

October 17, 2005

*Hand Delivered*

Martha Diehl, Chair  
Planning Commissioner  
County of Monterey  
168 West Alisal Street  
Salinas, CA 93902

**SUBJECT: REVISED RANCHO SAN JUAN SPECIFIC PLAN AND  
ADDENDUM TO FEIR**

Dear Chair Diehl and Planning Commission Members:

On behalf of LandWatch Monterey County and the Rancho San Juan Opposition Coalition, this is to oppose the Revised Rancho San Juan Specific Plan (“RSJ RSP” or “Revised Specific Plan”) as well as the proposed amendments to the General Plan, Greater Salinas Area Plan, and zoning ordinance (collectively, “Revised Project”).

As will be discussed in this letter, the Revised Project is inconsistent with numerous General Plan policies and renders the General Plan internally inconsistent. It clearly demonstrates the inadequacies of that 23-year old plan, which no longer reflects the realities on the ground.

Furthermore, the Water Supply Analysis does not meet the requirements of SB 610 or SB 221, and cannot support a finding that the water supply is adequate. There is simply no substantial evidence at this point that the essential additional water supplies can be provided.

In addition, evaluation of new information and changes to this project demonstrates new or significantly increased impacts. Thus, use of an Addendum rather than a Subsequent EIR is inconsistent with CEQA requirements.

Finally, the County should not adopt the proposed amendments to the General Plan that are necessary to the Revised Project, because most of these amendments are identical to, and the rest are substantially similar to, the amendments that are subject to the pending referendum. The County should not usurp the orderly referendum process by rushing through the same amendments. And in any event, the County cannot legally adopt these amendments prior to the election.

## **I. THE REVISED SPECIFIC PLAN IS INCONSISTENT WITH THE GENERAL PLAN**

### **A. Legal Requirements For General Plan Consistency**

A project must be consistent with the applicable general plan. *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183. Consistency demands that a project both “further the objectives and policies of the general plan *and* not obstruct their attainment.” *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4<sup>th</sup> 1334, 1336 (“*FUTURE*”), citations and internal quotations omitted, emphasis added. Where a project conflicts with a single general plan policy, its approval may be reversed. *San Bernadino County Audubon Society, Inc. v. County of San Bernadino* (1984) 155 Cal.App.3d 738, 753; *FUTURE, supra*, 62 Cal.App.4<sup>th</sup> at 1341( project inconsistent with one land use policy).

A specific plan must be consistent with a general plan. Gov. Code, § 65454. A specific plan must support a general plan; thus, a specific plan that frustrates general plan policies, even without direct conflicts, will be found inconsistent. *Napa Citizens v. Napa County Board of Supervisors* (2001) 91 Cal.App.4<sup>th</sup> 342, 379.

As discussed in more detail below, the Project is fundamentally inconsistent with a number of Monterey County General Plan policies. For example, the Project would cause a substantial increase in traffic that would not be fully mitigated. Thus, the Project fails to meet transportation related Goals 37 (promote safe, effective, and economical transportation system that will service existing and future land uses), 38 (minimize negative impacts of transportation in the County), and 39 (provide for a road and highway network to meet the needs of existing and anticipated movements of people and commodities).

### **B. Inadequate Consistency Analysis**

The October 19, 2005 Staff Report discussion of GP and GSAP amendments claims that there is an analysis of consistency contained in Appendix C of the Revised Specific Plan. This consistency analysis is a recycled version of the inadequate consistency analysis presented in the original specific plan. As noted in the discussion below, the consistency analysis omits analysis of key policies that the Revised Project violates or frustrates without mitigation.

In several instances the consistency analysis fails to reflect the language of the GP and GSAP amendments proposed in your October, 2005 staff report, retaining the language of the amendments that were approved in December 2004. That is, the purported consistency analysis is not even based on the most recently proposed text of the General Plan. Because of these errors and omissions in the consistency analysis, the

Planning Commission and the Board do not have an adequate basis to find the Project consistent.

No portion of the consistency analysis addresses the proposed rezoning of properties outside the Revised Specific Plan area as commercial and industrial.

An EIR must discuss any inconsistencies between the proposed Project and applicable general plans and regional plans. CEQA Guidelines § 15125(d). This discussion is mandatory under CEQA. The inadequacy of the consistency analysis is itself a reason why an Addendum is insufficient and a Supplemental EIR must be prepared.

### **C. Traffic Conflicts**

#### **1. The Revised Project's Unmitigated Traffic Impacts Conflict With General Plan Policies**

The DEIR and the Addendum admit that the availability of supplemental funding or other limitations may prevent the County from constructing the improvements necessary to mitigate the Project impacts on its roads and intersections in 2010 and 2020. In particular, the DEIR for the Adopted Specific Plan acknowledges that availability of supplemental funding or other limitations may prevent the County from constructing the improvements necessary to mitigate traffic impacts from the HYH Property Project and thus “the improvements may not be available concurrent with need or completed at all.” DEIR 5.2-35. That DEIR also found that the HYH Property Project’s impacts on highways in 2010 and 2020 would remain significant due to the lack of a programmatic development traffic Impact Fee Program and the fact that the existing *ad hoc* fee program cannot mitigate impacts. DEIR 5.2-36.

The Addendum confirms that the Revised Specific Plan will still cause significant impacts to six intersections and two freeway segments. Addendum, pp. 21-28. The Addendum also confirms that the Revised Specific Plan will contribute to cumulatively significant impacts on roadway segments, intersections, and all segments of Highway 101. Addendum, p. 82. The Addendum does not alter the conclusion that these impacts will remain significant and unmitigated. The cause is the same: “the uncertainty of the adequacy of the traffic fee to fund all of the improvements needed.” Addendum, p. 24.

Monterey County General Plan Goals 37, 38, and 39 are intended to ensure that the County’s circulation system supports its land use. These provisions are not simply a wise choice by the County; they are mandated by the statutory requirement that the circulation element correlate with the land use element of a general plan. Gov. Code § 65302(b). This effectively requires the circulation element to set forth service standards as well as proposals respecting changes in roadway demand caused by changes in land use. The correlation requirement is intended to prevent the land use element from permitting growth without adequate proposals for addressing circulation needs.

*Concerned Citizens of Calaveras County v. Calaveras County Board of Supervisors* (1985) 166 Cal.App.3d 90, 99-103. In *Concerned Citizens of Calaveras County* the court held that achieving the mandatory correlation of the circulation and land use elements required that a county actually identify funding sources and a real plan to address the state highway system before allowing additional growth:

“We conclude that the general plan cannot identify substantial problems that will emerge with its state highway system, further report that no known funding sources are available for improvements necessary to remedy the problems, and achieve statutorily mandated correlation with its land use element (which provides for substantial population increases) simply by stating that the county will ask other agencies of government for money.” *Id.* at 103.

The facile consistency analysis in Appendix C of the DEIR obscured the fact that the Adopted Specific Plan would cause significant unmitigated traffic impacts that cannot be reconciled with General Plan goals. That consistency analysis recited the Specific Plan requirements for roadway improvements and traffic mitigation facilities, “as identified in the Environmental Impact Report.” DEIR, p. C-13. However, that consistency analysis did *not* mention that the EIR admits that the traffic mitigation facilities are entirely uncertain. As noted below, the Revised Specific Plan consistency analysis simply abandons any attempt to claim that the Revised Specific Plan will be consistent with the policies requiring mitigation of traffic impacts. RSJ RSP, App. C, p. C-15.

In *Napa Citizens v. Napa County Board of Supervisors* (2001) 91 Cal.App.4<sup>th</sup> 342, 379, the court held that the consistency doctrine required “more than that the Updated Specific Plan recite goals and policies that are consistent with those set forth in the County’s General Plan.” *Id.* at 379. Instead, the specific plan was required *actually to mitigate* impacts that would frustrate general plan goals, goals which were very similar to Monterey County General Plan Goals 37, 38, and 39:

“If the Updated Specific Plan will frustrate the General Plan’s goals and policies, it is inconsistent with the County’s General Plan *unless it also includes definite affirmative commitments to mitigate the adverse effect or effects.*” *Id.*, emphasis added.

This requires more than a recitation that the County will “work towards improving roadways;” it requires a “binding commitment . . . to alleviate the impact the Project will have on traffic . . .” *Id.* at 380.

There is simply no such binding commitment here. On the contrary, the County admits that necessary improvements are entirely uncertain. A requirement to pay impact fees without evidence that mitigation will actually occur is not adequate mitigation. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (groundwater impact fees not mitigation absent evidence of water available for purchase); *San*

*Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79 (unspecified transit funding mechanism not mitigation); *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140. Under Planning and Zoning Law, payment of impact fees for improvements that are clearly infeasible does not constitute the necessary commitment to mitigation: where the cost of highway improvements necessary to mitigate impacts are clearly beyond the means of the local jurisdiction, it cannot be reasonably argued that mitigation is feasible. *Napa Citizens, supra*, 91 Cal.App.4th at 364.

Thus, the Revised Specific Plan violates or frustrates without mitigation the following specific traffic and circulation goals and policies:

- Policy 37.4.1.: "The County shall encourage overall land use patterns which reduce the need to travel." The Revised Plan is an isolated development that includes less than one acre of commercial development. It will require reliance on the automobile for travel to work, school and shopping. This policy was not even discussed in the consistency analysis.
- Policy 38.1.5: "Adequate traffic capacity *shall be* a criterion for development consideration." The criterion was not applied and the policy was not even discussed in the consistency analysis.
- Objective 39.1: "Provide an adequate road system that is within the County's ability to finance and maintain." The road system is inadequate. The DEIR and Addendum acknowledge that financing for necessary improvements is so uncertain that the impacts must be considered unmitigated.
- Policy 39.1.2.1 requires the County to evaluate and implement *some* method to fund necessary circulation improvements needed to accommodate RSJ ADC traffic. The County has not done this and the policy was not even addressed in the consistency analysis.
- Policy 39.2.8 requires the County to develop a Master Circulation Plan for Greater Salinas Area that meets a number of guidelines, including directing traffic around Salinas and outlining financing. The County has not done this and the policy was not even addressed in the consistency analysis.
- Policy 39.1.2: "The cost of new roads *shall be* borne as equitably as possible among benefiting property owners and/or users." HYH's arbitrarily capped impact fees are not fair shares. The rest of the public will have to pay for the improvements or suffer their lack. The policy was not even discussed in the consistency analysis.
- Policy 39.1.4: "New Development *shall be* located where there is existing road and highway capacity or where adequate road and highway capacity will be

- provided." This development is not so located. The policy was not even discussed in the consistency analysis.
- Policy 37.2.1: "Transportation demands of proposed development *shall not exceed* an acceptable level of service for existing transportation facilities, unless appropriate increases in capacities are provided for." Unacceptable levels of service result and are not mitigated. The policy was not even discussed in the consistency analysis.
  - Policy 26.1.4: The County *shall designate growth areas only where there is* provision for an *adequate* level of services and facilities such as . . . *transportation.*" The discussion in the consistency analysis made no reference to transportation. RSJ RSP, App. C, pp. C-5-6.
  - Policy 27.1.2: "The County shall limit residential development in areas which are unsuited for more intensive development due to . . . the lack of public services and facilities." The policy was not even discussed in the consistency analysis.
  - Objective 27.2: "Provide for adequate access to and circulation within residential areas." See also Policy 27.2.1 – ("Residential areas shall be located with convenient access to . . . transportation.") The Revised Specific Plan does not provide adequate *regional* access because traffic impacts are unmitigated.
  - Rancho San Juan ADC Development Guideline 5: ". . . development which has any significant unmitigated impacts *shall not commence* until the Highway 101 bypass construction date has been set." The consistency analysis claims that requiring subdivisions to remain *compatible* with alternative bypass designs, *if feasible*, ensures consistency. RSJ RSP, App. C, p. C-19. But the Policy states categorically that development *must* wait on the assurance of a planned construction date, and it does not include any "feasibility" qualification.
  - Policy 39.1.4.1: "***Implementation of all land uses within the Greater Salinas Area Plan shall occur only if there will be no significant unmitigated impact on traffic circulation.***" (See following discussion.)

Because the Revised Specific Plan is so clearly inconsistent with Policy 39.1.4.1, the County proposes to amend it, although the conflicting documentation of proposed amendments makes it unclear exactly how. The consistency analysis in the Revised Specific Plan retains the same language adopted in December 2004 – *i.e.*, the blunt instrument approach of simply exempting the RSJ Specific Plan area from this requirement. RSJ RSP, Appendix C, p. C-15. However, the amendment contained in Exhibit E to the Staff Report uses entirely different language, providing an exception where development is "*in accordance with a comprehensive traffic mitigation program contained in an adopted Specific Plan.*" Staff Report, App. E, Draft Resolution, p. 6.

The mysterious phrase, “comprehensive traffic mitigation program,” is not explained in the Staff Report, the consistency analysis, or the Revised Specific Plan.

In fact, there *is* no “comprehensive traffic mitigation program contained in” the Revised Specific Plan. This is evident from the fact that the Addendum acknowledges that the impacts remain “potentially unmitigated” due to the “uncertainty of the adequacy of the traffic fee to fund all of the improvements needed” and due to the fact that freeway improvements, for which there is no funding, are “beyond the control of private developers.” Addendum, pp. 24, 27. The Addendum fails to mention the fact that the unnecessarily capped traffic impact fee is clearly *not* sufficient to construct the needed improvements, that there will now be no other fair share contributions from other development in the Specific Plan area, and that there was *never* any plan to spend any portion of the impact fee on freeway mitigation.<sup>1</sup>

Whatever its form, amendment of Policy 39.1.4.1 cannot cure the Revised Specific Plan’s inconsistency with the General Plan. The failure to mitigate impacts clearly violates Policy 37.2.1, Policy 39.1.4, and Policy 37.4.1, and there is no proposal to amend these policies.

Finally, the consistency analysis simply omits any consideration of the traffic impacts from rezoning area outside the Revised Specific Plan. But traffic from permitting commercial and industrial development of this area will certainly aggravate existing conditions.

2. The Revised Specific Plan Renders the General Plan Internally Inconsistent By Violating the Correlation Requirement

The consistency doctrine requires that a General Plan be internally consistent. Gov. Code, § 65300.5. The statutory requirement that the circulation element correlate with the land use element of a general plan (Gov. Code, § 65302(b)) effectively requires the circulation element to set forth service standards as well as proposals to address changes in roadway demand caused by changes in land use. *Concerned Citizens of Calaveras County v. Calaveras County Board of Supervisors* (1985) 166 Cal.App.3d 90, 100. Thus, in amending its General Plan to re-designate land uses, an agency must ensure that the amendment is consistent with the other elements of the plan and that the

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<sup>1</sup> It is disingenuous to claim that the reason freeway impacts remain unmitigated is that the improvements are “beyond the control of private developers.” In fact, they are unmitigated because there is no funding source available for these improvements. See, for example, General Plan Update Draft EIR, p. 5.2-19 and General Plan Draft, p. 109 (both listing programs for which TAMC is seeking funding, and not including the Highway 101 Bypass.) And even if there were other funds available, there is no requirement that any portion of the applicant’s traffic impact fees be used to fund Highway 101 improvements. The list of proposed improvements toward which the applicant’s traffic impact fee will be applied does not even include Highway 101 projects. DEIR, Table 5.2-18, p. 5.2-32.

General Plan as a whole remains internally consistent. Specifically, growth must not impair circulation standards. *Id.* at 99-103.

The County cannot resolve inconsistency problems merely by revising Policy 39.1.4.1, regardless of the wording, because words will not provide the required circulation. By designating land uses that are unsupported by a circulation system, the Revised Project creates a conflict between the land use and circulation elements of the General Plan and violates the requirement that the land use and circulation elements be correlated. Indeed, amendment of Policy 39.1.4.1, in order to permit unmitigated traffic impacts, is a facial violation of the correlation requirement. And again, Policy 39.1.4.1 does not even apply to the commercial and industrial development outside the Revised Specific Plan.

3. The Monterey General Plan Circulation Element No Longer Supports Its Land Use Element

The 1982 Monterey County General Plan Circulation element is no longer adequate to support the Land Use element because of 22 years of largely unanticipated growth. Before the Project can be approved, the land use and circulation elements of the General Plan must be revised, at least as they affect, and are affected by, the Revised Project area. The orderly and logical process to accomplish this is the General Plan Update, which the County should complete prior to approval of further large scale intensive land uses.

A general plan may “fall so far behind changing local conditions that the County will fail to fulfill an implied statutory duty to keep its general plan current.” *DeVita v. County of Napa* (1995) 9 Cal.4<sup>th</sup> 763, 792, citing *Garat v. City of Riverside* (1991) 2 Cal.App.4<sup>th</sup> 259, 296, fn. 28. “Local agencies must periodically review and revise their general plans as circumstances warrant . . .” *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal. 3d 553, 572.

Because its general plan is inconsistent or inadequate due to its failure to keep it current, and there is a nexus between its inadequacies and inconsistencies and the geographic areas implicated in its proposed amendment, the County must prepare a general plan update before approval of zoning enactments. *Garat v. City of Riverside*, *supra*, 2 Cal.App.4<sup>th</sup> at 299, 303. The County’s General Plan, as amended by the proposed General Plan amendments to accommodate the Revised Specific Plan, would be invalid because 1) changes in land use and adoption of community and specific plans resulted in traffic impacts, causing an inconsistency or a lack of correlation between circulation and land use elements, 2) those impacts required update of the general plan to avoid inconsistency, and 3) the inconsistency affects the geographic area affected by the proposed amendment. *Id.* at 301.

The General Plan update process provides ample evidence that the circulation element is no longer correlated with the land use element and that the General Plan must be updated to correct this lack of correlation. For example, in connection with a 2003



workshop on the draft General Plan, staff advised the Board of the correlation requirement:

“State Planning Law requires that a General Plan’s circulation element be correlated with the land use element. This requires consideration of the levels, distribution, and timing of anticipated new development in light of available and funded road capacities. The General Plan must be based on only those infrastructure improvements for which there are reasonable expectations for funding and construction within the 20 year planning timeframe.” Staff Report, Monterey County Board of Supervisors, Oct. 7, 2003.

Staff then told the Board that previously planned circulation capacity had already been exhausted:

*“The existing road network is deficient to serve existing demand. Many roads in the northern portion of the county are currently operating at Level of Service F. The addition of more trips due to growth further strains these roads beyond planned capacity.”* *Id.* ; see also A. Chapin *et al.*, Draft Existing Conditions Report, October 1999; Joint Workshop With Planning Commission for Direction Re Correlation of Land Use and Circulation, Oct. 7, 2003 (admitting roadway network is deficient).

The traffic policies, implementation plans, improvements, and standards included in the current General Plan are inadequate to support the current intensity of land use. Furthermore, these inadequacies apply in the geographic area covered by the specific plan. The *ad hoc* general plan amendments proposed for the Project cannot cure the lack of correlation between the land use and circulation element because they simply try to except the Project from the correlation requirement.

#### **D. Agricultural Policy Conflicts**

The Revised Specific Plan converts 400 acres of farmland. The Revised Project also designates agricultural land outside the Revised Specific Plan area as commercial and industrial. This directly conflicts with General Plan Goal 30, Policy 30.0.3, and Policy 30.0.4 which require preservation of farmland in agricultural uses, require a finding that any conversion is not detrimental to the agricultural viability of adjoining parcels, and require the County to make “every effort” to preserve agricultural use of farmland.

The Revised Specific Plan proposes simply to amend Goal 30 and Policy 30.0.3 to except the RSJ SP area from their requirements, adopting the same amendments that are now subject to referendum. RSJ RSP, Appendix C, p. C-9. However, the amendment contained in Exhibit E to the Staff Report uses entirely different language, providing an exception to the ban on conversion and the requirement to find no detrimental impacts to adjoining agricultural parcels, where development is “*in accordance with the policies of a Specific Plan which implements an alternative farmland preservation strategy.*” Staff

Report, App. E, Draft Resolution, pp. 4, 5. The “alternative farmland preservation strategy” is not identified or explained in the Staff Report, the consistency analysis, or the Revised Specific Plan.

If the alternative preservation strategy is in fact the 1:1 compensation requirements set out in Mitigation Measure 5.11-1a, then it does nothing to address the violation of Policy 30.0.3, which requires a finding that the subdivision of farmland will not be detrimental to the agricultural viability of adjoining parcels. Allowing conversion of half of the County’s farmland in exchange for preserving the other half does nothing to ensure that there are no detrimental impacts on adjacent farmland. The proposed amendment simply renders Policy 30.0.3 ineffective and/or internally inconsistent. Policy 30.0.3 as revised would no longer support Goal 30.

There is no evidence that there is an “alternative farmland preservation strategy” to protect the agricultural land outside the Revised Specific Plan area that is to be redesignated commercial and industrial.

The Revised Project also clearly conflicts with Policy 30.0.4, which requires the County to make “every effort” to preserve agricultural use of farmland. This conflict is not even noted in the consistency analysis, much less resolved. Mitigation Measure 5.11-1a does not preserve farmland; it simply allows half of it to be developed.

The agricultural buffers provided are well under the minimum requirements in the County's existing zoning code (200-foot width), and there is no justification for the statement in the consistency analysis that the buffers provided are of "sufficient size to protect agriculture from the impacts of incompatible development and to mitigate against the effects of agricultural operations on adjacent land uses” RSJRSP, App. C, p. C-8. The agricultural buffer adjacent to Planning Area 12B is 100 feet wide, with no explanation as to why a buffer that is half the size of the current county requirement is "sufficient." The buffer provided in Planning Area 12C is limited to only the required 30-foot rear yard setback for Residential Estate homes. Again, there is no explanation as to why this buffer width is adequate to protect the adjacent agricultural land use, nor why it is so much less than the buffer provided in Planning Area 12B.

The consistency analysis argues that agricultural land will be protected by virtue of the ADC concept. It states that the ADC concept is intended as

“a planning technique to reduce pressures for inefficient farmland conversion (urban sprawl) in inappropriate county locations. The tradeoff is well-planned *compact urban development* in an appropriate location *adjacent to an existing urban area* versus unplanned development at numerous inappropriate rural locations.” RSJ RSP, Appendix C, p. C-9, emphasis added.

This language is of course a residue of the consistency analysis for the Specific Plan adopted in December 2004. See DEIR, App.C, p. C-10-11. However, as discussed

below, the Revised Specific Plan is no longer “adjacent to an existing urban area” because it no longer borders Salinas. The Revised Specific Plan is no longer a “compact urban development” – it lacks any urban character and no longer contains the urban commercial and employment elements that the Adopted Specific Plan included. In fact, the Revised Specific Plan is an ADC in name only – it simply does not implement the ADC concept. As such, the Revised Project threatens agricultural land with more sprawl rather than protecting it by promoting compact urban growth.

#### **E. Growth Policy Conflicts**

Abandoning the ADC concept, the Revised Specific Plan simply permits another large, isolated, sprawling development. There is no evidence that the Revised Specific Plan is required to meet housing needs. Even the purported benefit of the Adopted Specific Plan’s jobs/housing balance through mixed-use development including employment and office space has been lost. High density residential development has been abandoned and medium density development has been severely reduced. See Addendum, Table A-1, p. 10 (comparing Adopted v. Revised Specific Plan). The Project constitutes precisely the kind of growth that GP and GSAP policies bar:

- Policy 26.1.1: "The County shall discourage premature and scattered development." As noted below, the Project is premature because the Growth Management Policy requires growth to occur first as infill and then in areas adjacent to existing communities. The limited size of the Project makes it an isolated, scattered development.
- Policy 20.1.5.1: “Scattered development shall be discouraged in order to reduce vehicular emissions by decreasing home to destination distances.” Again, there is no longer even the fiction that a commercial component will improve the jobs/housing balance. Essentially all of the residents will commute.
- Policy 27.1.3: “Residential development should be concentrated in growth areas.” The Revised SP is no longer a growth area, because growth is limited to the HYH project. The consistency analysis claims incorrectly that the Project is consistent because “the ADC designates Rancho San Juan as an appropriate growth area *adjacent to* the City of Salinas.” RSJ RSP, App. C, p. C-7. The Project is no longer adjacent to Salinas and no longer implements the ADC concept.
- Policy 26.1.2.1: “Land use patterns shall promote compact, orderly, community-centered growth.”

The treatment of the Revised Specific Plan as an ADC violates the General Plan’s Growth Management Policy set out in Appendix A of the 1982 General Plan. The Growth Management Policy encourages new ADCs "if they can be shown to better achieve other aspects of growth management such as the preservation of prime

agricultural lands or the protection of other natural resources." GP, p. A-2. A low density residential golf course development, which is surrounded by agricultural land, does not meet this test.

The Growth Management Policy lists five criteria that must be met by an ADC. *Id.* The current proposal presents a "new ADC boundary" and an entirely different scope of development than the previously adopted ADC in the area. However the new ADC does not meet any of the five criteria.

Criteria "A" requires an ADC to contain existing semi-rural development. Figure 1-3 of the Revised Specific Plan clearly illustrates that there is no semi-rural or any other type of development within the proposed ADC area. Rather, it is strictly an agricultural area, currently being used for strawberry fields and cattle grazing.

Criteria "B" requires that public services be available to serve high intensity land uses. The GP requires that an ADC "*shall provide* urban services to the residents such as provision of water, sewage treatment, roads, commercial facilities, schools, and fire protection." GP, p. A-2, emphasis added. "Areas of development concentration *shall provide* adequate infrastructure to the development such as water, sewage treatment, roads, commercial facilities, schools, and fire protection." GP, p. 175, emphasis added. However, the Revised Specific Plan will no longer provide urban services, including schools, a library, or significant commercial facilities. (Figure 8.1 of the Revised Specific Plan provides that the small area of Neighborhood Commercial development does not need to be constructed until occupancy of the 900th dwelling unit.) Even the requirements in the Adopted Specific Plan that a sheriff's substation and a transit station be constructed have been abandoned. Adopted RSJ SP, pp. 10-7, 10-9; RSJ RSP, Table 8-1. Furthermore, no analysis has been conducted to demonstrate adequate availability of public facilities in light of Salinas' growth plans to the east.

Criteria "C" bars sprawl development. A land use plan that devotes 46.8% of the developable acreage to Residential Estate homes (see page 2-5 of the Revised Specific Plan) and constitutes leapfrog development surrounded by agricultural land is the classic definition of sprawl development, which Criteria "C" expressly disallows.

Criteria "D" requires that "[a] new area *shall not under any circumstances* be located where it may adversely impact significant prime or productive agricultural land." GP, p. A-2, emphasis added. The Revised Project will permanently remove 400 acres of such farmland and threaten adjoining farmland. As Figure 1-4 of the Revised SP illustrates, over half of the proposed ADC comprises significant prime or productive agricultural lands. These significant agricultural designations also surround the proposed ADC, yet the Revised Specific Plan provides as little as 30-foot wide buffers to protect such surrounding farmland. Clearly, this has the effect of adversely impacting significant prime or productive agricultural lands, expressly disallowed by Criteria "D."

Criteria "E" requires that that “[d]evelopment should be minimized on visually sensitive slopes.” *Id.* The Project will violate this policy by permitting building on ridgelines and slopes, as discussed below.

The Growth Management Policy requires that “[p]riority for growth will be given first to infilling within existing urban areas. The next priority will be for development on lands adjacent to existing and densely settled urban areas where the necessary services and facilities are available...” *Id.* at A-3. Substantial infill potential remains available. See, Attachment 1, Pending, Approved and Unconstructed, and Other Projects. And the Revised Project is not adjacent to “existing and densely settled urban areas where the necessary services and facilities are available” because it is no longer adjacent to Salinas.

Ironically, connection to the City of Salinas was identified as a key feature of the Adopted Specific Plan:

“In assessing the residential development potential for the Ranch San Juan ADC/Community Area the 1991 Area of Development Concentration Feasibility Study states that, ‘because the ADC is adjacent to Salinas, it would take on the characteristic of an extension of Salinas rather than a separate area.’” Adopted RSJ SP, p. 2-7.

Although the Project will no longer be adjacent to Salinas, the consistency analysis still claims that the Project *is* adjacent to Salinas as the basis of its conclusion that Project is consistent with the Policies requiring residential growth to be concentrated in growth areas (Policy 27.1.3) to ensure access to employment centers and public services and facilities (Goal 27). RSJ RSP, App. C, p. C-7.

In sum, this isolated enclave of high-end residential and resort uses with no substantial commercial or employment support system is entirely inconsistent with the ADC concept required under the Growth Management Policy. The consistency analysis cannot support a finding to the contrary.

#### **F. Ridgeline And Slope Development Policy Conflicts**

Policy 26.1.10 bars building on slopes greater than 30% without a finding that there are no alternatives elsewhere or the project better achieves resource protection. Substantial portions of the project would be built on slopes greater than 30%. With a total project size of 671 acres, clearly there are alternatives to building on slopes less than 30%. There is no evidence that building on slopes better achieves resource protection.

The consistency analysis claims that compliance with the exception provisions under Zoning Ordinance § 21.64.230 will ensure consistency. Revised Specific Plan, App. C, p. C-7. However, the Ordinance still requires that these findings be made. On this record, and without a grading plan before it, the County cannot conclude that there

are no alternatives. Nor is there anything in the record to support a finding that proposed grading better achieves resource protection.

The Project also violates the Policy 26.1.9, which prohibits ridgeline development without a special permit based on a finding that there will not be visual impairment. Again, the proposed amendment of this Policy to provide consistency is unclear. An amendment simply to except the RSJ area is set out in Appendix C to the Revised Specific Plan. RSJ RSP, App. C, p. C-6. The Staff Report sets out a different amendment, waiving the permit requirement "if grading is addressed in a comprehensive manner in an adopted Specific Plan." Staff Report, Exhibit E, p. 4. The Staff Report provides no explanation of the phrase "grading . . . addressed in a comprehensive manner." And there is nothing in this language that even suggests that grading "addressed in a comprehensive manner" even needs to be protective of views. The proposed revision to Policy 26.1.9 apparently renders it internally inconsistent and/or completely ineffective. Policy 26.1.9 as revised would no longer support Goal 26 (protect desirable existing land uses).

#### **G. Water Resources Policy Conflicts**

As set out in the discussion of the new water supply assessment below, there is no substantial evidence that the water supply is adequate and there is substantial evidence that the Revised Project will result in taking more water out of an already depleted aquifer than is supported by recharge on the site. The new water supply assessment erroneously concludes that the Revised Project will still result in a positive on-site "water balance." As discussed below, this is an irrelevant criterion to determine if the Revised Project has significant direct or cumulative impacts on the aquifer.

However, even if the revised WSA were accepted at face value, it demonstrates that the revised Project will in fact worsen the existing regional conditions, because it will consume more water than existing uses. Even if the Revised Project does not itself result in a negative on-site water balance, it clearly *contributes to and aggravates existing overdrafting because it uses more water.*

Continued overdrafting and aquifer depletion, violates the safe yield requirement of GSAP Policy 6.1.4 (GS): "New development shall be phased so that the existing water supplies are not committed beyond their *safe long-term yields* in areas where long-term yield can be determined. Development levels that generate a water demand which exceeds the safe yields of local aquifers shall only be allowed when additional satisfactory water supplies are secured."

The lack of adequate water supply violates GP Policy 53.1.3 which provides that "[t]he County shall not allow water consuming development in areas which do not have proven adequate water supplies." It also violates Policy 21.1.1 "The County shall establish growth policies which are integrated with the natural limitation of the County's surface and groundwater bodies to sustain acceptable quality."

## **II. INADEQUATE WATER SUPPLY ANALYSIS AND SIGNIFICANT WATER RESOURCE IMPACTS**

Under the provisions of Senate Bill 610 (“SB 610”), the County is required to prepare or obtain a water supply assessment (“WSA”) for large projects and to include this assessment in the CEQA document prepared for the project. Pub. Resources Code § 21151.9; Water Code §§ 10911(b), 10912(a). Senate Bill 221 (“SB 221”) prohibits approval of a residential subdivision over 500 units unless there is written verification that a sufficient water supply is or will be available. Business and Profession Code § 11010(a); Gov. Code §§ 65867.5(c), 66473.7(b). SB 221 contemplates using the SB 610 water supply assessment as a means of meeting the requirement that a city have a written verification of a sufficient water supply before approving a project. Gov. Code § 66473.7(c). The Revised Project would be subject to these requirements because it includes more than 500 residential units and requires subdivision approval. Water Code § 10912(a); Government Code § 664737(a).

The water supply assessment and any plans for additional supplies *must be included in the EIR*: “[t]he city . . . shall include the water supply assessment provided pursuant to Section 10910, and any information provided pursuant to subdivision (a), *in any environmental document* prepared for the project pursuant to [CEQA].” Water Code § 10911(b). This requirement is designed to ensure that the public can review the water supply assessment during the comment period and provide comments on the both. It is also designed to ensure that the public can verify that the water supply assessment and the EIR are consistent and that CEQA conclusions referencing the water supply assessment are well-founded.

The County has obtained an entirely new water supply assessment from California Water Service Company (“CWSC”). CWSC, Water Supply Assessment Report for Rancho San Juan Plan Development, Monterey County, California, Oct. 5, 2005 (“WSA”). This WSA forms the basis of the conclusion in the Addendum that the Revised Project will not have significant impacts.

The WSA does not meet statutory requirements under SB 610 or SB 221 because it fails to provide required information regarding existing and planned water demand and supply. Furthermore, because of errors and omissions, the WSA cannot support findings that the water supply is adequate or that the Revised Project will not result in significant impacts.

### **A. Demand Information Is Inadequate Or Erroneous**

The WSA projects demand for the Revised Project using unsupportable assumptions regarding average persons per residence and average demand per person. As set forth in comments made on the Adopted Specific Plan, the assumption of 3.16 persons per residence is inconsistent with CWSC’s own planning assumption of 3.66 persons. The assumption that per capita demand is 97.3 gallons per day is inconsistent

with CWSC's 2002 survey data, the most recent available data, showing per capita demand is 103 gpd *for similar projects*. Indeed, the WSA relies on this 2002 survey in calculating return flows from residential irrigation. WSA, p. 17. Thus, the assumptions are both indefensible and inconsistent. Had proper assumptions been used, the WSA would have projected substantially more water usage. The conclusion that the Revised Project will result in a positive on-site "water balance" for the Project site cannot be supported.

CWSC intends to interconnect the Revised Project to its existing water system and CWSC evaluates the adequacy of the water supply with reference to the supply and demand of its entire service area. Thus, the WSA must project demand for the Project and other uses of the same water sources. Water Code, § 10910(c)(3). In doing this, it must use a consistent methodology.

The WSA references a system-wide trend forecast of growth and then concludes that the Project demand "is quite small and could be considered part of" this forecast. WSA, p. 7. However, the WSA provides no evidence that Project demand *should* be considered part of CWSC's previous forecast, and, in fact, it should not be.

First, CWSC's system-wide demand forecast is not based on a "land use specific plan" but is derived merely by assuming past growth will continue at the same rate. WSA, p. 7. There is no evidence that approval of this Project is consistent with the trend data, and there is substantial evidence to the contrary. For example, pending annexations to Salinas may substantially accelerate the demand trend. See "Preliminary Spheres of Influence Evaluation for the City of Salinas", August, 2005 (request would accommodate 15,091 new dwelling units on about 3,000 acres of viable farmland.) Furthermore, the WSA itself contradicts the claim that the Project demand is not "quite small" relative to demand growth: it acknowledged that the Project will account for 10% of demand growth in 2015. WSA, p. 6.

By failing to aggregate Project demand with a meaningful, consistently derived projection of other demand to determine overall future demand, the WSA fails to provide information about the demand from "existing and planned future uses, including agriculture and manufacturing uses," as required by Water Code, § 10910(c)(3).

The WSA also fails to provide information to support an analysis of cumulative impacts to water resources under CEQA. CEQA *requires* that cumulative impacts be determined with reference either to a summary of projections contained in an adopted plan or to a list of past, present, and probable future projects producing related or cumulative impacts. CEQA Guidelines, § 15130(b)(1). CWSC's trend projection methodology, which is not based on a land use plan, does not support either of these methods. And even if CWSC's trend projections were a part of an adopted plan, since the Project was not contained in the plan, its demand must be added to the projection, not simply be assumed to be within it.



**B. The WSA Fails To Present Required Information About Existing Supply And Necessary Delivery Systems**

SB 610 requires that a water supply assessment provide “a description of the quantities of water received in prior years by the public water system . . . under the existing water supply entitlements, water rights, or water service contracts” as required by Water Code, § 10910(d)(1). The WSA fails to provide this information for the CWSC system as a whole. Because the systems will be interconnected and because supply adequacy depends on the overall system, it is not sufficient to provide this information only for the wells on the Project site.

Where a project depends on groundwater, SB 610 requires that “a detailed description of the amount and location of groundwater pumped by the public water system . . . for the past five years.” Water Code, § 10910(f)(3). The WSA entirely fails to provide this information for its overall groundwater supply. Furthermore, the information it does provide regarding the on-site wells is not “detailed.” WSA, p. 7. The WSA provides only an “estimate” of current pumping and states that it “appears” that the wells have been in operation for 5 years. *Id.*

SB 610 requires that a water supply assessment provide information about “contracts and other proof of entitlement to an identified water supply.” Water Code, § 10910(d)(2)(A). Although the WSA states that HYH Corporation has correlative beneficial use rights to groundwater under its site, it provides no discussion of CWSC’s entitlements to the *rest* of the interconnected system-wide water sources. WSA, p. 13.

Furthermore, neither the WSA nor the Addendum provides a meaningful discussion of whether the existing and planned groundwater uses is a reasonable, beneficial use of the common resource or whether CWSC will be able to continue to use it. A groundwater basin adjudication has begun and the WSA admits that CWSC may no longer be able to control use of groundwater. WSA, p. 9. Thus, there is no evidence to support the conclusion that existing water supplies will continue to be available.

SB 610 requires with reference to existing sources that a water supply assessment provide “copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system.” Water Code, § 10910(d)(2)(B). The WSA does not provide information about the adopted capital outlay program to finance the necessary water supply system. In fact, WSA admits that a capital outlay program has *not* been adopted, because it comments that the capital costs are the developer’s responsibility and not part of CWSC’s capital plan. WSA, pp. 14-15.

SB 610 requires with reference to existing sources that a water supply assessment provide information about necessary regulatory approvals to convey or deliver water supply. Water Code, § 10910(d)(2)(D). The WSA does not identify these approvals and merely states that CWSC “is familiar” with them. WSA, p. 16.

### **C. The WSA Fails To Present Any Meaningful Information Regarding Essential Additional Supplies**

If a Project's water supplier determines existing supplies are insufficient, plans to acquire additional supplies *must* be developed, and information about those plans must be made available to decision makers and the public. SB 610 provides that a water supply assessment that predicts a shortage must include plans for acquiring additional water supplies, including estimated costs, permits and approvals, and the time frame for implementation. Water Code § 10911(a). *This information must be included in the CEQA document.* Water Code § 10911(b). SB 221 provides that when the verification of water supply relies on projected water supplies that are not currently available, the verification *shall be based* on written contracts and proofs of water rights, copies of capital outlay program for financing the water supply, securing governmental permits for infrastructure, and any necessary regulatory approvals. Gov. Code § 66473.7(d). SB 221 requires that the written verification of water supply availability be based on substantial evidence. Gov. Code § 66473.7(c).

The WSA acknowledges that existing supplies are inadequate to support maximum daily demand, even under normal conditions. WSA, pp. 18-19. The WSA also admits that "it is likely" that groundwater levels would further decline in multiple dry years, but that CWSC has not determined by how much. WSA, p. 19.

In response to the admitted inadequacy of existing supplies, CWSC offers nothing more than its promise to conduct a "feasibility study to develop a long-term supply plan." WSA, p. 19. To address the short and medium term shortfall, the WSA proposes to assess the feasibility of more well drilling. WSA, p. 10.

To address the long term shortfall, the WSA proposes to conduct a feasibility study to evaluate seven alternatives, only one of which has apparently even been the subject of any actual planning effort. WSA, pp. 10-12. These alternatives call for more well drilling, despite the pending adjudication that is intended to prevent continued overdrafting.

The only proposal other than well drilling in these alternatives is diversion of the Salinas River, a project that is now entirely uncertain. In ruling that a challenge to the Salinas Valley Water Project is not ripe for review, the Court observed that there *is no* "defined and approved project:"

"The parties have submitted conflicting declarations as to whether this project is a certainty to be built. They have submitted conflicting declarations on the amount of water that will need to be released from the dams. They have submitted conflicting documents on whether the project will received [sic] \$10 million dollars in funding from proposition 50 funding. In other words there is no agreement as to when, and if, this project will be completed." Los Angeles

County Superior Court, Minute Order, *Water World Resorts, Inc. v. County of Monterey*, BC297778, May 23, 2005.

And the highly uncertain Salinas Valley Water Project is the only one of the seven alternatives that has apparently been the subject of any actual planning or environmental review. As far as any information in the record, the rest of the alternatives are entirely speculative.

Of course, the WSA does not provide the information required by SB 610 and SB 221 about these proposed additional supply sources. In particular, the WSA does not provide the estimated costs, permits and approvals, and the time frame for implementation required by Water Code § 10911(a). The WSA does not provide the written contracts and proofs of water rights, copies of capital outlay program for financing the water supply, securing governmental permits for infrastructure, and any necessary regulatory approvals required by Gov. Code § 66473.7(d). This omission is not surprising since the projects are admittedly only in the “feasibility study” stage.

A CEQA document is invalid if it fails to include in the project description offsite facilities that are implicit in the project. *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829-830 (omission of required water delivery facilities invalidates EIR); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4<sup>th</sup> 713, 729-734 (EIR invalid for failure to describe and analyze wastewater treatment plant.) The Addendum does not include the additional water supply projects identified in the WSA in the project description.

A CEQA document is invalid if it fails to evaluate the impacts of the construction of necessary additional water supplies. *Santiago County Water Dist., supra* 118 Cal.App.3d 818 (EIR may not defer description of environmental effects of constructing essential water supply facilities); *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4<sup>th</sup> 182 (the EIR may not defer analysis of impacts of providing water supply). Neither the Addendum nor the WSA describes or contains an evaluation of the impacts of the additional supply sources identified as essential to a finding that the project has an adequate and reliable water supply. This omission is not surprising because, except for the now entirely uncertain the Salinas Valley Water Project, no environmental review has been undertaken for these speculative projects, which are still in the “feasibility study” stage.

#### **D. The WSA Entirely Omits The Revised Project Area Outside The Revised Specific Plan**

The WSA makes no reference to the action to rezone the areas outside the Revised Specific Plan Area. Because this action will permit industrial and commercial uses of these areas, the WSA should have included an analysis of the consequences to water resources of future development.

### **E. The WSA Cannot Support A Finding That Supplies Are Adequate**

Because the WSA fails to present essential information that is statutorily required under both SB 610 and SB 221, and because its projection of both demand and supply are unsupported, the WSA cannot support a determination that there is an adequate water supply for the Revised Project. The conclusion in the WSA that the water supply will be adequate is founded on wishful thinking, not the substantial evidence that the law requires. WSA, p. 20; Gov. Code § 66473.7(c). Most notably, the WSA simply does not present any credible evidence that essential additional supplies can be developed in light of basin overdrafting and other environmental constraints.

### **F. Project and Cumulative Water Resource Impacts Will Be Significant, And Substantially More Severe Than Projected In The FEIR**

As the WSA and Addendum admit, the Revised Specific Plan will result in “a decrease of 25 acre-ft/year with respect to the estimated existing land use water balance of +50 acre-ft/year” caused by existing uses at the site. WSA, p. 18, Addendum, p. 64. In other words, the Revised Project will diminish the aquifer by using 25 acre-ft/year more water than the existing uses on the Revised Specific Plan site.

This calculation was based on a “water balance” analysis using the same methodology as the analysis provided to the County in support of the Adopted Specific Plan. Compare Rancho San Juan Water Balance Estimate: Existing Land Use Versus Development Plan, Oct. 5, 2005, WSA, Table 3, p. 22 to Butterfly Village Water Balance Estimate: Existing Land Use Versus Development Plan, Apr. 23, 2004.

The Addendum claims that the 25-acre decrease in the water balance, *i.e.*, taking even more water from the overdrafted aquifer than is currently taken, will not constitute a significant impact, either for the Project or taken together with cumulative conditions. Addendum, pp. 64, 82-83. The Addendum blithely states that “because the annual demand for groundwater generated by the Revised Specific Plan is not expected to exceed the annual recharge . . . [it] would not result in a significant cumulative impact on local water resources.” Addendum, p. 83.

The criterion of significance used for Project and cumulative impacts in this overdrafted aquifer cannot logically be whether the Project site itself results in a positive or negative on-site water balance. The criterion must be stated with reference to the Project’s *impact on existing conditions, i.e.* with reference to whether it makes things better or worse. And the impact analysis cannot be limited to the on-site area. Thus, if the Project uses 25 acre-ft more water than are used under existing conditions, and draws from an interconnected aquifer, it *must contribute* to cumulative regional overdrafting.

A Subsequent EIR is required if new information or changes to a project show new or more severe impacts. The April 2004 water balance analysis showed that the Butterfly Village project would *improve* the water balance at the site: the balance was

increased from + 50 acre-ft/year to +85 acre-ft/year, an increase of 35 acre-ft. Now the Project is projected to *diminish* the water supply by 25 acre-ft. Because of new information or changes in the Project, the Addendum now projects that an impact previous found significant will be more severe. The Addendum must also conclude that the HYH Project now contributes to cumulative overdrafting, an admittedly significant impact. Thus, a Subsequent EIR is required.

### **III. A SUBSEQUENT EIR IS REQUIRED**

The Addendum is an unsuccessful effort to resurrect an inadequate Final Environmental Impact Report. It does not meet CEQA requirements for an Addendum which limits its use to making minor corrections in EIRs. The Addendum is 86 pages and includes three appendices, including a 568 page Traffic Analysis. It appears that the Addendum was prepared to circumvent the public review process and limit the amount of time for public consideration of the Revised Plan. The public deserves better treatment than this, in particular, an opportunity for notice, time for analysis and comments, and a required response to comments from decision makers.

The Addendum relies on identifying impacts as being less than those for the approved project, *i.e.*, the project is not as bad as it could have been. That is not informative to either the public or decision makers. A Subsequent EIR ("SEIR") that clearly identifies all of the impacts of the Revised Plan is required under CEQA.

#### **A. Water Supply Issues Require An SEIR**

As discussed above, new information in the WSA indicates that the Revised Project will diminish the water balance from existing uses, aggravating impacts previously found to be individually and cumulatively significant. This requires an SEIR.

#### **B. Unexamined Zoning Changes Require An SEIR**

The project includes rezoning of the areas within the Adopted Specific Plan but outside the original ADC to Heavy Commercial, Light Commercial, Low Density Residential and Permanent Grazing. Addendum, pp. 8-9. Changes in land use designations to these uses were not addressed in the Addendum or the FEIR. They obviously constitute major revisions to the project, potentially resulting in significant impacts on air quality, traffic and water quantity and quality. Prior analysis of the newly proposed land uses was prepared in the 1980s and is obviously outdated.

#### **C. Traffic Issues Require An SEIR**

Unmitigated traffic impacts will continue to occur because the developer has refused to commit to pay for necessary improvements. Traffic impact fees for the Revised Plan are arbitrarily limited to \$16,017,310. If the same impact fees recently applied to the East Garrison project were applied to this project, the fees would be over

\$20 million. See Notice of Special Tax Lien, FORA, July 1, 2005 and FORA Capital Improvement Program FY05/06 to FY21/22, June 2005. In addition, the East Garrison project is required to fund its fair share of improvements to six road segments and five intersections at \$205/square foot for residential development and \$423/1000 square feet for commercial development. The feasibility of imposing this level of funding on developers constitutes new information demonstrating feasible mitigation which should be applied to the Revised Plan. The applicants' refusal to adopt feasible mitigation requires an SEIR.

Under the Adopted Specific Plan, fair share fees were to be exacted from developments in the Specific Plan area but outside the HYH project. These fees were to be used to mitigate traffic impacts. The removal of these fair share fees, which would effectively have subsidized the HYH project and made up to some extent for its artificially capped traffic impact fees, can only aggravate the traffic problems. This change in the project will result in more severe impacts at those intersections and roadway segments that continue to require improvements, because adequate funding is now even more unlikely. Thus, an SEIR is required.

The Addendum states, "While mitigation at some impacted intersections requires a different set of improvements (e.g., land reconfiguration) due to the change in the baseline condition, these do not constitute new mitigation measures or alternatives related to traffic impacts previously found not be feasible [sic] would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative mitigation measures or alternatives considered infeasible in the FEIR are not considered feasible; or". This incomprehensible statement suggests that mitigation measures found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measures - one of the criteria for preparing a Subsequent EIR. Furthermore, if mitigation changes, it is new mitigation, which requires a Subsequent EIR so that the public can have the opportunity to evaluate its adequacy.

#### **D. Air Quality Issues Require An SEIR**

The Addendum finds a significant impact on air quality and finds that impacts will be significant after mitigation. Mitigation measures listed in the Addendum include bicycle paths, preferential carpool/vanpool parking, onsite childcare centers and other on-site measures. They do not include the off-site mitigation included in the FEIR which states that Mitigation Measure 5.7-2h was added to require HYH to contribute a fee to the MBUAPCD to re-power nine existing agricultural pumps to offset NOx and VOC impacts. Offsite mitigation should be included as a mitigation measure for the revised project since it has been determined that offsite mitigation is a feasible measure. For example, \$2.6 million in mitigation fees were included as conditions for the East Garrison project to help mitigate air quality impacts associated with that major project with fees to be used to repower agricultural pumps and to fund CNG school buses and a

CNG station. Failure to impose this feasible mitigation requires an SEIR.

The Air Quality analysis dismisses the need to prepare a diesel risk assessment based on the lack of sensitive receptors adjacent to the project. Addendum, p. 49. Since the project will be constructed in three phases, residents in Phases 1 and 2 may be affected by diesel exhaust during construction. The Addendum does not include a mitigation measure requiring that diesel risk assessments be prepared during Phases 2 and 3.

#### **E. Emergency Response Issues Require An SEIR**

In the approval process for the Adopted Specific Plan, public concern was expressed that circulation impairment would prevent adequate response time by emergency service providers (five minutes for fire/emergency medical and 14 minutes for sheriff.). This concern was addressed with the claim that on-site stations would ensure adequate response time. Failure to provide on-site emergency responder facilities will result in new significant impacts, requiring an SEIR.

#### **IV. IDENTICAL GENERAL PLAN AMENDMENTS CANNOT BE EFFECTIVE PRIOR TO THE REFERENDUM**

Most of the proposed General Plan amendments for the Revised Project are identical to the amendments that are subject to the pending referendum. Others are substantially similar. These amendments cannot become effective, and the Revised Project depending on these amendments cannot be approved, until the voters have spoken:

“If the board of supervisors does not entirely repeal the ordinance against which a petition is filed, the board shall submit the ordinance to the voters either at the next regularly scheduled county election occurring not less than 88 days after the date of the order, or at a special election called for that purpose not less than 88 days after the date of the order. The ordinance *shall not become effective unless and until a majority of the voters voting on the ordinance vote in favor of it.*” Election Code § 9145.

The County must wait for the public to indicate whether it wants the kind of development enabled by these general plan amendments. Waiting is both politically responsible and legally required.

#### **V. CONCLUSION**

For the foregoing reasons, LandWatch Monterey and the Rancho San Juan Opposition Coalition urge the Planning Commission to reject the Revised Specific Plan, the Revised Project, and the Addendum. At minimum, the Revised Project requires preparation of an adequate Water Supply Assessment and Subsequent EIR with an opportunity for public participation and comment responses. There is no reason for the

October 18, 2005

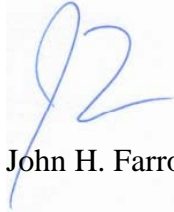
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County to rush to approve this flawed project before the voters have the opportunity to reject development of the area. And the County may not do so legally until after the voters speak.

Please call with any questions. Thank you for considering these comments.

Yours sincerely,

M. R. WOLFE & ASSOCIATES

A handwritten signature in blue ink, appearing to read 'JH Farrow', is positioned above the printed name.

John H. Farrow

JHF:hs



**Attachment 1**

**SUMMARY PENDING/APPROVED & UNCONSTRUCTED AND OTHER  
PROJECT LIST (10/12/05)**

Jurisdiction	DUs	Other Information
Unincorporated - Pending		
Big Sur	24	
Monterey Peninsula	231	
Carmel Valley	564	
South County	628	
North County/Salinas	4,801	4,000 RSJ
Toro	251	
Unincorporated - Approved/Unconstructed	2,531	E. Garrison 1,470; 14 - CV; 17 Castroville; 515 (AMBAG)
<b>Subtotal</b>	<b>9,030</b>	
DUs on Legal Lots of Record	7,399	
<b>Total County</b>	<b>16,429</b>	
Marina	4,450	2,650 approved/uncon-Univ. Villages, Marina Hts, 13 AMBAG; 1,800 pending (Marina Station - 1,400 & Cypress Knolls - 400)
Seaside	158	48 approved/uncon (AMBAG) and 110 pending
King City	800	Approved/unconstructed
Soledad	1,323	177 pending; 1,146 approved/unconstructed
Greenfield	908	Pending/approved/unconstructed
Monterey	141	Approved/unconstructed (AMBAG)
Salinas	649	Approved/unconstructed (AMBAG)
Sand City	30	Approved/unconstructed (AMBAG)
Gonzales	71	Approved/unconstructed (AMBAG)
Soledad	1,324	Approved/unconstructed - Miravale - 1,146; 1 AMBAG; pending - 177 - Orchard Villas
Carmel, PG & DRO	11	Approved/unconstructed (AMBAG)
Greenfield	54	Approved/unconstructed (AMBAG)
<b>Total Cities</b>	<b>9,919</b>	

<b>Total Pending &amp; approve/unconstructed</b>	<b>26,348</b>	82,733 persons (3.14 pers/DU)
Other		
Boronda Community Plan	750	Buildout
Castroville Community Plan	1,655	Buildout
Pajaro Community Plan	128	Buildout
Chualar	N/A	
King City	4,992	Preliminary Sphere of Influence
Soledad	9,279	Buildout
Greenfield	7,891	Buildout
Salinas Proposed Annexation	15,091	Preliminary Sphere of Influence Report
CSUMB	1,000	
<b>Total Other</b>	<b>40,786</b>	
<b>TOTAL</b>	<b>67,134</b>	210,800 persons. AMBAG 2025 forecast is 564,869 (extrapolated). 2005 DOF estimate is 425,102. AMBAG growth in next 20 years - 139,767

Sources: AMBAG data used to prepared consistency determinations for the AQMP; data from EIRs on General Plans, General Plans, Preliminary Sphere of Influence Reports, and Community Plans prepared by the Monterey County Redevelopment Agency.