other issues during review of the Draft EIR. MCWRA decided, after several public meetings and workshops on the subject, to prepare this joint EIR/EIS on a revised project that incorporates a seasonal surface diversion facility (see Chapter 3.0 for a full description). The revised project grew out of a proposal brought forward in public comments. It has been refined through a collaborative effort, and is intended to resolve public concerns while meeting the project's objectives.

The revised (current) project is similar in many respects to the project already evaluated, but includes a surface diversion facility (in lieu of subsurface diversion and use of recycled water), no storage reservoirs, use of existing CSIP distribution facilities in the short term and possible expansion of these facilities in the long term, and distribution to agricultural sectors only (no urban deliveries). The project is expected to divert an average of 9,700 AFY of water from the Salinas River near Moro Cojo during the irrigation season. The diverted water will be mixed with reclaimed wastewater from the MCWRP and will be delivered to agricultural lands in the CSIP area. If seawater intrusion continues in the future due to increased demands in the coastal urban areas, an expanded distribution system might be needed to deliver Salinas River water to areas outside of the CSIP area. The project, as now proposed, includes a federal action associated with approval of the proposed surface diversion facility.

As indicated above, comments were received from the public during the CEQA public review period for the 1998 Draft EIR. All substantive comments received on that Draft EIR have been considered in this EIR/EIS, either through incorporation into the proposed action or through inclusion in the analysis.

A nitrate management workplan to stop nitrate contamination in the Basin is not included as a part of the current project but is the subject of separate planning efforts by MCWRA. The nitrate management program was initially developed as part of the Salinas Valley Water Project, Project Plan Report Draft, October 1998. Section 4 of the draft document, Nitrate Management Program, outlines a five-year program. The five-year program includes four activities: Administration, Monitoring and Measuring Nitrate, Source Management Reduction, and Domestic Ground Water Protection. Each activity has defined subtasks. For this and the last three years, nitrate program activities have been funded through two consecutive Clean Water Act 319(h) grants. At the end of this first five-year period promoting nitrate management, the program will be evaluated for effectiveness. It is during this time that strategic planning for the next five-year phase of nitrate management will begin.

1.4 Intended Use & Type of EIR/EIS

1.4.1 Type of EIR/EIS

According to CEQA, an EIR is required whenever a proposed action has the potential to result in a significant environmental impact. An EIR is an informational document used to inform public agency decision-makers and the general public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency is required to consider the information presented in the EIR when determining whether or not to approve a proposed action.

According to NEPA, an EIS is required whenever a proposed action represents a proposal for legislation or a federal action (activity financed, assisted, conducted, or approved by a federal agency) that has the potential to result in significant effects on the quality of the human environment. The proposed action represents a federal action because it may require federal permits for one or more of the following

EXHIBIT 8

TRANSMITTAL MEMORANDUM

To: Fort Ord Reuse Authority Administrative Committee

From: Ellen Martin and Kate O'Beirne

Subject: Fort Ord Multi-Species Habitat Conservation Plan—Financial Model Sensitivity Analysis and Cost Allocation Alternatives; EPS #192003

Date: November 13, 2019

The Fort Ord Reuse Authority (FORA) retained Economic & Planning Systems, Inc. (EPS) to evaluate funding obligations associated with the Fort Ord Multi-Species Habitat Conservation Plan (HCP). Under separate cover, EPS has prepared a detailed technical memorandum and analysis documenting the HCP funding model and endowment funding requirements for purposes of HCP implementation. As part of discussions regarding FORA transition considerations and in concert with FORA Administrative Committee requests, FORA requested that EPS provide a series of sensitivity analyses evaluating the effect of various changes to anticipated costs and revenues on HCP implementation. In addition, EPS evaluated several cost allocation alternatives that offer varying approaches to allocating HCP Endowment Capitalization requirements among the benefitting jurisdictions.

EPS conducted the analyses using the baseline HCP financial model used for purposes of HCP implementation. It is important to note that the analysis is based on the assumption that the FORA jurisdictions implement a replacement funding mechanism for the FORA Developer Fee and Community Facilities District (CFD) Special Tax. Revenues available to capitalize the HCP endowments are assumed to be equal to the existing FORA Developer Fee and CFD Special Tax rates.

In addition, it is important to note that the analyses are based on the anticipated HCP endowment funding requirements using the assumptions established in the baseline HCP financial model. These endowment funding requirements do not contemplate any additional contingency fund requirements associated with reduced endowment fund payout rates or other contingency funding needs.

The Economics of Land Use

Economic & Planning Systems, Inc.
400 Capitol Mall, 28th Floor
Sacramento, CA 95814
916 649 8010 tel
916 649 2070 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

HCP Financial Model Sensitivity Analyses

The HCP sensitivity analyses evaluate different scenarios for endowment funding circumstances. To inform discussions surrounding establishing a Joint Exercise of Powers Agreement (JPA) to create the Fort Ord Regional Habitat Cooperative, EPS evaluated the following scenarios, as summarized in **Table 1**:

- **Baseline Analysis.** The baseline analysis reflects the current HCP financing model, which uses FORA Capital Improvement Program (CIP) development projections and the current HCP cost assumptions. This analysis provides the baseline for comparison for purposes of sensitivity testing.

- **Scenario 1: Revenue Sensitivity Analysis.** For purposes of all sensitivity analyses, EPS revised the development absorption assumptions to show absorption of approximately 300 units per year and a prolonged development timeframe for the nonresidential development. **Table 2** illustrates the proposed development land uses by year for the Baseline Analysis, and **Table 3** lists the proposed development land uses by year for the Sensitivity Analyses.

  For **Scenario 1**, HCP endowment funding needs are evaluated based on the revised development absorption schedule (and associated revenue projections, using the CFD as a proxy for a future replacement funding mechanism), as well as current cost assumptions. This scenario demonstrates the effect of delayed absorption and associated revenues on the total endowment funding requirements.

- **Cost Sensitivity Analysis.** Using the same revised development absorption schedule, EPS examined 2 cost sensitivity analyses to identify the potential impact of reduced habitat management costs on the endowment funding requirements. It is important to note that these cost sensitivity analyses <u>are not based on an analysis of habitat management costs relative to anticipated development</u> and are instead based on <u>hypothetical cost reduction scenarios</u> to illustrate the associated financial modeling dynamics. Further analysis on the part of the HCP consultants would be necessary to relate anticipated development timing to projected habitat management costs:

  - ***Scenario 2: Delayed Revenues and Costs*: Scenario 2** is based on the assumption that habitat management costs are reduced in the early years but reach the current estimate of $2.2 million annually over the permit term. EPS evaluated 3 alternatives evaluating a 5, 10, and 20 percent reduction in costs in the early years, phasing those costs in over time as development absorbs. **Figure 1** illustrates the cost assumptions associated with this scenario, with annual habitat management costs detailed in **Table 4**.

  - ***Scenario 3: Delayed Revenues and Reduced Costs*: Scenario 3** evaluates the endowment funding requirements should habitat management costs be significantly lower than costs currently anticipated. For this scenario, EPS evaluated 2 cost reduction alternatives—assuming that permit term and post-permit term costs are reduced by 15 and 25 percent, respectively. **Figure 2** illustrates the cost assumptions used for this scenario, with **Table 4** detailing annual habitat management costs associated with each alternative.

Appendix A offers additional detail regarding initial and ongoing cost assumptions for each scenario, alternative, and individual HCP endowment.

Figure 1
Summary of Total HCP Costs by Scenario
Scenario 2: Delayed Revenues and Early Years Cost Reduction

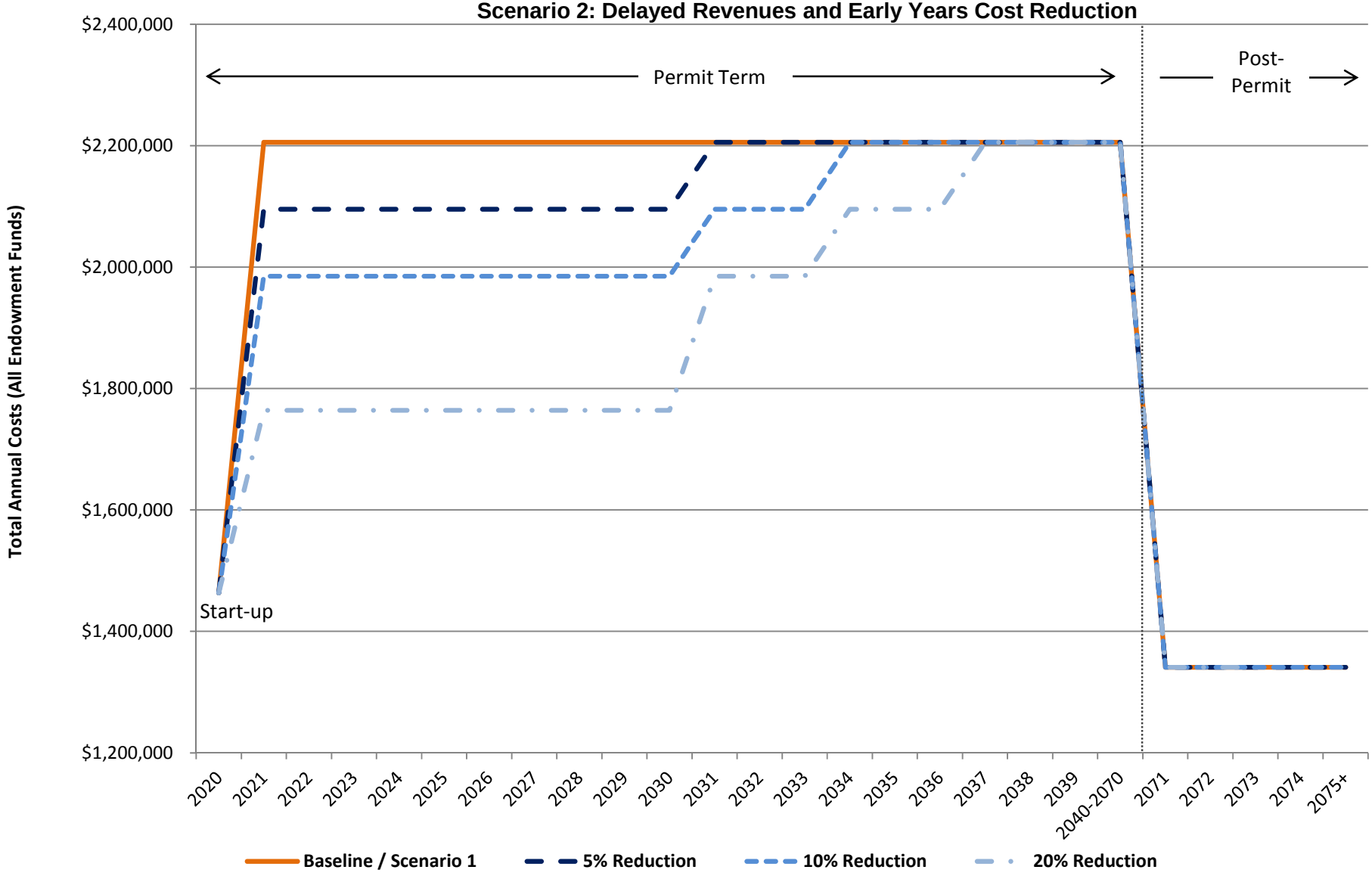
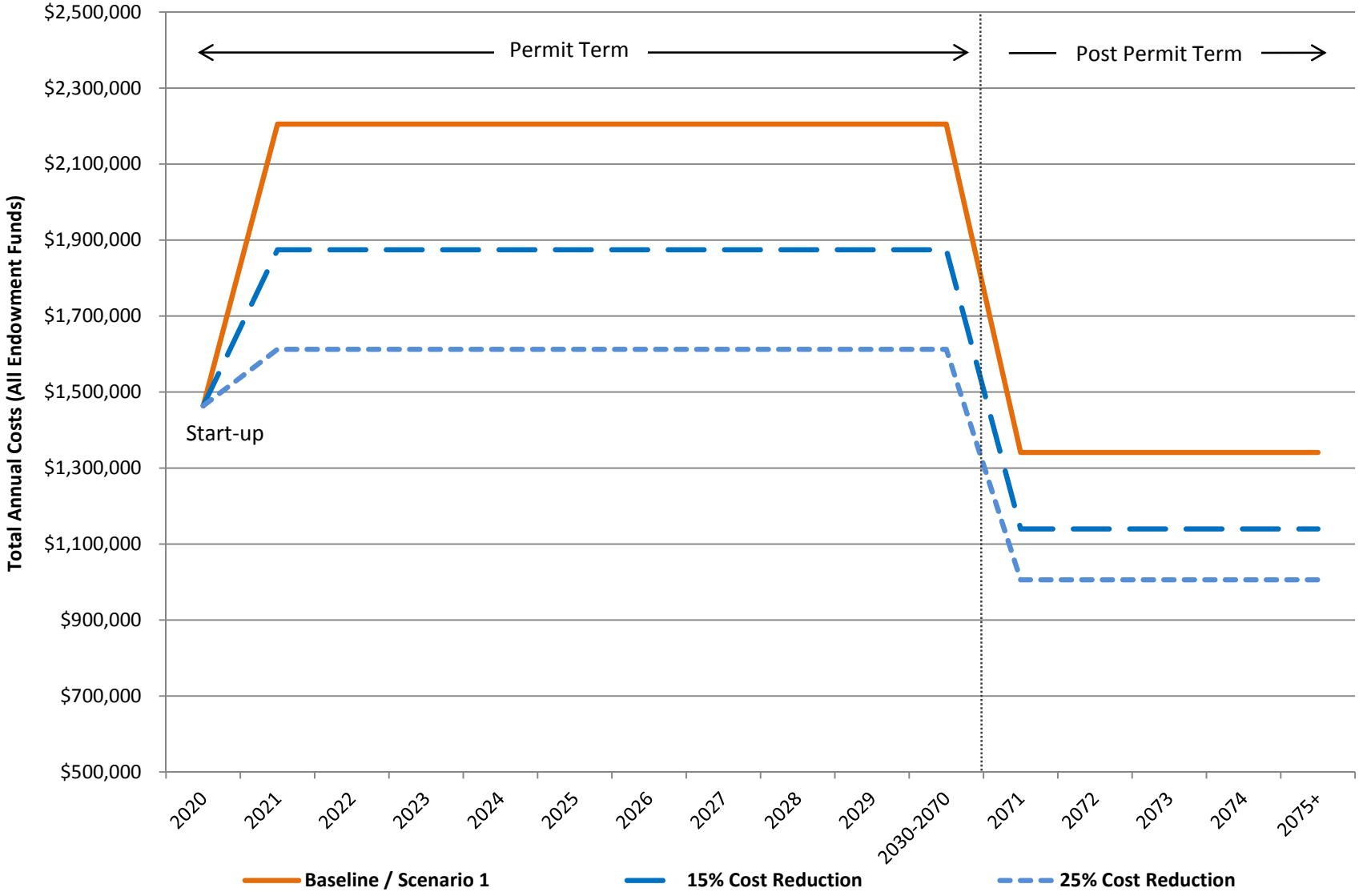


Figure 2
Summary of Total HCP Costs by Scenario
Scenario 3: Delayed Revenues and Cost Reduction



Sensitivity Analysis Results

Figure 3 summarizes the total future revenues needed to capitalize the HCP endowment for each scenario and alternative evaluated, with **Table 5** offering additional details regarding the assumed CFD replacement revenues generated relative to the portion required to fund the HCP endowment. Again, note that this analysis is based on the assumption that after FORA's sunset in 2020, the FORA jurisdictions implement replacement funding mechanisms for purposes of capitalizing the HCP endowments. This analysis is based on the assumption that the replacement funding mechanism will mirror the current FORA Developer Fee and CFD Special Tax rates. Results by scenario are summarized below, and **Appendix B** offers additional detail regarding endowment funding cash flows informing these outcomes:

- **Scenario 1: Revenue Sensitivity Analysis. Scenario 1** is based on the assumed slower development absorption and associated slower revenue generation for purposes of capitalizing the HCP endowments. Current cost assumptions are maintained. This scenario demonstrates that while total habitat management costs remain the same as the Baseline Analysis, delayed absorption and associated revenues increases the HCP endowment funding requirement by more than $5.8 million over the course of the development period. The HCP endowment funding requirement increases because the amount of revenue generated by development in the earlier years decreases and therefore decreases the availability of interest earnings used to capitalize the endowment.

- **Cost Sensitivity Analysis. Scenarios 2** and **3** use the same delayed absorption schedule but also integrate reduced annual habitat management costs:

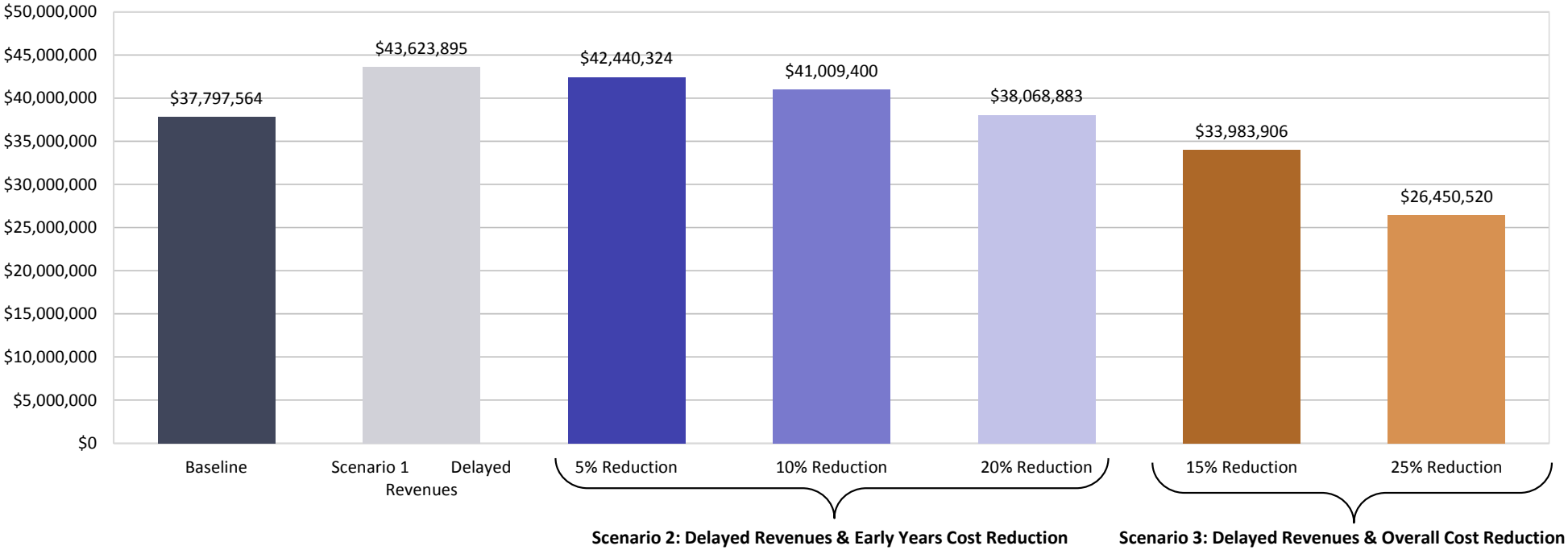
  - ***Scenario 2: Delayed Revenues and Costs*: Scenario 2** is based on the assumption that habitat management costs are reduced in the early years but reach the current estimate of $2.2 million annually over the permit term. Even though costs are reduced in the early years, those cost reductions are insufficient to overcome the influence of slower development absorption and associated revenue generation:

    - Scenario 2—Alternative 1—5 Percent Early Years Reduction in Costs. This alternative demonstrates that even though HCP costs are reduced until Fiscal Year (FY) 2031, with delayed absorption and associated revenues, the HCP endowment funding requirement increases by more than $4.6 million over the course of the development period, in comparison with the Baseline Scenario.

    - Scenario 2—Alternative 2—10 Percent Early Years Reduction in Costs. This alternative demonstrates that even though HCP costs are reduced until FY 2034, with delayed absorption and associated revenues, the HCP endowment funding requirement increases by more than $3.2 million over the course of the development period.

    - Scenario 2—Alternative 3—20 Percent Early Years Reduction in Costs. This alternative demonstrates that even though HCP costs are reduced until FY 2037, with delayed absorption and associated revenues, the HCP endowment funding requirement increases by approximately $271,000 over the course of the development period.

Figure 3
HCP Endowment Funding Requirement



- ***Scenario 3: Delayed Revenues and Reduced Costs*:** In hypothetical **Scenario 3**, as the permit term and post-permit term costs are significantly reduced, the HCP endowment funding requirement decreases for both alternatives relative to the **Baseline Scenario**.

  - Scenario 3—Alternative 1—15 Percent Overall Cost Reduction. This scenario demonstrates that with HCP costs decreased by 15 percent in conjunction with delayed absorption and associated revenues, the HCP endowment funding requirement decreases by more than $3.8 million over the course of the development period.

  - Scenario 3—Alternative 2—25 Percent Overall Cost Reduction. This scenario demonstrates that with HCP costs decreased by 25 percent in conjunction with delayed absorption and associated revenues, the HCP endowment funding requirement decreases by approximately $11.3 million over the course of the development period.

Again, please note that these cost sensitivity analyses are not based on an analysis of habitat management costs relative to anticipated development and are instead based on hypothetical cost reduction scenarios to illustrate the associated financial modeling dynamics. In addition, these endowment funding requirements do not contemplate any additional contingency fund requirements associated with reduced endowment fund payout rates or other contingency funding needs. Further analysis on the part of the HCP consultants would be necessary to relate anticipated development timing to projected habitat management costs.

Cost Allocation Alternatives

To understand the potential array of options related to distributing HCP endowment capitalization requirements among the FORA jurisdictions, EPS evaluated a series of HCP Endowment Funding cost allocation alternatives. Each cost allocation alternative evaluates a potential method to distribute costs between the jurisdictions and benefiting permittees, relying on estimates for HCP costs and associated HCP endowment capitalization requirements. Please note that these alternatives are based on data available at the time this memorandum was written, with the understanding that refinements and updates will be a necessary step for the JPA to undertake to establish the final cost allocation approach. This analysis was completed to present the potential logic and formulas that could be applied, as well as to demonstrate "directional shifts" that occur under various approaches. EPS evaluated the following alternatives, as summarized in **Tables 6** and **7**:

- **Alternative 1: CFD Replacement Revenue.** Alternative 1 reflects the continuation of the current HCP financing paradigm, basing allocation on each jurisdiction's share of the projected CFD replacement revenue at current CFD rates using the projections from FORA's 2019-20 CIP Analysis date May 3, 2019. This alternative excludes UC office land use as it is exempt from the CFD calculation per FORA staff and in accordance with agreements between FORA and the UC that will expire upon FORA's sunset. EPS understands that the jurisdictions may have updates to the underlying development projections that the JPA should consider.

- **Alternative 2: Developable Acreage.** Alternative 2 reflects the cost allocation based on each jurisdiction's share of developable acreage. This alternative includes 2 sub-alternatives reflecting a "market/resource constrained" approach and a "market/resource unconstrained" approach.

  - **Alternative 2A: Short-Term Planning Pipeline Developable Acreage.** The short-term planning pipeline is derived from the projections reported by jurisdictions to FORA and used in the FORA CIP Analysis (consistent with Alternative 1). For this scenario, however,

jurisdiction projections are translated into developable acreages based on density assumptions reported in **Appendix C**. This alternative excludes development already constructed or entitled with an independent take permit. This scenario reflects a market and resource constrained scenario whereby only portions of the total developable areas are anticipated to develop.

  - **Alternative 2B: Permit-Term Total Developable Acreage.** This scenario reflects the full parcel acreage for the development areas anticipated to develop in the permit term as shown in **Appendix D**. This alternative excludes properties not anticipated to develop (e.g. Parker Flats, Monterey County outside East Garrison) within the permit term. The acreage included in this scenario comprises areas categorized as "Entitled HCP Dependent" and "Planned Development HCP Dependent" acres, or land that will develop under the auspices of the HCP and associated take permit. These classifications were defined and determined by FORA staff. This scenario reflects no market or resource constraints that would limit development on those parcels anticipated to develop within the permit term.

- **Alternative 3: Water Allocations.** Alternative 3 uses current water allocation as a proxy for development capacity reflecting data provided by Denise Duffy & Associates. The water allocations are assumed to be total, not remaining (i.e., they may include water allocations supporting existing development and exclude allocations to CSUMB, State Parks and Recreation, U.S. Army, and the Assumed Line Loss). Future analysis by the JPA may contemplate limiting this analysis to remaining water allocation only.

  - **Alternative 3A.** Derived based on potable water allocations.

  - **Alternative 3B.** Derived based on total water allocations, which includes both potable and recycled water allocations.

Please note that these alternatives are not intended to reflect proposals, but instead to offer examples of how costs might be logically distributed amongst the benefiting parties. Ultimately, the JPA will be responsible for determining how endowment funding responsibilities are distributed amongst the benefiting parties. **Table 6** summarizes how each jurisdiction's endowment funding percentage was derived based on each cost allocation alternative.

Table 7 summarizes the cost allocation outcomes based on the alternative methodologies described above. To facilitate comparison, each alternative assumes a $40 million endowment funding requirement and identifies how that obligation would be distributed among the identified parties under each alternative cost allocation approach. Key outcomes of the cost allocation alternatives include the following findings:

- Allocating costs based on CFD Replacement Revenues (**Alternative 1**) continues the existing FORA financing paradigm and relies heavily on residential development to fund HCP endowment costs, since the current CFD rates are weighted more heavily to residential uses.

- Utilizing a developable acreage approach shifts costs onto nonresidential land uses, essentially treating each developable acre equally for cost allocation purposes. However, there are challenges with this allocation method, as it is difficult to determine how much of each parcel will actually develop, as illustrated by the shifts in cost allocation between **Alternative 2A** and **2B**.

- Water allocations (**Alternative 3**) may provide a more appropriate proxy for total development capacity, with the inclusion of recycled water meriting further consideration related to the potential use of that water allocation (i.e., does recycled water support additional permitted "take"?).

Again, the above cost allocation alternatives are intended to provide context for future JPA Board/Cooperative considerations and to facilitate discussions among the Administrative Committee. As the JPA Board considers HCP Endowment Funding requirements, there are a number of additional issues and topics that will warrant consideration. These items include:

- Land use changes. How will the HCP endowment funding cost allocation model adjust for rezones and other land use changes that may alter the distribution of endowment funding obligations?

- Endowment payout rate. The HCP endowment funding cost allocation model may need to consider contingency provisions should the endowment not achieve currently modeled payout rates.

- Interim shortfalls. Should any interim shortfalls materialize, the JPA Board/Cooperative should consider how those shortfalls will be resolved.

- Other permittee/beneficiary participation. The cost allocation analysis presented above largely maintains current assumptions relating to which permittees are obliged to fund HCP endowment funding requirements, largely driven by the existing FORA funding paradigm and agreements between FORA and other permittees regarding their HCP funding obligations. The JPA Board/Cooperative should consider if participation by other permittees in HCP funding obligations is warranted (e.g., MPC, Monterey Peninsula Regional Park District, CSUMB, Veterans Cemetery, developable area in HMAs).

- Other changed circumstances. The JPA Board/Cooperative should establish procedures to address other changed circumstances that may affect the ability of the Cooperative to fully fund HCP activities and the HCP endowments by the culmination of the permit term.

EPS appreciates your review of the enclosed technical analysis and hopes that the Administrative Committee finds this material informative regarding HCP endowment funding options. Please contact Ellen Martin at (916) 649-8010 with questions and comments regarding this analysis.

List of Tables

Table 1
FORA Habitat Conservation Plan - Financial Model Sensitivity Analysis
Development Funding Scenario Summary

Item	Absorption Assumption	Development Timeframe	Endowment Funding Requirement [1]	Difference from Baseline No.	Difference from Baseline %
DEVELOPMENT SCENARIO					
Baseline	FORA CIP Assumptions	2020-2030	$37,797,564	-	-
Scenario 1: Revenue Sensitivity (Delayed Revenues)	Prolonged development absorption ~300 units per year	2020-2036	$43,623,895	$5,826,331	15.4%
Scenario 2: Delayed Revenues and Costs	Prolonged development absorption	2020-2036			
Alternative 1 - 5% Cost Reduction in early years	~300 units per year		$42,440,324	$4,642,760	12.3%
Alternative 2 - 10% Cost Reduction in early years			$41,009,400	$3,211,836	8.5%
Alternative 3 - 20% Cost Reduction in early years			$38,068,883	$271,319	0.7%
Scenario 3: Delayed Revenues and Reduced Costs	Prolonged development absorption	2020-2036			
Alternative 1 - 15% Cost Reduction	~300 units per year		$33,983,906	($3,813,658)	(10.1%)
Alternative 2 - 25% Cost Reduction			$26,450,520	($11,347,044)	(30.0%)

Source: EPS.

[1] Excludes HCP contingency amount.

Table 2
FORA Habitat Conservation Plan - Financial Model Sensitivity Analysis
Baseline Planned Land Use Summary by Year

FY Ending	New Residential [1]	Existing/Replac. Residential	Nonresidential [2]			
			Office [3]	Industrial	Retail	Hotel
	Units	*Units*	*Acres*	*Acres*	*Acres*	*Rooms*
2020	187	47	13.1	0.0	1.8	0
2021	346	0	20.6	1.1	5.0	368
2022	1,117	0	14.7	5.5	24.1	200
2023	927	0	24.3	8.9	10.8	330
2024	655	0	29.6	39.4	13.5	344
2025	443	0	26.9	10.7	14.5	0
2026	350	0	21.6	9.6	0.0	0
2027	287	0	3.3	5.5	0.0	0
2028	234	0	9.8	0.6	0.0	100
2029	100	0	3.3	0.0	0.0	0
2030	232	0	9.8	0.0	0.0	0
TOTAL	**4,878**	**47**	**177.1**	**81.3**	**69.7**	**1,342**

LU

Source: FORA.

[1] Per FORA the VTC intends to meet the tier 1 CFD rate discount, which is 5% of the new residential rate, for their entitled 71-unit project. Therefore FORA applied a 5% factor on the CFD calculation for these units.
[2] Building square footages are converted to acreage by dividing building square feet by the Floor-Area-Ratio for each land use type and then again by 43,560 (square feet per acre).
[3] Per FORA the UC office space is exempt from the CFD calculation.

Table 3
FORA Habitat Conservation Plan - Financial Model Sensitivity Analysis
Sensitivity Analysis - Planned Land Use Summary by Year

Sensitivity Analysis
Land Use Assumptions

FY Ending	New Residential [1]	Existing/Replac. Residential	Nonresidential [2]			
			Office	Industrial	Retail	Hotel
	Units	*Units*	*Acres*	*Acres*	*Acres*	*Rooms*
2020	187	47	0.0	0.0	0.0	0
2021	300	0	0.0	0.0	0.0	0
2022	300	0	0.0	0.0	5.0	368
2023	300	0	14.7	5.5	1.8	200
2024	300	0	24.3	8.9	10.8	330
2025	300	0	29.6	39.4	24.1	344
2026	300	0	26.9	10.7	13.5	0
2027	300	0	21.6	9.6	14.5	0
2028	300	0	20.6	5.5	0.0	0
2029	300	0	13.1	0.6	0.0	100
2030	300	0	9.8	1.1	0.0	0
2031	300	0	9.8	0.0	0.0	0
2032	300	0	3.3	0.0	0.0	0
2033	300	0	3.3	0.0	0.0	0
2034	300	0	0.0	0.0	0.0	0
2035	300	0	0.0	0.0	0.0	0
2036	191	0	0.0	0.0	0.0	0
TOTAL	**4,878**	**47**	**177.1**	**81.3**	**69.7**	**1,342**

LU

Source: FORA.

[1] Sensitivity Analysis is based on a residential absorption of about 300 units per year.
[2] Nonresidential square footage is assumed to be gradual and absorption is prolonged to correspond with residential development.

Table 4
FORA Habitat Conservation Plan - Financial Model Sensitivity Analysis
Summary of Total HCP Costs by Scenario

Permit Year	Year	Total Annual Costs (All Endowment Funds)						
				Scenario 2			Scenario 3	
		Baseline	Scenario 1	Alt. 1	Alt. 2	Alt. 3	Alt. 1	Alt. 2
Scenario Description			*Delayed Revenues*	*Delayed Revenues & Early Years Cost Reduction*			*Delayed Revenues & Reduced Costs*	
				5%	*10%*	*20%*	*15%*	*25%*
	2020	($1,463,528)	($1,463,528)	($1,463,528)	($1,463,528)	($1,463,528)	($1,463,528)	($1,463,528)
1	2021	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2022	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2023	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2024	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2025	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2026	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2027	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2028	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2029	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
10	2030	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,764,222)	($1,874,486)	($1,612,294)
	2031	($2,205,278)	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,874,486)	($1,612,294)
	2032	($2,205,278)	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,874,486)	($1,612,294)
	2033	($2,205,278)	($2,205,278)	($2,205,278)	($2,095,014)	($1,984,750)	($1,874,486)	($1,612,294)
	2034	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($2,095,014)	($1,874,486)	($1,612,294)
	2035	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($2,095,014)	($1,874,486)	($1,612,294)
	2036	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($2,095,014)	($1,874,486)	($1,612,294)
	2037	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($1,874,486)	($1,612,294)
	2038	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($1,874,486)	($1,612,294)
	2039	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($1,874,486)	($1,612,294)
20-50	2040-2070	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($2,205,278)	($1,874,486)	($1,612,294)
	Post-Permit							
	2071+	($1,340,992)	($1,340,992)	($1,340,992)	($1,340,992)	($1,340,992)	($1,139,843)	($1,005,744)

Source: Fort Ord Reuse Authority.

DRAFT

Table 5
FORA Habitat Conservation Plan - Financial Model Sensitivity Analysis
Summary of Endowment Capitalization Requirements by Scenario [1] [2]

				SENSITIVITY ANALYSIS											
	Baseline				Scenario 1 - Delayed Revenues		Scenario 2 - Delayed Revenues & Early Years Cost Reduction						Scenario 3 - Delayed Revenues and Reduced Costs			
							Alt. 1 - 5%		Alt. 2 - 10%		Atl. 3 - 20%		Alt. 1 - 15%		Alt. 2 - 25%	
FY Ending	Total CFD Special Tax Revenue	% Dedicated to HCP	Total HCP Revenues	Total CFD Special Tax Revenue	% CFD Rev. Dedicated to HCP	Total HCP Revenues	% CFD Rev. Dedicated to HCP	Total HCP Revenues	% CFD Rev. Dedicated to HCP	Total HCP Revenues	% CFD Rev. Dedicated to HCP	Total HCP Revenues	% CFD Rev. Dedicated to HCP	Total HCP Revenues	% CFD Rev. Dedicated to HCP	Total HCP Revenues
2020	$6,104,257	30.0%	$1,831,277	$6,274,650	36.0%	$2,258,874	35.0%	$2,196,128	33.0%	$2,070,635	33.0%	$2,070,635	28.0%	$1,756,902	21.0%	$1,317,677
2021	$9,544,814	27.6%	$2,637,232	$7,610,509	31.4%	$2,387,417	30.5%	$2,322,727	29.5%	$2,247,383	27.3%	$2,077,669	24.4%	$1,860,009	19.1%	$1,450,563
2022	$31,162,534	27.6%	$8,610,208	$10,429,329	31.4%	$3,271,680	30.5%	$3,183,031	29.5%	$3,079,781	27.3%	$2,847,207	24.4%	$2,548,928	19.1%	$1,987,830
2023	$26,187,592	27.6%	$7,235,632	$8,932,646	31.4%	$2,802,171	30.5%	$2,726,244	29.5%	$2,637,810	27.3%	$2,438,612	24.4%	$2,183,139	19.1%	$1,702,562
2024	$19,676,212	27.6%	$5,436,537	$11,237,705	31.4%	$3,525,268	30.5%	$3,429,748	29.5%	$3,318,494	27.3%	$3,067,893	24.4%	$2,746,495	19.1%	$2,141,907
2025	$12,312,764	27.6%	$3,402,017	$10,711,981	31.4%	$3,360,349	30.5%	$3,269,297	29.5%	$3,163,248	27.3%	$2,924,371	24.4%	$2,618,008	19.1%	$2,041,704
2026	$8,980,604	27.6%	$2,481,341	$8,725,278	31.4%	$2,737,120	30.5%	$2,662,955	29.5%	$2,576,575	27.3%	$2,382,001	24.4%	$2,132,458	19.1%	$1,663,038
2027	$7,307,945	27.6%	$2,019,185	$7,712,504	31.4%	$2,419,412	30.5%	$2,353,856	29.5%	$2,277,502	27.3%	$2,105,514	24.4%	$1,884,936	19.1%	$1,470,003
2028	$6,534,851	27.6%	$1,805,579	$7,695,261	31.4%	$2,414,003	30.5%	$2,348,594	29.5%	$2,272,411	27.3%	$2,100,806	24.4%	$1,880,722	19.1%	$1,466,717
2029	$2,547,111	27.6%	$703,767	$8,219,654	31.4%	$2,578,505	30.5%	$2,508,638	29.5%	$2,427,264	27.3%	$2,243,965	24.4%	$2,008,883	19.1%	$1,566,666
2030	$5,916,717	27.6%	$1,634,789	$7,645,152	31.4%	$2,398,284	30.5%	$2,333,300	29.5%	$2,257,613	27.3%	$2,087,127	24.4%	$1,868,475	19.1%	$1,457,166
2031	$0	0.0%	$0	$7,641,333	31.4%	$2,397,086	30.5%	$2,332,135	29.5%	$2,256,486	27.3%	$2,086,084	24.4%	$1,867,542	19.1%	$1,456,438
2032	$0	0.0%	$0	$7,619,511	31.4%	$2,390,241	30.5%	$2,325,475	29.5%	$2,250,042	27.3%	$2,080,127	24.4%	$1,862,209	19.1%	$1,452,279
2033	$0	0.0%	$0	$7,619,511	31.4%	$2,390,241	30.5%	$2,325,475	29.5%	$2,250,042	27.3%	$2,080,127	24.4%	$1,862,209	19.1%	$1,452,279
2034	$0	0.0%	$0	$7,608,600	31.4%	$2,386,818	30.5%	$2,322,145	29.5%	$2,246,820	27.3%	$2,077,148	24.4%	$1,859,542	19.1%	$1,450,199
2035	$0	0.0%	$0	$7,608,600	31.4%	$2,386,818	30.5%	$2,322,145	29.5%	$2,246,820	27.3%	$2,077,148	24.4%	$1,859,542	19.1%	$1,450,199
2036	$0	0.0%	$0	$4,844,142	31.4%	$1,519,607	30.5%	$1,478,432	29.5%	$1,430,475	27.3%	$1,322,451	24.4%	$1,183,908	19.1%	$923,293
Total	**$136,275,400**		**$37,797,564**	**$138,136,367**		**$43,623,895**		**$42,440,324**		**$41,009,400**		**$38,068,883**		**$33,983,906**		**$26,450,520**

Source: EPS.

[1] All scenarios assume that a replacement mechanism for FORA CFD is in place. Revenues are estimated based on FY 2019-20 CFD special tax rate and development absorption assumptions pertinent to that scenario.
[2] Reflects Endowment funding requirements based on current cost estimates and cost sensitivities as described. Does not include HCP payout rate contingency.

Table 6
FORA Cost Allocation Alternatives
Cost Allocation Alternatives Summary

Item	Alternative 1: CFD Replacement Revenue [1]		Alternative 2: Developable Acreage				Alternative 3: Water Allocations [4]			
			2A: Short-Term Planning Pipeline Developable Acreage [2]		2B: Permit-Term Total Developable Acreage [3]		3A: Potable Water Allocations		3B: Total Water Allocations	
	Projected CFD Replacement Revenue	Percent of CFD Replacement Revenues	Projected Developable Acres	Percent of Projected Dev. Acres	Projected Developable Acres	Percent of Projected Dev. Acres	Potable Water AFY	Percent of Potable Water AFY	Total Water AFY	Percent of Total Water AFY
Jurisdiction										
Del Rey Oaks	$14,434,891	10.6%	148.5	14.8%	328.3	14.0%	242.5	6.7%	522.5	10.7%
Marina	$63,565,939	46.6%	330.4	32.8%	592.8	25.3%	1,340.0	37.1%	1,685.0	34.5%
City of Monterey	$198,748	0.1%	59.7	5.9%	110.0	4.7%	65.0	1.8%	65.0	1.3%
Monterey County	$15,471,439	11.4%	107.7	10.7%	107.7	4.6%	720.0	19.9%	854.0	17.5%
Seaside	$34,546,890	25.4%	241.2	24.0%	715.0	30.6%	1,012.5	28.0%	1,465.5	30.0%
UC [6]	$8,057,494	5.9%	118.8	11.8%	486.0	20.8%	230.0	6.4%	290.0	5.9%
Total	**$136,275,400**		**1,006.4**		**2,339.8**		**3,610.0**		**4,882.0**	

cost alt

Source: FORA; EPS.

[1] Represents future development at current CFD rates. See Appendix C for details.
[2] Includes development in planning pipeline, as derived from the projections reported by jurisdictions to FORA and used in the FORA CIP Analysis. Jurisdiction projections translated into developable acreages based on density assumptions reported in Appendix A, excluding EIP acreage.
[3] Includes Entitled HCP Dependent and Planned Development HCP Dependent acreage as provided by FORA staff. See Table D-1 for details.
[4] Water allocations are assumed to be total, not remaining, and exclude allocations to CSUMB, State Parks and Recreation, U.S. Army, and the Assumed Line Loss.
[5] UC office space is exempt from the CFD calculation under Alternatives 1 per FORA staff. However, Alternatives 2 and 3 include all UC projects identified by FORA staff as HCP dependent. The current UC agreement to contribute to the HCP expires with FORA's sunset.

Table 7
FORA Cost Allocation Alternatives
Jurisdictional Share of Endowment Funding: Cost Allocation Alternatives [1] [2]

Item	Alternative 1: CFD Replacement Revenue [3]		Alternative 2: Developable Acreage				Alternative 3: Water Allocations [6]			
			2A: Short-Term Planning Pipeline [4]		2B: Permit-Term Total [5]		3A: Potable Water Allocations		3B: Total Water Allocations	
	Projected CFD Replacement Revenue %	Share of Endowment Funding	Projected Developable Acres %	Share of Endowment Funding	Projected Developable Acres %	Share of Endowment Funding	Potable Water AFY %	Share of Endowment Funding	Total Water AFY %	Share of Endowment Funding
Jurisdiction										
Del Rey Oaks	10.6%	$4,200,000	14.8%	$5,900,000	14.0%	$5,600,000	6.7%	$2,700,000	10.7%	$4,300,000
Marina	46.6%	$18,700,000	32.8%	$13,100,000	25.3%	$10,100,000	37.1%	$14,800,000	34.5%	$13,800,000
City of Monterey	0.1%	$100,000	5.9%	$2,400,000	4.7%	$1,900,000	1.8%	$700,000	1.3%	$500,000
Monterey County	11.4%	$4,500,000	10.7%	$4,300,000	4.6%	$1,800,000	19.9%	$8,000,000	17.5%	$7,000,000
Seaside	25.4%	$10,100,000	24.0%	$9,600,000	30.6%	$12,200,000	28.0%	$11,200,000	30.0%	$12,000,000
UC [7]	5.9%	$2,400,000	11.8%	$4,700,000	20.8%	$8,300,000	6.4%	$2,500,000	5.9%	$2,400,000
Total		**$40,000,000**		**$40,000,000**		**$40,000,000**		**$40,000,000**		**$40,000,000**

endow

Source: FORA; EPS.

[1] See Table 6 for percentage calculations.
[2] Only includes base HCP endowment funding. Does not include HCP payout contingency.
[3] Represents future development at current CFD rates. See Appendix A for details.
[4] Includes development in planning pipeline, as derived from the projections reported by jurisdictions to FORA and used in the FORA CIP Analysis. Jurisdiction projections translated into developable acreages based on density assumptions reported in Appendix A, excluding EIP acreage.
[5] Includes Entitled HCP Dependent and Planned Development HCP Dependent acreage as provided by FORA staff. Reflects total parcel area for those development areas anticipated to develop in permit term. See Table D-1 for details.
[6] Water allocations are assumed to be total, not remaining (i.e., they may include water allocations supporting existing development) and exclude allocations to CSUMB, State Parks and Recreation, U.S. Army, and the Assumed Line Loss. The JPA Board/Cooperative may want to consider evaluating remaining water allocations as a basis for cost allocation.
[7] UC office space is exempt from the CFD calculation under Alternatives 1 per FORA staff. However, Alternatives 2 and 3 include all UC projects identified by FORA staff as HCP dependent. The current UC agreement to contribute to the HCP expires with FORA's sunset.

APPENDICES:

Appendix A: Summary of Initial and Ongoing Costs—Individual Endowments

Appendix B: Preliminary Endowment Cash Flow—All Endowments

Appendix C: Projected Replacement CFD Special Tax Revenue

Appendix D: FORA Estimated Developable Acreage—Long-Term Development Pipeline

APPENDIX A:

Summary of Initial and Ongoing Costs—Individual Endowments

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Table A-1
FORA Biennial CIP Review - Baseline
Summary of Initial and Ongoing Costs - Individual Endowments

Baseline

Permit Year	FY Ending	HCP Endowment Startup Costs	HCP Endowment Ongoing Costs	HCP Endowment Total	UC Endowment Startup Costs	UC Endowment Ongoing Costs	UC Endowment Total	IAF Endowment Startup Costs	IAF Endowment Ongoing Costs	IAF Endowment Total	Borderlands Endowment Startup Costs	Borderlands Endowment Ongoing Costs	Borderlands Endowment Total
	2020	($444,609)	$0	**($444,609)**	($1,018,919)	$0	**($1,018,919)**	$0	$0	**$0**	$0	$0	**$0**
1	2021	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2022	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2023	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2024	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2025	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2026	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2027	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2028	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2029	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
10	2030	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2031	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2032	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2033	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2034	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2035	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2036	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2037	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2038	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2039	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
20-50	2040-2070	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	Post-Permit												
	2071+	$0	($780,983)	**($780,983)**	$0	($232,779)	**($232,779)**	$0	($105,019)	**($105,019)**	$0	($222,211)	**($222,211)**

costs_indiv

Source: FORA.

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Table A-2
FORA HCP Financial Model Sensitivity - Scenario 1
Summary of Initial and Ongoing Costs - Individual Endowments

Scenario 1
Delyaed Revenues

Permit Year	FY Ending	HCP Endowment Startup Costs	HCP Endowment Ongoing Costs	HCP Endowment Total	UC Endowment Startup Costs	UC Endowment Ongoing Costs	UC Endowment Total	IAF Endowment Startup Costs	IAF Endowment Ongoing Costs	IAF Endowment Total	Borderlands Endowment Startup Costs	Borderlands Endowment Ongoing Costs	Borderlands Endowment Total
	2020	($444,609)	$0	**($444,609)**	($1,018,919)	$0	**($1,018,919)**	$0	$0	**$0**	$0	$0	**$0**
1	2021	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2022	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2023	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2024	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2025	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2026	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2027	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2028	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2029	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
10	2030	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2031	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2032	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2033	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2034	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2035	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2036	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2037	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2038	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	2039	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
20-50	2040-2070	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	Post-Permit												
	2071+	$0	($780,983)	**($780,983)**	$0	($232,779)	**($232,779)**	$0	($105,019)	**($105,019)**	$0	($222,211)	**($222,211)**

costs_indiv

Source: FORA.

Table A-3
FORA HCP Financial Model Sensitivity - Scenario 2 - Alternative 1
Summary of Initial and Ongoing Costs - Individual Endowments

Scenario 2 Alt. 1 - Delayed Rev. & 5% Early Years Cost Reduction

Sensitivity Cost Red.	Permit Year	FY Ending	HCP Endowment Startup Costs	HCP Endowment Ongoing Costs	HCP Endowment Total	UC Endowment Startup Costs	UC Endowment Ongoing Costs	UC Endowment Total	IAF Endowment Startup Costs	IAF Endowment Ongoing Costs	IAF Endowment Total	Borderlands Endowment Startup Costs	Borderlands Endowment Ongoing Costs	Borderlands Endowment Total
		2020	($444,609)	$0	**($444,609)**	($1,018,919)	$0	**($1,018,919)**	$0	$0	**$0**	$0	$0	**$0**
5%	1	2021	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
↓		2022	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2023	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2024	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2025	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2026	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2027	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2028	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2029	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
	10	2030	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
		2031	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2032	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2033	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2034	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2035	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2036	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
return to original		2037	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2038	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2039	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	20-50	2040-2070	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		Post-Permit												
		2071+	$0	($780,983)	**($780,983)**	$0	($232,779)	**($232,779)**	$0	($105,019)	**($105,019)**	$0	($222,211)	**($222,211)**

costs_indiv

Source: FORA.

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Table A-4
FORA HCP Financial Model Sensitivity - Scenario 2 - Alternative 2
Summary of Initial and Ongoing Costs - Individual Endowments

Scenario 2 Alt. 2 - Delayed Rev. & 10% Early Years Cost Reduction

Sensitivity Cost Red.	Permit Year	FY Ending	HCP Endowment Startup Costs	HCP Endowment Ongoing Costs	HCP Endowment Total	UC Endowment Startup Costs	UC Endowment Ongoing Costs	UC Endowment Total	IAF Endowment Startup Costs	IAF Endowment Ongoing Costs	IAF Endowment Total	Borderlands Endowment Startup Costs	Borderlands Endowment Ongoing Costs	Borderlands Endowment Total
		2020	($444,609)	$0	**($444,609)**	($1,018,919)	$0	**($1,018,919)**	$0	$0	**$0**	$0	$0	**$0**
10%	1	2021	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2022	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2023	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2024	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2025	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2026	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2027	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2028	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2029	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓	10	2030	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
5%		2031	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
↓		2032	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
↓		2033	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
↓		2034	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
↓		2035	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
↓		2036	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
return to original		2037	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2038	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2039	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	20-50	2040-2070	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		Post-Permit 2071+	$0	($780,983)	**($780,983)**	$0	($232,779)	**($232,779)**	$0	($105,019)	**($105,019)**	$0	($222,211)	**($222,211)**

costs_indiv

Source: FORA.

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Table A-5
FORA HCP Financial Model Sensitivity - Scenario 2 - Alternative 3
Summary of Initial and Ongoing Costs - Individual Endowments

Scenario 2 Alt. 3 - Delayed Rev. & 20% Early Years Cost Reduction

Sensitivity Cost Red.	Permit Year	FY Ending	HCP Endowment Startup Costs	HCP Endowment Ongoing Costs	HCP Endowment Total	UC Endowment Startup Costs	UC Endowment Ongoing Costs	UC Endowment Total	IAF Endowment Startup Costs	IAF Endowment Ongoing Costs	IAF Endowment Total	Borderlands Endowment Startup Costs	Borderlands Endowment Ongoing Costs	Borderlands Endowment Total
		2020	($444,609)	$0	**($444,609)**	($1,018,919)	$0	**($1,018,919)**	$0	$0	**$0**	$0	$0	**$0**
20%	1	2021	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2022	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2023	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2024	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2025	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2026	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2027	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2028	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓		2029	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
↓	10	2030	$0	($1,123,990)	**($1,123,990)**	$0	($222,250)	**($222,250)**	$0	($240,214)	**($240,214)**	$0	($177,769)	**($177,769)**
10%		2031	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2032	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
↓		2033	$0	($1,264,488)	**($1,264,488)**	$0	($250,031)	**($250,031)**	$0	($270,241)	**($270,241)**	$0	($199,990)	**($199,990)**
5%		2034	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
↓		2035	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
↓		2036	$0	($1,334,738)	**($1,334,738)**	$0	($263,922)	**($263,922)**	$0	($285,254)	**($285,254)**	$0	($211,100)	**($211,100)**
return to original		2037	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2038	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		2039	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
	20-50	2040-2070	$0	($1,404,987)	**($1,404,987)**	$0	($277,812)	**($277,812)**	$0	($300,267)	**($300,267)**	$0	($222,211)	**($222,211)**
		Post-Permit												
		2071+	$0	($780,983)	**($780,983)**	$0	($232,779)	**($232,779)**	$0	($105,019)	**($105,019)**	$0	($222,211)	**($222,211)**

costs_indiv

Source: FORA.

Table A-6
FORA HCP Financial Model Sensitivity - Scenario 3 - Alternative 1
Summary of Initial and Ongoing Costs - Individual Endowments

Scenario 3 Alt. 1 - Delayed Rev. & 15% Cost Reduction

Sensitivity Cost Red.	Permit Year	FY Ending	HCP Endowment Startup Costs	HCP Endowment Ongoing Costs	HCP Endowment Total	UC Endowment Startup Costs	UC Endowment Ongoing Costs	UC Endowment Total	IAF Endowment Startup Costs	IAF Endowment Ongoing Costs	IAF Endowment Total	Borderlands Endowment Startup Costs	Borderlands Endowment Ongoing Costs	Borderlands Endowment Total
		2020	($444,609)	$0	**($444,609)**	($1,018,919)	$0	**($1,018,919)**	$0	$0	**$0**	$0	$0	**$0**
15%	1	2021	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2022	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2023	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2024	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2025	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2026	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2027	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2028	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2029	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
	10	2030	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2031	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2032	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2033	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2034	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2035	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2036	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2037	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2038	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		2039	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
	20-50	2040-2070	$0	($1,194,239)	**($1,194,239)**	$0	($236,141)	**($236,141)**	$0	($255,227)	**($255,227)**	$0	($188,879)	**($188,879)**
		Post-Permit												
		2071+	$0	($663,835)	**($663,835)**	$0	($197,862)	**($197,862)**	$0	($89,266)	**($89,266)**	$0	($188,879)	**($188,879)**

costs_indiv

Source: FORA.

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Table A-7
FORA HCP Financial Model Sensitivity - Scenario 3 - Alternative 2
Summary of Initial and Ongoing Costs - Individual Endowments

Scenario 3 Alt. 2 - Delayed Rev. & 25% Cost Reduction

Sensitivity Cost Red.	Permit Year	FY Ending	HCP Endowment Startup Costs	HCP Endowment Ongoing Costs	HCP Endowment Total	UC Endowment Startup Costs	UC Endowment Ongoing Costs	UC Endowment Total	IAF Endowment Startup Costs	IAF Endowment Ongoing Costs	IAF Endowment Total	Borderlands Endowment Startup Costs	Borderlands Endowment Ongoing Costs	Borderlands Endowment Total
		2020	($444,609)	$0	**($444,609)**	($1,018,919)	$0	**($1,018,919)**	$0	$0	**$0**	$0	$0	**$0**
25%	1	2021	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2022	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2023	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2024	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2025	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2026	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2027	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2028	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2029	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
	10	2030	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2031	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2032	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2033	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2034	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2035	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2036	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2037	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2038	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		2039	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
	20-50	2040-2070	$0	($1,053,740)	**($1,053,740)**	$0	($208,359)	**($208,359)**	$0	($225,201)	**($225,201)**	$0	($124,994)	**($124,994)**
		Post-Permit												
		2071+	$0	($585,737)	**($585,737)**	$0	($174,585)	**($174,585)**	$0	($78,764)	**($78,764)**	$0	($166,658)	**($166,658)**

costs_indiv

Source: FORA.

APPENDIX B:

Preliminary Endowment Cash Flow— All Endowments

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Table B-1
FORA Biennial CIP Review - Baseline
Preliminary Endowment Cash Flow - All Endowments

Baseline
All Endowments

Permit Year	FY Ending	Beginning Balance	Interest Earnings (+)	Deposits (+)	Transfer In (+)	Subtotal	Annual Costs (-)	Transfer Out (-)	Ending Balance
	2020	$15,979,149	$710,170	$1,831,277	$0	$18,520,596	($1,463,528)	$0	$17,057,068
1	2021	$17,057,068	$760,611	$2,637,232	$0	$20,454,911	($2,205,278)	$0	$18,249,633
	2022	$18,249,633	$813,739	$8,610,208	$0	$27,673,580	($2,205,278)	$0	$25,468,302
	2023	$25,468,302	$1,135,576	$7,235,632	$0	$33,839,510	($2,205,278)	$0	$31,634,232
	2024	$31,634,232	$1,410,476	$5,436,537	$0	$38,481,246	($2,205,278)	$0	$36,275,968
	2025	$36,275,968	$1,617,416	$3,402,017	$0	$41,295,401	($2,205,278)	$0	$39,090,123
	2026	$39,090,123	$1,742,865	$2,481,341	$0	$43,314,329	($2,205,278)	$0	$41,109,051
	2027	$41,109,051	$1,832,855	$2,019,185	$0	$44,961,092	($2,205,278)	$0	$42,755,814
	2028	$42,755,814	$1,906,251	$1,805,579	$0	$46,467,645	($2,205,278)	$0	$44,262,367
	2029	$44,262,367	$1,973,395	$703,767	$0	$46,939,529	($2,205,278)	$0	$44,734,251
10	2030	$44,734,251	$1,994,402	$1,634,789	$0	$48,363,443	($2,205,278)	$0	$46,158,165
	2031	$46,158,165	$2,057,861	$0	$0	$48,216,025	($2,205,278)	$0	$46,010,748
	2032	$46,010,748	$2,051,251	$0	$0	$48,061,999	($2,205,278)	$0	$45,856,721
	2033	$45,856,721	$2,044,346	$0	$0	$47,901,067	($2,205,278)	$0	$45,695,789
	2034	$45,695,789	$2,037,131	$0	$0	$47,732,920	($2,205,278)	$0	$45,527,642
	2035	$45,527,642	$2,029,592	$0	$0	$47,557,234	($2,205,278)	$0	$45,351,956
	2036	$45,351,956	$2,021,715	$0	$0	$47,373,672	($2,205,278)	$0	$45,168,394
	2037	$45,168,394	$2,013,485	$0	$0	$47,181,879	($2,205,278)	$0	$44,976,601
	2038	$44,976,601	$2,004,886	$0	$0	$46,981,487	($2,205,278)	$0	$44,776,209
	2039	$44,776,209	$1,995,901	$0	$0	$46,772,111	($2,205,278)	$0	$44,566,833
20	2040	$44,566,833	$1,986,513	$0	$0	$46,553,346	($2,205,278)	$0	$44,348,069
	2041	$44,348,069	$1,976,705	$0	$0	$46,324,773	($2,205,278)	$0	$44,119,496
	2042	$44,119,496	$1,966,456	$0	$0	$46,085,952	($2,205,278)	$0	$43,880,674
	2043	$43,880,674	$1,955,748	$0	$0	$45,836,422	($2,205,278)	$0	$43,631,144
	2044	$43,631,144	$1,944,559	$0	$0	$45,575,704	($2,205,278)	$0	$43,370,426
	2045	$43,370,426	$1,932,869	$0	$0	$45,303,295	($2,205,278)	$0	$43,098,017
	2046	$43,098,017	$1,920,655	$0	$0	$45,018,672	($2,205,278)	$0	$42,813,394
	2047	$42,813,394	$1,907,892	$0	$0	$44,721,287	($2,205,278)	$0	$42,516,009
	2048	$42,516,009	$1,894,558	$0	$0	$44,410,566	($2,205,278)	$0	$42,205,289
	2049	$42,205,289	$1,880,625	$0	$0	$44,085,913	($2,205,278)	$0	$41,880,636
30	2050	$41,880,636	$1,866,067	$0	$0	$43,746,703	($2,205,278)	$0	$41,541,425
	2051	$41,541,425	$1,850,856	$0	$0	$43,392,281	($2,205,278)	$0	$41,187,004
	2052	$41,187,004	$1,834,964	$0	$0	$43,021,967	($2,205,278)	$0	$40,816,689
	2053	$40,816,689	$1,818,358	$0	$0	$42,635,047	($2,205,278)	$0	$40,429,769
	2054	$40,429,769	$1,801,007	$0	$0	$42,230,777	($2,205,278)	$0	$40,025,499
	2055	$40,025,499	$1,782,879	$0	$0	$41,808,378	($2,205,278)	$0	$39,603,100
	2056	$39,603,100	$1,763,937	$0	$0	$41,367,037	($2,205,278)	$0	$39,161,759
	2057	$39,161,759	$1,744,145	$0	$0	$40,905,904	($2,205,278)	$0	$38,700,627
	2058	$38,700,627	$1,723,466	$0	$0	$40,424,093	($2,205,278)	$0	$38,218,815
	2059	$38,218,815	$1,701,860	$0	$0	$39,920,675	($2,205,278)	$0	$37,715,397
40	2060	$37,715,397	$1,679,284	$0	$0	$39,394,681	($2,205,278)	$0	$37,189,403
	2061	$37,189,403	$1,655,695	$0	$0	$38,845,098	($2,205,278)	$0	$36,639,821
	2062	$36,639,821	$1,631,049	$0	$0	$38,270,869	($2,205,278)	$0	$36,065,591
	2063	$36,065,591	$1,605,297	$0	$0	$37,670,888	($2,205,278)	$0	$35,465,610
	2064	$35,465,610	$1,578,389	$0	$0	$37,044,000	($2,205,278)	$0	$34,838,722
	2065	$34,838,722	$1,550,275	$0	$0	$36,388,997	($2,205,278)	$0	$34,183,719
	2066	$34,183,719	$1,520,900	$0	$0	$35,704,619	($2,205,278)	$0	$33,499,341
	2067	$33,499,341	$1,490,207	$0	$0	$34,989,548	($2,205,278)	$0	$32,784,271
	2068	$32,784,271	$1,458,137	$0	$0	$34,242,408	($2,205,278)	$0	$32,037,130
	2069	$32,037,130	$1,424,629	$0	$0	$33,461,758	($2,205,278)	$0	$31,256,481
50	2070	$31,256,481	$1,389,617	$0	$0	$32,646,098	($2,205,278)	$0	$30,440,820
	Post Permit								
	2071+	$30,440,820	$1,353,035	$0	$0	$31,793,855	($1,340,992)	$0	$30,452,863

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Table B-2
FORA HCP Financial Model Sensitivity - Scenario 1
Preliminary Endowment Cash Flow - All Endowments

Scenario 1 - Delayed Revenues
All Endowments

Permit Year	FY Ending	Beginning Balance	Interest Earnings (+)	Deposits (+)	Transfer In (+)	Subtotal	Annual Costs (-)	Transfer Out (-)	Ending Balance
	2020	$15,979,149	$710,170	$2,258,874	$0	$18,948,193	($1,463,528)	$0	$17,484,665
1	2021	$17,484,665	$779,684	$2,387,417	$0	$20,651,766	($2,205,278)	$0	$18,446,488
	2022	$18,446,488	$822,531	$3,271,680	$0	$22,540,700	($2,205,278)	$0	$20,335,422
	2023	$20,335,422	$906,720	$2,802,171	$0	$24,044,313	($2,205,278)	$0	$21,839,035
	2024	$21,839,035	$973,727	$3,525,268	$0	$26,338,030	($2,205,278)	$0	$24,132,753
	2025	$24,132,753	$1,075,967	$3,360,349	$0	$28,569,068	($2,205,278)	$0	$26,363,790
	2026	$26,363,790	$1,175,412	$2,737,120	$0	$30,276,322	($2,205,278)	$0	$28,071,045
	2027	$28,071,045	$1,251,500	$2,419,412	$0	$31,741,957	($2,205,278)	$0	$29,536,680
	2028	$29,536,680	$1,316,814	$2,414,003	$0	$33,267,497	($2,205,278)	$0	$31,062,219
	2029	$31,062,219	$1,384,798	$2,578,505	$0	$35,025,523	($2,205,278)	$0	$32,820,245
10	2030	$32,820,245	$1,463,150	$2,398,284	$0	$36,681,679	($2,205,278)	$0	$34,476,401
	2031	$34,476,401	$1,536,958	$2,397,086	$0	$38,410,445	($2,205,278)	$0	$36,205,168
	2032	$36,205,168	$1,614,005	$2,390,241	$0	$40,209,413	($2,205,278)	$0	$38,004,135
	2033	$38,004,135	$1,694,182	$2,390,241	$0	$42,088,557	($2,205,278)	$0	$39,883,280
	2034	$39,883,280	$1,777,934	$2,386,818	$0	$44,048,031	($2,205,278)	$0	$41,842,754
	2035	$41,842,754	$1,865,268	$2,386,818	$0	$46,094,840	($2,205,278)	$0	$43,889,562
	2036	$43,889,562	$1,956,497	$1,519,607	$0	$47,365,666	($2,205,278)	$0	$45,160,389
	2037	$45,160,389	$2,013,122	$0	$0	$47,173,511	($2,205,278)	$0	$44,968,233
	2038	$44,968,233	$2,004,507	$0	$0	$46,972,740	($2,205,278)	$0	$44,767,463
	2039	$44,767,463	$1,995,505	$0	$0	$46,762,968	($2,205,278)	$0	$44,557,690
20	2040	$44,557,690	$1,986,099	$0	$0	$46,543,789	($2,205,278)	$0	$44,338,511
	2041	$44,338,511	$1,976,272	$0	$0	$46,314,783	($2,205,278)	$0	$44,109,506
	2042	$44,109,506	$1,966,004	$0	$0	$46,075,509	($2,205,278)	$0	$43,870,232
	2043	$43,870,232	$1,955,275	$0	$0	$45,825,507	($2,205,278)	$0	$43,620,229
	2044	$43,620,229	$1,944,065	$0	$0	$45,564,294	($2,205,278)	$0	$43,359,016
	2045	$43,359,016	$1,932,352	$0	$0	$45,291,369	($2,205,278)	$0	$43,086,091
	2046	$43,086,091	$1,920,115	$0	$0	$45,006,205	($2,205,278)	$0	$42,800,928
	2047	$42,800,928	$1,907,328	$0	$0	$44,708,255	($2,205,278)	$0	$42,502,978
	2048	$42,502,978	$1,893,967	$0	$0	$44,396,945	($2,205,278)	$0	$42,191,667
	2049	$42,191,667	$1,880,008	$0	$0	$44,071,675	($2,205,278)	$0	$41,866,397
30	2050	$41,866,397	$1,865,422	$0	$0	$43,731,820	($2,205,278)	$0	$41,526,542
	2051	$41,526,542	$1,850,182	$0	$0	$43,376,724	($2,205,278)	$0	$41,171,447
	2052	$41,171,447	$1,834,259	$0	$0	$43,005,706	($2,205,278)	$0	$40,800,428
	2053	$40,800,428	$1,817,621	$0	$0	$42,618,049	($2,205,278)	$0	$40,412,772
	2054	$40,412,772	$1,800,238	$0	$0	$42,213,009	($2,205,278)	$0	$40,007,732
	2055	$40,007,732	$1,782,074	$0	$0	$41,789,806	($2,205,278)	$0	$39,584,528
	2056	$39,584,528	$1,763,096	$0	$0	$41,347,624	($2,205,278)	$0	$39,142,346
	2057	$39,142,346	$1,743,266	$0	$0	$40,885,613	($2,205,278)	$0	$38,680,335
	2058	$38,680,335	$1,722,548	$0	$0	$40,402,882	($2,205,278)	$0	$38,197,605
	2059	$38,197,605	$1,700,899	$0	$0	$39,898,504	($2,205,278)	$0	$37,693,226
40	2060	$37,693,226	$1,678,280	$0	$0	$39,371,506	($2,205,278)	$0	$37,166,228
	2061	$37,166,228	$1,654,646	$0	$0	$38,820,874	($2,205,278)	$0	$36,615,597
	2062	$36,615,597	$1,629,952	$0	$0	$38,245,549	($2,205,278)	$0	$36,040,271
	2063	$36,040,271	$1,604,150	$0	$0	$37,644,421	($2,205,278)	$0	$35,439,143
	2064	$35,439,143	$1,577,191	$0	$0	$37,016,335	($2,205,278)	$0	$34,811,057
	2065	$34,811,057	$1,549,023	$0	$0	$36,360,080	($2,205,278)	$0	$34,154,802
	2066	$34,154,802	$1,519,591	$0	$0	$35,674,393	($2,205,278)	$0	$33,469,115
	2067	$33,469,115	$1,488,839	$0	$0	$34,957,953	($2,205,278)	$0	$32,752,676
	2068	$32,752,676	$1,456,707	$0	$0	$34,209,382	($2,205,278)	$0	$32,004,105
	2069	$32,004,105	$1,423,134	$0	$0	$33,427,238	($2,205,278)	$0	$31,221,960
50	2070	$31,221,960	$1,388,054	$0	$0	$32,610,015	($2,205,278)	$0	$30,404,737
	Post Permit								
	2071+	$30,404,737	$1,351,402	$0	$0	$31,756,139	($1,340,992)	$0	$30,415,147

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Table B-3
FORA HCP Financial Model Sensitivity - Scenario 2 - Alternative 1
Preliminary Endowment Cash Flow - All Endowments

Scenario 2 Alt. 1 - Delayed Rev. & 5% Early Years Cost Reduction
All Endowments

Permit Year	FY Ending	Beginning Balance	Interest Earnings (+)	Deposits (+)	Transfer In (+)	Subtotal	Annual Costs (-)	Transfer Out (-)	Ending Balance
	2020	$15,979,149	$710,170	$2,196,128	$0	$18,885,446	($1,463,528)	$0	$17,421,918
1	2021	$17,421,918	$776,884	$2,322,727	$0	$20,521,530	($2,095,014)	$0	$18,426,516
	2022	$18,426,516	$821,639	$3,183,031	$0	$22,431,186	($2,095,014)	$0	$20,336,173
	2023	$20,336,173	$906,753	$2,726,244	$0	$23,969,169	($2,095,014)	$0	$21,874,155
	2024	$21,874,155	$975,293	$3,429,748	$0	$26,279,195	($2,095,014)	$0	$24,184,182
	2025	$24,184,182	$1,078,260	$3,269,297	$0	$28,531,738	($2,095,014)	$0	$26,436,724
	2026	$26,436,724	$1,178,665	$2,662,955	$0	$30,278,344	($2,095,014)	$0	$28,183,330
	2027	$28,183,330	$1,256,508	$2,353,856	$0	$31,793,694	($2,095,014)	$0	$29,698,681
	2028	$29,698,681	$1,324,040	$2,348,594	$0	$33,371,314	($2,095,014)	$0	$31,276,300
	2029	$31,276,300	$1,394,348	$2,508,638	$0	$35,179,286	($2,095,014)	$0	$33,084,273
10	2030	$33,084,273	$1,474,928	$2,333,300	$0	$36,892,501	($2,095,014)	$0	$34,797,487
	2031	$34,797,487	$1,551,282	$2,332,135	$0	$38,680,904	($2,205,278)	$0	$36,475,627
	2032	$36,475,627	$1,626,070	$2,325,475	$0	$40,427,171	($2,205,278)	$0	$38,221,893
	2033	$38,221,893	$1,703,895	$2,325,475	$0	$42,251,263	($2,205,278)	$0	$40,045,985
	2034	$40,045,985	$1,785,190	$2,322,145	$0	$44,153,320	($2,205,278)	$0	$41,948,042
	2035	$41,948,042	$1,869,962	$2,322,145	$0	$46,140,150	($2,205,278)	$0	$43,934,872
	2036	$43,934,872	$1,958,515	$1,478,432	$0	$47,371,819	($2,205,278)	$0	$45,166,541
	2037	$45,166,541	$2,013,392	$0	$0	$47,179,933	($2,205,278)	$0	$44,974,655
	2038	$44,974,655	$2,004,789	$0	$0	$46,979,444	($2,205,278)	$0	$44,774,166
	2039	$44,774,166	$1,995,799	$0	$0	$46,769,965	($2,205,278)	$0	$44,564,687
20	2040	$44,564,687	$1,986,406	$0	$0	$46,551,094	($2,205,278)	$0	$44,345,816
	2041	$44,345,816	$1,976,592	$0	$0	$46,322,408	($2,205,278)	$0	$44,117,131
	2042	$44,117,131	$1,966,338	$0	$0	$46,083,469	($2,205,278)	$0	$43,878,191
	2043	$43,878,191	$1,955,624	$0	$0	$45,833,815	($2,205,278)	$0	$43,628,537
	2044	$43,628,537	$1,944,430	$0	$0	$45,572,967	($2,205,278)	$0	$43,367,689
	2045	$43,367,689	$1,932,733	$0	$0	$45,300,422	($2,205,278)	$0	$43,095,145
	2046	$43,095,145	$1,920,512	$0	$0	$45,015,656	($2,205,278)	$0	$42,810,379
	2047	$42,810,379	$1,907,742	$0	$0	$44,718,121	($2,205,278)	$0	$42,512,843
	2048	$42,512,843	$1,894,400	$0	$0	$44,407,244	($2,205,278)	$0	$42,201,966
	2049	$42,201,966	$1,880,460	$0	$0	$44,082,426	($2,205,278)	$0	$41,877,148
30	2050	$41,877,148	$1,865,894	$0	$0	$43,743,042	($2,205,278)	$0	$41,537,764
	2051	$41,537,764	$1,850,675	$0	$0	$43,388,439	($2,205,278)	$0	$41,183,161
	2052	$41,183,161	$1,834,773	$0	$0	$43,017,934	($2,205,278)	$0	$40,812,657
	2053	$40,812,657	$1,818,158	$0	$0	$42,630,815	($2,205,278)	$0	$40,425,537
	2054	$40,425,537	$1,800,798	$0	$0	$42,226,335	($2,205,278)	$0	$40,021,057
	2055	$40,021,057	$1,782,659	$0	$0	$41,803,716	($2,205,278)	$0	$39,598,438
	2056	$39,598,438	$1,763,707	$0	$0	$41,362,145	($2,205,278)	$0	$39,156,867
	2057	$39,156,867	$1,743,904	$0	$0	$40,900,771	($2,205,278)	$0	$38,695,493
	2058	$38,695,493	$1,723,213	$0	$0	$40,418,706	($2,205,278)	$0	$38,213,429
	2059	$38,213,429	$1,701,594	$0	$0	$39,915,022	($2,205,278)	$0	$37,709,745
40	2060	$37,709,745	$1,679,005	$0	$0	$39,388,750	($2,205,278)	$0	$37,183,472
	2061	$37,183,472	$1,655,403	$0	$0	$38,838,875	($2,205,278)	$0	$36,633,597
	2062	$36,633,597	$1,630,742	$0	$0	$38,264,340	($2,205,278)	$0	$36,059,062
	2063	$36,059,062	$1,604,975	$0	$0	$37,664,037	($2,205,278)	$0	$35,458,760
	2064	$35,458,760	$1,578,053	$0	$0	$37,036,812	($2,205,278)	$0	$34,831,534
	2065	$34,831,534	$1,549,922	$0	$0	$36,381,456	($2,205,278)	$0	$34,176,179
	2066	$34,176,179	$1,520,530	$0	$0	$35,696,708	($2,205,278)	$0	$33,491,430
	2067	$33,491,430	$1,489,819	$0	$0	$34,981,249	($2,205,278)	$0	$32,775,971
	2068	$32,775,971	$1,457,730	$0	$0	$34,233,701	($2,205,278)	$0	$32,028,423
	2069	$32,028,423	$1,424,202	$0	$0	$33,452,625	($2,205,278)	$0	$31,247,347
50	2070	$31,247,347	$1,389,169	$0	$0	$32,636,517	($2,205,278)	$0	$30,431,239
	Post Permit								
	2071+	$30,431,239	$1,352,566	$0	$0	$31,783,805	($1,340,992)	$0	$30,442,813

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Table B-4
FORA HCP Financial Model Sensitivity - Scenario 2 - Alternative 2
Preliminary Endowment Cash Flow - All Endowments

Scenario 2 Alt. 2 - Delayed Rev. & 10% Early Years Cost Reduction
All Endowments

Permit Year	FY Ending	Beginning Balance	Interest Earnings (+)	Deposits (+)	Transfer In (+)	Subtotal	Annual Costs (-)	Transfer Out (-)	Ending Balance
	2020	$15,979,149	$710,170	$2,070,635	$0	$18,759,953	($1,463,528)	$0	$17,296,425
1	2021	$17,296,425	$771,286	$2,247,383	$0	$20,315,095	($1,984,750)	$0	$18,330,345
	2022	$18,330,345	$817,349	$3,079,781	$0	$22,227,474	($1,984,750)	$0	$20,242,724
	2023	$20,242,724	$902,584	$2,637,810	$0	$23,783,118	($1,984,750)	$0	$21,798,368
	2024	$21,798,368	$971,911	$3,318,494	$0	$26,088,774	($1,984,750)	$0	$24,104,024
	2025	$24,104,024	$1,074,683	$3,163,248	$0	$28,341,955	($1,984,750)	$0	$26,357,205
	2026	$26,357,205	$1,175,116	$2,576,575	$0	$30,108,896	($1,984,750)	$0	$28,124,146
	2027	$28,124,146	$1,253,867	$2,277,502	$0	$31,655,515	($1,984,750)	$0	$29,670,765
	2028	$29,670,765	$1,322,793	$2,272,411	$0	$33,265,968	($1,984,750)	$0	$31,281,218
	2029	$31,281,218	$1,394,566	$2,427,264	$0	$35,103,048	($1,984,750)	$0	$33,118,298
10	2030	$33,118,298	$1,476,444	$2,257,613	$0	$36,852,356	($1,984,750)	$0	$34,867,606
	2031	$34,867,606	$1,554,409	$2,256,486	$0	$38,678,501	($2,095,014)	$0	$36,583,487
	2032	$36,583,487	$1,630,880	$2,250,042	$0	$40,464,409	($2,095,014)	$0	$38,369,395
	2033	$38,369,395	$1,710,474	$2,250,042	$0	$42,329,911	($2,095,014)	$0	$40,234,897
	2034	$40,234,897	$1,793,617	$2,246,820	$0	$44,275,333	($2,205,278)	$0	$42,070,056
	2035	$42,070,056	$1,875,404	$2,246,820	$0	$46,192,279	($2,205,278)	$0	$43,987,001
	2036	$43,987,001	$1,960,838	$1,430,475	$0	$47,378,314	($2,205,278)	$0	$45,173,036
	2037	$45,173,036	$2,013,679	$0	$0	$47,186,715	($2,205,278)	$0	$44,981,437
	2038	$44,981,437	$2,005,088	$0	$0	$46,986,525	($2,205,278)	$0	$44,781,247
	2039	$44,781,247	$1,996,111	$0	$0	$46,777,358	($2,205,278)	$0	$44,572,081
20	2040	$44,572,081	$1,986,732	$0	$0	$46,558,813	($2,205,278)	$0	$44,353,535
	2041	$44,353,535	$1,976,933	$0	$0	$46,330,468	($2,205,278)	$0	$44,125,190
	2042	$44,125,190	$1,966,694	$0	$0	$46,091,884	($2,205,278)	$0	$43,886,606
	2043	$43,886,606	$1,955,995	$0	$0	$45,842,601	($2,205,278)	$0	$43,637,324
	2044	$43,637,324	$1,944,817	$0	$0	$45,582,141	($2,205,278)	$0	$43,376,863
	2045	$43,376,863	$1,933,138	$0	$0	$45,310,001	($2,205,278)	$0	$43,104,723
	2046	$43,104,723	$1,920,934	$0	$0	$45,025,657	($2,205,278)	$0	$42,820,379
	2047	$42,820,379	$1,908,184	$0	$0	$44,728,563	($2,205,278)	$0	$42,523,285
	2048	$42,523,285	$1,894,861	$0	$0	$44,418,146	($2,205,278)	$0	$42,212,868
	2049	$42,212,868	$1,880,941	$0	$0	$44,093,809	($2,205,278)	$0	$41,888,531
30	2050	$41,888,531	$1,866,396	$0	$0	$43,754,928	($2,205,278)	$0	$41,549,650
	2051	$41,549,650	$1,851,199	$0	$0	$43,400,849	($2,205,278)	$0	$41,195,571
	2052	$41,195,571	$1,835,321	$0	$0	$43,030,892	($2,205,278)	$0	$40,825,614
	2053	$40,825,614	$1,818,730	$0	$0	$42,644,344	($2,205,278)	$0	$40,439,066
	2054	$40,439,066	$1,801,395	$0	$0	$42,240,461	($2,205,278)	$0	$40,035,184
	2055	$40,035,184	$1,783,282	$0	$0	$41,818,466	($2,205,278)	$0	$39,613,188
	2056	$39,613,188	$1,764,357	$0	$0	$41,377,546	($2,205,278)	$0	$39,172,268
	2057	$39,172,268	$1,744,583	$0	$0	$40,916,851	($2,205,278)	$0	$38,711,573
	2058	$38,711,573	$1,723,923	$0	$0	$40,435,496	($2,205,278)	$0	$38,230,218
	2059	$38,230,218	$1,702,335	$0	$0	$39,932,553	($2,205,278)	$0	$37,727,275
40	2060	$37,727,275	$1,679,779	$0	$0	$39,407,054	($2,205,278)	$0	$37,201,776
	2061	$37,201,776	$1,656,211	$0	$0	$38,857,987	($2,205,278)	$0	$36,652,710
	2062	$36,652,710	$1,631,586	$0	$0	$38,284,296	($2,205,278)	$0	$36,079,018
	2063	$36,079,018	$1,605,856	$0	$0	$37,684,874	($2,205,278)	$0	$35,479,596
	2064	$35,479,596	$1,578,972	$0	$0	$37,058,568	($2,205,278)	$0	$34,853,291
	2065	$34,853,291	$1,550,882	$0	$0	$36,404,173	($2,205,278)	$0	$34,198,895
	2066	$34,198,895	$1,521,532	$0	$0	$35,720,428	($2,205,278)	$0	$33,515,150
	2067	$33,515,150	$1,490,866	$0	$0	$35,006,016	($2,205,278)	$0	$32,800,738
	2068	$32,800,738	$1,458,823	$0	$0	$34,259,561	($2,205,278)	$0	$32,054,283
	2069	$32,054,283	$1,425,343	$0	$0	$33,479,627	($2,205,278)	$0	$31,274,349
50	2070	$31,274,349	$1,390,362	$0	$0	$32,664,711	($2,205,278)	$0	$30,459,433
	Post Permit								
	2071+	$30,459,433	$1,353,810	$0	$0	$31,813,243	($1,340,992)	$0	$30,472,251

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Table B-5
FORA HCP Financial Model Sensitivity - Scenario 2 - Alternative 3
Preliminary Endowment Cash Flow - All Endowments

Scenario 2 Alt. 3 - Delayed Rev. & 20% Early Years Cost Reduction
All Endowments

Permit Year	FY Ending	Beginning Balance	Interest Earnings (+)	Deposits (+)	Transfer In (+)	Subtotal	Annual Costs (-)	Transfer Out (-)	Ending Balance
	2020	$15,979,149	$710,170	$2,070,635	$0	$18,759,953	($1,463,528)	$0	$17,296,425
1	2021	$17,296,425	$771,281	$2,077,669	$0	$20,145,376	($1,764,222)	$0	$18,381,154
	2022	$18,381,154	$819,612	$2,847,207	$0	$22,047,973	($1,764,222)	$0	$20,283,751
	2023	$20,283,751	$904,412	$2,438,612	$0	$23,626,775	($1,764,222)	$0	$21,862,553
	2024	$21,862,553	$974,773	$3,067,893	$0	$25,905,220	($1,764,222)	$0	$24,140,997
	2025	$24,140,997	$1,076,332	$2,924,371	$0	$28,141,701	($1,764,222)	$0	$26,377,479
	2026	$26,377,479	$1,176,021	$2,382,001	$0	$29,935,500	($1,764,222)	$0	$28,171,278
	2027	$28,171,278	$1,255,971	$2,105,514	$0	$31,532,763	($1,764,222)	$0	$29,768,541
	2028	$29,768,541	$1,327,158	$2,100,806	$0	$33,196,506	($1,764,222)	$0	$31,432,283
	2029	$31,432,283	$1,401,310	$2,243,965	$0	$35,077,559	($1,764,222)	$0	$33,313,337
10	2030	$33,313,337	$1,485,152	$2,087,127	$0	$36,885,615	($1,764,222)	$0	$35,121,393
	2031	$35,121,393	$1,565,740	$2,086,084	$0	$38,773,217	($1,984,750)	$0	$36,788,467
	2032	$36,788,467	$1,640,034	$2,080,127	$0	$40,508,627	($1,984,750)	$0	$38,523,877
	2033	$38,523,877	$1,717,376	$2,080,127	$0	$42,321,380	($1,984,750)	$0	$40,336,630
	2034	$40,336,630	$1,798,166	$2,077,148	$0	$44,211,944	($2,095,014)	$0	$42,116,930
	2035	$42,116,930	$1,877,507	$2,077,148	$0	$46,071,584	($2,095,014)	$0	$43,976,571
	2036	$43,976,571	$1,960,385	$1,322,451	$0	$47,259,406	($2,095,014)	$0	$45,164,392
	2037	$45,164,392	$2,013,306	$0	$0	$47,177,699	($2,205,278)	$0	$44,972,421
	2038	$44,972,421	$2,004,699	$0	$0	$46,977,120	($2,205,278)	$0	$44,771,842
	2039	$44,771,842	$1,995,706	$0	$0	$46,767,549	($2,205,278)	$0	$44,562,271
20	2040	$44,562,271	$1,986,310	$0	$0	$46,548,581	($2,205,278)	$0	$44,343,303
	2041	$44,343,303	$1,976,492	$0	$0	$46,319,795	($2,205,278)	$0	$44,114,517
	2042	$44,114,517	$1,966,234	$0	$0	$46,080,751	($2,205,278)	$0	$43,875,473
	2043	$43,875,473	$1,955,516	$0	$0	$45,830,989	($2,205,278)	$0	$43,625,711
	2044	$43,625,711	$1,944,317	$0	$0	$45,570,028	($2,205,278)	$0	$43,364,750
	2045	$43,364,750	$1,932,616	$0	$0	$45,297,366	($2,205,278)	$0	$43,092,088
	2046	$43,092,088	$1,920,390	$0	$0	$45,012,478	($2,205,278)	$0	$42,807,201
	2047	$42,807,201	$1,907,616	$0	$0	$44,714,816	($2,205,278)	$0	$42,509,538
	2048	$42,509,538	$1,894,269	$0	$0	$44,403,807	($2,205,278)	$0	$42,198,529
	2049	$42,198,529	$1,880,323	$0	$0	$44,078,852	($2,205,278)	$0	$41,873,574
30	2050	$41,873,574	$1,865,752	$0	$0	$43,739,326	($2,205,278)	$0	$41,534,048
	2051	$41,534,048	$1,850,527	$0	$0	$43,384,575	($2,205,278)	$0	$41,179,298
	2052	$41,179,298	$1,834,619	$0	$0	$43,013,917	($2,205,278)	$0	$40,808,639
	2053	$40,808,639	$1,817,998	$0	$0	$42,626,637	($2,205,278)	$0	$40,421,360
	2054	$40,421,360	$1,800,632	$0	$0	$42,221,992	($2,205,278)	$0	$40,016,714
	2055	$40,016,714	$1,782,486	$0	$0	$41,799,200	($2,205,278)	$0	$39,593,922
	2056	$39,593,922	$1,763,527	$0	$0	$41,357,449	($2,205,278)	$0	$39,152,171
	2057	$39,152,171	$1,743,717	$0	$0	$40,895,889	($2,205,278)	$0	$38,690,611
	2058	$38,690,611	$1,723,019	$0	$0	$40,413,630	($2,205,278)	$0	$38,208,352
	2059	$38,208,352	$1,701,392	$0	$0	$39,909,744	($2,205,278)	$0	$37,704,467
40	2060	$37,704,467	$1,678,796	$0	$0	$39,383,262	($2,205,278)	$0	$37,177,984
	2061	$37,177,984	$1,655,185	$0	$0	$38,833,170	($2,205,278)	$0	$36,627,892
	2062	$36,627,892	$1,630,516	$0	$0	$38,258,408	($2,205,278)	$0	$36,053,130
	2063	$36,053,130	$1,604,740	$0	$0	$37,657,870	($2,205,278)	$0	$35,452,592
	2064	$35,452,592	$1,577,808	$0	$0	$37,030,400	($2,205,278)	$0	$34,825,122
	2065	$34,825,122	$1,549,668	$0	$0	$36,374,790	($2,205,278)	$0	$34,169,512
	2066	$34,169,512	$1,520,265	$0	$0	$35,689,777	($2,205,278)	$0	$33,484,500
	2067	$33,484,500	$1,489,544	$0	$0	$34,974,044	($2,205,278)	$0	$32,768,766
	2068	$32,768,766	$1,457,444	$0	$0	$34,226,210	($2,205,278)	$0	$32,020,932
	2069	$32,020,932	$1,423,905	$0	$0	$33,444,837	($2,205,278)	$0	$31,239,560
50	2070	$31,239,560	$1,388,861	$0	$0	$32,628,421	($2,205,278)	$0	$30,423,143
	Post Permit								
	2071+	$30,423,143	$1,352,245	$0	$0	$31,775,388	($1,340,992)	$0	$30,434,396

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Table B-6
FORA HCP Financial Model Sensitivity - Scenario 3 - Alternative 1
Preliminary Endowment Cash Flow - All Endowments

Scenario 3 Alt. 1 - Delayed Rev. & 15% Cost Reduction
All Endowments

Permit Year	FY Ending	Beginning Balance	Interest Earnings (+)	Deposits (+)	Transfer In (+)	Subtotal	Annual Costs (-)	Transfer Out (-)	Ending Balance
	2020	$15,979,149	$710,170	$1,756,902	$0	$18,446,221	($1,463,528)	$0	$16,982,693
1	2021	$16,982,693	$757,299	$1,860,009	$0	$19,600,000	($1,874,486)	$0	$17,725,514
	2022	$17,725,514	$790,388	$2,548,928	$0	$21,064,830	($1,874,486)	$0	$19,190,344
	2023	$19,190,344	$855,674	$2,183,139	$0	$22,229,156	($1,874,486)	$0	$20,354,670
	2024	$20,354,670	$907,558	$2,746,495	$0	$24,008,724	($1,874,486)	$0	$22,134,238
	2025	$22,134,238	$986,879	$2,618,008	$0	$25,739,125	($1,874,486)	$0	$23,864,639
	2026	$23,864,639	$1,064,007	$2,132,458	$0	$27,061,104	($1,874,486)	$0	$25,186,618
	2027	$25,186,618	$1,122,922	$1,884,936	$0	$28,194,476	($1,874,486)	$0	$26,319,990
	2028	$26,319,990	$1,173,427	$1,880,722	$0	$29,374,139	($1,874,486)	$0	$27,499,652
	2029	$27,499,652	$1,225,995	$2,008,883	$0	$30,734,531	($1,874,486)	$0	$28,860,045
10	2030	$28,860,045	$1,286,623	$1,868,475	$0	$32,015,143	($1,874,486)	$0	$30,140,657
	2031	$30,140,657	$1,343,693	$1,867,542	$0	$33,351,891	($1,874,486)	$0	$31,477,405
	2032	$31,477,405	$1,403,265	$1,862,209	$0	$34,742,879	($1,874,486)	$0	$32,868,393
	2033	$32,868,393	$1,465,257	$1,862,209	$0	$36,195,858	($1,874,486)	$0	$34,321,372
	2034	$34,321,372	$1,530,012	$1,859,542	$0	$37,710,926	($1,874,486)	$0	$35,836,440
	2035	$35,836,440	$1,597,536	$1,859,542	$0	$39,293,518	($1,874,486)	$0	$37,419,032
	2036	$37,419,032	$1,668,072	$1,183,908	$0	$40,271,012	($1,874,486)	$0	$38,396,526
	2037	$38,396,526	$1,711,623	$0	$0	$40,108,149	($1,874,486)	$0	$38,233,663
	2038	$38,233,663	$1,704,322	$0	$0	$39,937,985	($1,874,486)	$0	$38,063,499
	2039	$38,063,499	$1,696,693	$0	$0	$39,760,192	($1,874,486)	$0	$37,885,706
20	2040	$37,885,706	$1,688,722	$0	$0	$39,574,427	($1,874,486)	$0	$37,699,941
	2041	$37,699,941	$1,680,393	$0	$0	$39,380,334	($1,874,486)	$0	$37,505,848
	2042	$37,505,848	$1,671,691	$0	$0	$39,177,539	($1,874,486)	$0	$37,303,053
	2043	$37,303,053	$1,662,598	$0	$0	$38,965,651	($1,874,486)	$0	$37,091,165
	2044	$37,091,165	$1,653,098	$0	$0	$38,744,263	($1,874,486)	$0	$36,869,777
	2045	$36,869,777	$1,643,172	$0	$0	$38,512,949	($1,874,486)	$0	$36,638,463
	2046	$36,638,463	$1,632,801	$0	$0	$38,271,263	($1,874,486)	$0	$36,396,777
	2047	$36,396,777	$1,621,964	$0	$0	$38,018,741	($1,874,486)	$0	$36,144,255
	2048	$36,144,255	$1,610,641	$0	$0	$37,754,896	($1,874,486)	$0	$35,880,410
	2049	$35,880,410	$1,598,811	$0	$0	$37,479,221	($1,874,486)	$0	$35,604,735
30	2050	$35,604,735	$1,586,450	$0	$0	$37,191,186	($1,874,486)	$0	$35,316,700
	2051	$35,316,700	$1,573,535	$0	$0	$36,890,235	($1,874,486)	$0	$35,015,749
	2052	$35,015,749	$1,560,041	$0	$0	$36,575,789	($1,874,486)	$0	$34,701,303
	2053	$34,701,303	$1,545,941	$0	$0	$36,247,244	($1,874,486)	$0	$34,372,758
	2054	$34,372,758	$1,531,209	$0	$0	$35,903,967	($1,874,486)	$0	$34,029,481
	2055	$34,029,481	$1,515,816	$0	$0	$35,545,297	($1,874,486)	$0	$33,670,811
	2056	$33,670,811	$1,499,733	$0	$0	$35,170,544	($1,874,486)	$0	$33,296,058
	2057	$33,296,058	$1,482,928	$0	$0	$34,778,986	($1,874,486)	$0	$32,904,500
	2058	$32,904,500	$1,465,370	$0	$0	$34,369,870	($1,874,486)	$0	$32,495,384
	2059	$32,495,384	$1,447,024	$0	$0	$33,942,409	($1,874,486)	$0	$32,067,922
40	2060	$32,067,922	$1,427,856	$0	$0	$33,495,778	($1,874,486)	$0	$31,621,292
	2061	$31,621,292	$1,407,827	$0	$0	$33,029,120	($1,874,486)	$0	$31,154,633
	2062	$31,154,633	$1,386,901	$0	$0	$32,541,534	($1,874,486)	$0	$30,667,048
	2063	$30,667,048	$1,365,035	$0	$0	$32,032,083	($1,874,486)	$0	$30,157,597
	2064	$30,157,597	$1,342,189	$0	$0	$31,499,787	($1,874,486)	$0	$29,625,300
	2065	$29,625,300	$1,318,318	$0	$0	$30,943,619	($1,874,486)	$0	$29,069,133
	2066	$29,069,133	$1,293,377	$0	$0	$30,362,510	($1,874,486)	$0	$28,488,023
	2067	$28,488,023	$1,267,316	$0	$0	$29,755,340	($1,874,486)	$0	$27,880,854
	2068	$27,880,854	$1,240,087	$0	$0	$29,120,941	($1,874,486)	$0	$27,246,455
	2069	$27,246,455	$1,211,636	$0	$0	$28,458,091	($1,874,486)	$0	$26,583,605
50	2070	$26,583,605	$1,181,910	$0	$0	$27,765,515	($1,874,486)	$0	$25,891,029
	Post Permit								
	2071+	$25,891,029	$1,150,849	$0	$0	$27,041,878	($1,139,843)	$0	$25,902,035

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Table B-7
FORA HCP Financial Model Sensitivity - Scenario 3 - Alternative 2
Preliminary Endowment Cash Flow - All Endowments

Scenario 3 Alt. 2 - Delayed Rev. & 25% Cost Reduction
All Endowments

Permit Year	FY Ending	Beginning Balance	Interest Earnings (+)	Deposits (+)	Transfer In (+)	Subtotal	Annual Costs (-)	Transfer Out (-)	Ending Balance
	2020	$15,979,149	$710,170	$1,317,677	$0	$18,006,995	($1,463,528)	$0	$16,543,467
1	2021	$16,543,467	$737,688	$1,450,563	$0	$18,731,719	($1,612,294)	$0	$17,119,425
	2022	$17,119,425	$763,332	$1,987,830	$0	$19,870,587	($1,612,294)	$0	$18,258,294
	2023	$18,258,294	$814,067	$1,702,562	$0	$20,774,923	($1,612,294)	$0	$19,162,630
	2024	$19,162,630	$854,348	$2,141,907	$0	$22,158,884	($1,612,294)	$0	$20,546,590
	2025	$20,546,590	$916,008	$2,041,704	$0	$23,504,302	($1,612,294)	$0	$21,892,008
	2026	$21,892,008	$975,950	$1,663,038	$0	$24,530,996	($1,612,294)	$0	$22,918,702
	2027	$22,918,702	$1,021,685	$1,470,003	$0	$25,410,390	($1,612,294)	$0	$23,798,096
	2028	$23,798,096	$1,060,853	$1,466,717	$0	$26,325,666	($1,612,294)	$0	$24,713,373
	2029	$24,713,373	$1,101,621	$1,566,666	$0	$27,381,660	($1,612,294)	$0	$25,769,366
10	2030	$25,769,366	$1,148,661	$1,457,166	$0	$28,375,193	($1,612,294)	$0	$26,762,899
	2031	$26,762,899	$1,192,917	$1,456,438	$0	$29,412,254	($1,612,294)	$0	$27,799,960
	2032	$27,799,960	$1,239,112	$1,452,279	$0	$30,491,351	($1,612,294)	$0	$28,879,058
	2033	$28,879,058	$1,287,181	$1,452,279	$0	$31,618,518	($1,612,294)	$0	$30,006,224
	2034	$30,006,224	$1,337,393	$1,450,199	$0	$32,793,816	($1,612,294)	$0	$31,181,523
	2035	$31,181,523	$1,389,750	$1,450,199	$0	$34,021,472	($1,612,294)	$0	$32,409,178
	2036	$32,409,178	$1,444,441	$923,293	$0	$34,776,913	($1,612,294)	$0	$33,164,619
	2037	$33,164,619	$1,478,083	$0	$0	$34,642,702	($1,612,294)	$0	$33,030,408
	2038	$33,030,408	$1,472,066	$0	$0	$34,502,474	($1,612,294)	$0	$32,890,181
	2039	$32,890,181	$1,465,781	$0	$0	$34,355,961	($1,612,294)	$0	$32,743,668
20	2040	$32,743,668	$1,459,213	$0	$0	$34,202,880	($1,612,294)	$0	$32,590,587
	2041	$32,590,587	$1,452,351	$0	$0	$34,042,938	($1,612,294)	$0	$32,430,644
	2042	$32,430,644	$1,445,181	$0	$0	$33,875,825	($1,612,294)	$0	$32,263,531
	2043	$32,263,531	$1,437,690	$0	$0	$33,701,221	($1,612,294)	$0	$32,088,927
	2044	$32,088,927	$1,429,862	$0	$0	$33,518,789	($1,612,294)	$0	$31,906,495
	2045	$31,906,495	$1,421,684	$0	$0	$33,328,180	($1,612,294)	$0	$31,715,886
	2046	$31,715,886	$1,413,139	$0	$0	$33,129,025	($1,612,294)	$0	$31,516,731
	2047	$31,516,731	$1,404,211	$0	$0	$32,920,943	($1,612,294)	$0	$31,308,649
	2048	$31,308,649	$1,394,883	$0	$0	$32,703,532	($1,612,294)	$0	$31,091,238
	2049	$31,091,238	$1,385,136	$0	$0	$32,476,374	($1,612,294)	$0	$30,864,080
30	2050	$30,864,080	$1,374,952	$0	$0	$32,239,033	($1,612,294)	$0	$30,626,739
	2051	$30,626,739	$1,364,312	$0	$0	$31,991,051	($1,612,294)	$0	$30,378,757
	2052	$30,378,757	$1,353,194	$0	$0	$31,731,952	($1,612,294)	$0	$30,119,658
	2053	$30,119,658	$1,341,578	$0	$0	$31,461,236	($1,612,294)	$0	$29,848,943
	2054	$29,848,943	$1,329,441	$0	$0	$31,178,384	($1,612,294)	$0	$29,566,090
	2055	$29,566,090	$1,316,760	$0	$0	$30,882,851	($1,612,294)	$0	$29,270,557
	2056	$29,270,557	$1,303,510	$0	$0	$30,574,067	($1,612,294)	$0	$28,961,773
	2057	$28,961,773	$1,289,666	$0	$0	$30,251,439	($1,612,294)	$0	$28,639,146
	2058	$28,639,146	$1,275,201	$0	$0	$29,914,347	($1,612,294)	$0	$28,302,053
	2059	$28,302,053	$1,260,088	$0	$0	$29,562,141	($1,612,294)	$0	$27,949,847
40	2060	$27,949,847	$1,244,296	$0	$0	$29,194,143	($1,612,294)	$0	$27,581,849
	2061	$27,581,849	$1,227,797	$0	$0	$28,809,646	($1,612,294)	$0	$27,197,352
	2062	$27,197,352	$1,210,557	$0	$0	$28,407,909	($1,612,294)	$0	$26,795,615
	2063	$26,795,615	$1,192,544	$0	$0	$27,988,160	($1,612,294)	$0	$26,375,866
	2064	$26,375,866	$1,173,724	$0	$0	$27,549,590	($1,612,294)	$0	$25,937,296
	2065	$25,937,296	$1,154,059	$0	$0	$27,091,355	($1,612,294)	$0	$25,479,061
	2066	$25,479,061	$1,133,513	$0	$0	$26,612,574	($1,612,294)	$0	$25,000,280
	2067	$25,000,280	$1,112,045	$0	$0	$26,112,325	($1,612,294)	$0	$24,500,032
	2068	$24,500,032	$1,089,614	$0	$0	$25,589,646	($1,612,294)	$0	$23,977,352
	2069	$23,977,352	$1,066,177	$0	$0	$25,043,529	($1,612,294)	$0	$23,431,235
50	2070	$23,431,235	$1,041,689	$0	$0	$24,472,925	($1,612,294)	$0	$22,860,631
	Post Permit								
	2071+	$22,860,631	$1,016,103	$0	$0	$23,876,734	($1,005,744)	$0	$22,870,990

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APPENDIX C:

Projected Replacement CFD Special Tax Revenue

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Table C-1
FORA Cost Allocation Alternatives
Projected Replacement CFD Special Tax Revenue: Del Rey Oaks [1]

Del Rey Oaks

Item	Project Status [2]	Residential		Office		Industrial		Retail		Hotel		Total
		Units	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Rooms	Acres	
			Per Unit		*Per Acre*		*Per Acre*		*Per Acre*		*Per Room*	
CFD Rate (FY 2019/20)			$25,362		$3,327		$3,327		$68,555		$5,655	
Density (Units per Acre/FAR/ Rooms per Acre) [3]			6.00		0.35		0.40		0.25		31.50	
Del Rey Oaks Development		*Units*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Rooms*	*Acres*	*Acres*
RV Resort (Parcel D + Caltrans ROW)	EHD	0	0.0	400,000	26.2	0	0.0	0	0.0	0	0.0	26.2
City of Del Rey Oaks (Parcel B, C, & Volume 20)	PDHD	500	83.3	0	0.0	500,000	28.7	25,000	2.3	250	7.9	122.3
MPP LLC (Parcel A - 20 acres)	Unplanned	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0.0
Subtotal		**500**	**83.3**	**400,000**	**26.2**	**500,000**	**28.7**	**25,000**	**2.3**	**250**	**7.9**	**148.5**
Del Rey Oaks Replacement CFD Revenue			**$12,681,000**		**$87,288**		**$95,472**		**$157,381**		**$1,413,750**	**$14,434,891**

Source: FORA Draft CIP, dated 05-03-19; EPS.

[1] Assumes current FORA CIP development projections and current FORA CFD special tax rates.
[2] Entitled Independent Permit (EIP), Entitled HCP Dependent (EHD), or Planned Development HCP Dependent (PDHD).
[3] Land use totals provided by jurisdictions to FORA converted to acres using the noted density assumptions.

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Table C-2
FORA Cost Allocation Alternatives
Projected Replacement CFD Special Tax Revenue: Marina

Marina

Item	Project Status [2]	Residential Units	Residential Acres	Office Sq. Ft.	Office Acres	Industrial Sq. Ft.	Industrial Acres	Retail Sq. Ft.	Retail Acres	Hotel Rooms	Hotel Acres	Total
			Per Unit		*Per Acre*		*Per Acre*		*Per Acre*		*Per Room*	
CFD Rate (FY 2019/20)			$25,362		$3,327		$3,327		$68,555		$5,655	
Density (Units per Acre/FAR/ Rooms per Acre) [3]			6.00		0.35		0.40		0.25		31.50	
Marina Development		*Units*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Rooms*	*Acres*	*Acres*
Seahaven, aka Marina Heights	EIP											
Seahaven A		802	133.7	0	0.0	0	0.0	0	0.0	0	0.0	133.7
Seahaven Replacement		47	7.8	0	0.0	0	0.0	0	0.0	0	0.0	7.8
VTC	EIP	71	11.8	0	0.0	0	0.0	0	0.0	0	0.0	11.8
Dunes on Monterey Bay	EHD											
Dunes Phase 1		30	5.0	30,000	2.0	0	0.0	55,000	5.1	94	3.0	15.0
Dunes Phase 2		443	73.8	0	0.0	0	0.0	25,000	2.3	300	9.5	85.7
Dunes Phase 3		354	59.0	400,000	26.2	450,000	25.8	0	0.0	0	0.0	111.1
Cypress Knolls	EHD	712	118.7	0	0.0	0	0.0	0	0.0	0	0.0	118.7
Subtotal		**2,459**	**409.8**	**430,000**	**28.2**	**450,000**	**25.8**	**80,000**	**7.3**	**394**	**12.5**	**483.7**
Marina Replacement CFD Revenue			**$60,654,491**		**$93,835**		**$85,925**		**$503,618**		**$2,228,070**	**$63,565,939**

Source: FORA Draft CIP, dated 05-03-19; EPS.

[1] Assumes current FORA CIP development projections and current FORA CFD special tax rates.
[2] Entitled Independent Permit (EIP), Entitled HCP Dependent (EHD), or Planned Development HCP Dependent (PDHD).
[3] Land use totals provided by jurisdictions to FORA converted to acres using the noted density assumptions.

Prepared by EPS 11/13/2019

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Table C-3
FORA Cost Allocation Alternatives
Projected Replacement CFD Special Tax Revenue: City of Monterey

City of Monterey

Item	Project Status [2]	Residential Units	Residential Acres	Office Sq. Ft.	Office Acres	Industrial Sq. Ft.	Industrial Acres	Retail Sq. Ft.	Retail Acres	Hotel Rooms	Hotel Acres	Total
		Per Unit			*Per Acre*		*Per Acre*		*Per Acre*		*Per Room*	
CFD Rate (FY 2019/20)			$25,362		$3,327		$3,327		$68,555		$5,655	
Density (Units per Acre/FAR/ Rooms per Acre) [3]			6.00		0.35		0.40		0.25		31.50	
City of Monterey Development		*Units*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Rooms*	*Acres*	*Acres*
City of Monterey	PDHD	0	0.0	721,524	47.3	0.0	0.0	0	0.0	0	0.0	47.3
City of Monterey	PDHD	0	0.0	0	0.0	216,276	12.4	0	0.0	0	0.0	12.4
Subtotal Acreage		**0**	**0.0**	**721,524**	**47.3**	**216,276**	**12.4**	**0**	**0.0**	**0**	**0.0**	**59.7**
City of Monterey Replacement CFD Revenue			**$0**		**$157,452**		**$41,297**		**$0**		**$0**	**$198,748**

Source: FORA Draft CIP, dated 05-03-19; EPS.

[1] Assumes current FORA CIP development projections and current FORA CFD special tax rates.
[2] Entitled Independent Permit (EIP), Entitled HCP Dependent (EHD), or Planned Development HCP Dependent (PDHD).
[3] Land use totals provided by jurisdictions to FORA converted to acres using the noted density assumptions.

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Table C-4
FORA Cost Allocation Alternatives
Projected Replacement CFD Special Tax Revenue: County of Monterey

County of Monterey

Item	Project Status [2]	Residential		Office		Industrial		Retail		Hotel		Total
		Units	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Rooms	Acres	
		Per Unit		*Per Acre*		*Per Acre*		*Per Acre*		*Per Room*		
CFD Rate (FY 2019/20)		$25,362		$3,327		$3,327		$68,555		$5,655		
Density (Units per Acre/FAR/ Rooms per Acre) [3]		6.00		0.35		0.40		0.25		31.50		
County of Monterey Development		*Units*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Rooms*	*Acres*	*Acres*
East Garrison I Monterey County	EHD	601	100.2	68,000	4.5	0	0.0	34,000	3.1	0	0.0	107.7
Subtotal		**601**	**100.2**	**68,000**	**4.5**	**0**	**0.0**	**34,000**	**3.1**	**0**	**0.0**	**107.7**
County of Monterey Replacement CFD Revenue			**$15,242,562**		**$14,839**		**$0**		**$214,038**		**$0**	**$15,471,439**

Source: FORA Draft CIP, dated 05-03-19; EPS.

[1] Assumes current FORA CIP development projections and current FORA CFD special tax rates.
[2] Entitled Independent Permit (EIP), Entitled HCP Dependent (EHD), or Planned Development HCP Dependent (PDHD).
[3] Land use totals provided by jurisdictions to FORA converted to acres using the noted density assumptions.

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Table C-5
FORA Cost Allocation Alternatives
Projected Replacement CFD Special Tax Revenue: Seaside

Seaside

Item	Project Status [2]	Residential		Office		Industrial		Retail		Hotel		Total
		Units	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Rooms	Acres	
		Per Unit		*Per Acre*		*Per Acre*		*Per Acre*		*Per Room*		
CFD Rate (FY 2019/20)		$25,362		$3,327		$3,327		$68,555		$5,655		
Density (Units per Acre/FAR/ Rooms per Acre) [3]			6.00		0.35		0.40		0.25		31.50	
Seaside Development		*Units*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Rooms*	*Acres*	*Acres*
Seaside Resort	EIP	122	20.3	0	0.0	0	0.0	10,000	0.9	330	10.5	31.7
Campus Town	PDHD											
Surplus II		184	30.7	0	0.0	50,000	2.9	150,000	13.8	0	0.0	47.3
26 Acre Parcel		189	31.5	0	0.0	0	0.0	0	0.0	118	3.7	35.2
Main Gate	PDHD	590	98.3	0	0.0	0	0.0	150,000	13.8	250	7.9	120.0
Nurses Barracks	PDHD	40	6.7	0	0.0	0	0.0	0	0.0	0	0.0	6.7
Seaside East	PDHD	0	0.0	400,000	26.2	100,000	5.7	0	0.0	0	0.0	32.0
Subtotal		**1,125**	**187.5**	**400,000**	**26.2**	**150,000**	**8.6**	**310,000**	**28.5**	**698**	**22.2**	**273.0**
Seaside Replacement CFD Revenue			**$28,532,250**		**$87,288**		**$28,642**		**$1,951,520**		**$3,947,190**	**$34,546,890**

Source: FORA Draft CIP, dated 05-03-19; EPS.

[1] Assumes current FORA CIP development projections and current FORA CFD special tax rates.
[2] Entitled Independent Permit (EIP), Entitled HCP Dependent (EHD), or Planned Development HCP Dependent (PDHD).
[3] Land use totals provided by jurisdictions to FORA converted to acres using the noted density assumptions.

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Table C-6
FORA Cost Allocation Alternatives
Projected Replacement CFD Special Tax Revenue: UC [1]

UC

Item	Project Status [2]	Residential		Office [3]		Industrial		Retail		Hotel		Total
		Units	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Sq. Ft.	Acres	Rooms	Acres	
		Per Unit			*Per Acre*		*Per Acre*		*Per Acre*		*Per Room*	
CFD Rate (FY 2019/20)			$25,362		$3,327		$3,327		$68,555		$5,655	
Density (Units per Acre/FAR/ Rooms per Acre) [4]			6.00		0.35		0.40		0.25		31.50	
UC Development		*Units*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Sq. Ft.*	*Acres*	*Rooms*	*Acres*	*Acres*
UC Triangle (County)	PDHD	240	40.0	0	0.0	0	0.0	0	0.0	0	0.0	40.0
UC Planned	PDHD	0	0.0	680,000	44.6	100,000	5.7	310,000	28.5	0	0.0	78.8
Subtotal		**240**	**40.0**	**680,000**	**44.6**	**100,000**	**5.7**	**310,000**	**28.5**	**0**	**0.0**	**118.8**
UC Replacement CFD Revenue			**$6,086,880**		**$0**		**$19,094**		**$1,951,520**		**$0**	**$8,057,494**

Source: FORA Draft CIP, dated 05-03-19; EPS.

[1] Assumes current FORA CIP development projections and current FORA CFD special tax rates.
[2] Entitled Independent Permit (EIP), Entitled HCP Dependent (EHD), or Planned Development HCP Dependent (PDHD).
[3] Per FOR A, the UC office space is exempt from the CFD payment, assuming that office uses will be academic uses and not private-sector development.
[4] Land use totals provided by jurisdictions to FORA converted to acres using the noted density assumptions.

APPENDIX D:

FORA Estimated Developable Acreage—
Long-Term Development Pipeline

Table D-1
FORA Cost Allocation Alternatives
FORA Estimated Developable Acreage - Long-Term Development Pipeline [1]

Item	Project Status	FORA Estimated Developable Acreage No.	% of Total
DEVELOPABLE ACREAGE			
Del Rey Oaks			
Del Rey Oaks RV Resort	Entitled HCP Dependent	53.8	
City of Del Rey Oaks	Planned Development	254.4	
MPP LLC (Parcel A)	Unplanned	20.0	
Subtotal Del Rey Oaks		**328.3**	**14.0%**
Marina			
Dunes on Monterey Bay [2]	Partially Built/Entitled HCP Dependent	211.7	
Cypress Knolls	Entitled HCP Dependent	190.0	
Marina Airport [3]	Planned Development	150.0	
TAMC	Planned Development	35.0	
Young Nak Church	Planned Development	0.5	
Marina Office	Planned Development	5.6	
Subtotal Marina		**592.8**	**25.3%**
City of Monterey			
City of Monterey	Planned Development	110.0	
Subtotal City of Monterey		**110.0**	**4.7%**
County of Monterey			
East Garrison: Monterey County [2]	Partially Built/Entitled HCP Dependent	107.7	
Subtotal County of Monterey		**107.7**	**4.6%**
Seaside			
Campus Town	Planned Development	80.0	
Main Gate	Planned Development	57.0	
Nurses Barracks	Planned Development	5.0	
Seaside East	Planned Development	573.0	
Subtotal Seaside		**715.0**	**30.6%**
UC [2]			
UC Triangle (County)	Planned Development	270.0	
UC (Marina)	Planned Development	216.0	
Subtotal UC		**486.0**	**20.8%**
TOTAL DEVELOPABLE ACREAGE		**2,339.8**	**100.0%**

Source: FORA; EPS.

[1] Unless otherwise noted, acreages are estimated based on total developable parcel size for project areas anticipated to develop within the HCP permit term. Estimated acreage reflects preliminary assumptions provided by FORA staff that should be confirmed by jurisdictions. Excludes project areas that have been built out and those entitled under an independent permit. Includes entitled HCP-dependent and planned HCP-dependent acreage as provided by FORA staff.

[2] Project is partially built out; estimated remaining acreage based on the estimate of total remaining developable acreage calculated in the FORA CIP model and shown in Table C-2.

[3] Acreage is a placeholder estimate subject to future planning efforts and jurisdiction confirmation.

[4] UC office space is exempt from the CFD calculation under Alternative 1. However, Alternatives 2 and 3 includes UC projects identified by FORA staff as HCP dependent. The current UC agreement to contribute to the HCP expires with FORA's sunset.