

June 16, 2015

Via E-mail

Terri Wissler Adam, Contract Project Manager
City of Seaside Resource Management Services
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Seaside, CA 93955
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Re: Draft EIR for Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (SCH201291056)

Dear Ms. Wissler Adam:

I write on behalf of LandWatch Monterey County (“LandWatch”) regarding the Draft Environmental Impact Report (“DEIR”) for the Monterey Downs and Monterey Horse Park and Central Coast Cemetery Specific Plan (“Project”). LandWatch is dedicated to preserving our community's economic vitality, high agricultural productivity, and the health of our environment by encouraging greater public participation in planning.

LandWatch requests that the City revise and recirculate the DEIR to address the defects set out in the comments below.

FORM OF ENVIRONMENTAL REVIEW DOCUMENT

- 1. The DEIR cannot function as a subsequent EIR to the BRP EIR because it is for a different CEQA “project” – a specific development project, not the Base Reuse Plan itself.**

A subsequent EIR is not permissible unless the project under review is the same project as the project that was originally reviewed. The DEIR purports to be a subsequent EIR to the Base Reuse Plan (“BRP”) EIR. DEIR 1-1 to 1-4. An EIR for a specific development project (or even for a specific plan of lesser geographic scope) cannot be a subsequent EIR to a program EIR, especially to a program EIR for a larger geographic area. Even if the project or specific plan were consistent with the program, the development project or specific plan is not the same CEQA “project” as the BRP. One thing is a development project of limited scope; the other is a plan for a much larger scope. They are different things. An SEIR is simply improper under CEQA. The only context in which a subsequent EIR to the BRP EIR might be proper would be a decision by FORA to modify the BRP itself.

It is not clear why the DEIR here purports to be an SEIR. Please explain why the document has been so designated by explaining what specific CEQA provisions related to

subsequent EIR's but not to normal EIRs this document purports to employ. For example, please explain if the EIR seeks to avail itself of the special baseline provisions applicable to subsequent EIRs.

2. Tiering is not proper.

The DEIR purports to take advantage of CEQA's provisions for tiered review from program EIRs, characterizing itself as a "second-tier EIR." DEIR 1-3. Tiering is not proper here for three reasons, as set out in Public Resources Code § 21094(b). First, as discussed below, the Project is not consistent with the plan for which the first tier EIR was prepared. For example, the DEIR admits that it is inconsistent with the BRP Hydrology and Water Quality Policy B-2 prohibiting approval of a development project without an assured long-term water supply. And as discussed below, the Project is inconsistent with the Base Reuse Plan ("BRP") Noise Element Policies A-1 and B-1, which the City has failed to implement through BRP Noise Element Program A-1.2.

Second, the Project is not consistent with the applicable General Plan, as is evident from the need for substantial amendments to the Seaside General Plan.

Third, as the DEIR admits, the Project is subject to Public Resources Code § 21166 due to changed circumstances and new information.

To the extent that the DEIR here purports to employ CEQA's provisions for tiering, the City fails to proceed as required by law.

3. The basis of the cumulative analysis is unjustified due to the limited geographic scope.

The DEIR purports to address CEQA's cumulative analysis requirements to specify and justify a geographic scope of analysis by focusing on a summary of projections contained in an adopted plan – the Base Reuse Plan itself. DEIR 3-1 to 3-5. In doing this, the DEIR improperly equates the project-level analysis of the BRP EIR with the cumulative analysis for this Project and frequently confuses the BRP EIR's project-level conclusions with its cumulative analysis conclusions.

As discussed below, the limitation of the geographic scope of analysis to the area covered by the BRP is not justified for some resource areas. For example, the cumulative water supply analysis should consider all of the areas that use the 900-foot aquifer, that use the 180-foot and 400-foot aquifers, or that are hydraulically connected to these aquifers. Limiting the analysis to the former Fort Ord base area is not justified because the Project will affect and be affected by past, present, and foreseeable future water-using projects outside the Fort Ord area.

WATER SUPPLY

4. Identification of pumping source aquifer is incomplete and equivocal.

The DEIR notes that there are three defined aquifers in the Marina Coast Water District (“MCWD”) service area, the 180-foot, the 400-foot, and the 900-foot aquifers. DEIR 4.8-9. However, the DEIR does not explain from which aquifer or aquifer the Project water supply would be drawn. The DEIR states that the upper aquifers (the 180-foot and 400-foot aquifers) in the coastal area are increasingly contaminated by high salinity due to seawater intrusion. DEIR 4.19-25, 4.8-9.

The DEIR states that the Project water supplier, MCWD, has two wells in the 900-foot aquifer and three wells in the upper aquifers, but outside the area currently affected by seawater intrusion. DEIR 4.8-34. Elsewhere the DEIR implies, but does not state, that the Fort Ord and Project water supply would come exclusively from the 900-foot aquifer.

Are the 180-foot and 400-foot aquifers actually a significant source of water supply to Fort Ord now? Are they expected to remain so in the future?

Please explain what portion of the Fort Ord water supply is currently pumped from the 900-foot aquifer(s) and what portion is pumped from the 180-foot or 400-foot aquifer. Please explain whether any portion of the Fort Ord or Project water supply would be pumped from the 180-foot and 400-foot aquifers in the future, and, if so, what portion and for how long.

Please explain whether the MCWD wells in the 180-foot and 400-foot aquifer are expected to be subject to seawater intrusion in the future. How far are they from the seawater intrusion front (the 500 mg/liter front)? In view of the expected significant acceleration in the movement of the seawater intrusion front in a period after a drought, for how long are the MCWD wells in the 180-foot and 400-foot aquifer expected to remain sources of potable water supply?

The DEIR implies that some wells are screened in both the 900-foot aquifer and in shallower aquifers: “[o]ther than MCWD, only a small number of wells tap the 900-foot deep aquifer, some of which also draw from the middle aquifer.” DEIR 4.8-9, emphasis added. Do the wells screened in the 900-foot aquifer and in the middle aquifer actually pump from the middle aquifer?

5. The DEIR fails to identify wells other than MCWD wells that draw from the 900-foot aquifer or to provide an analysis of pumping demand from that aquifer.

The DEIR states that there are wells other than MCWD wells that draw from the 900-foot aquifer. DEIR 4.8-9. Please identify those additional wells.

Please provide an analysis of the total current and projected future pumping demand from the 900-foot aquifer, including MCWD and all other wells pumping from the 900-foot aquifer.

6. Recharge, saline contamination, and sustained yield of 900-foot aquifer are not adequately discussed.

The DEIR identifies various aquifers in the Salinas Valley Groundwater Basin, but fails to clarify the relation of those aquifers in terms of volumes of pumping and recharge.

“Potable water for the MCWD’s service area comes primarily from wells developed in the Salinas Valley Groundwater basin. This groundwater basin underlies the Salinas Valley from San Ardo to the coast of the Monterey Bay and is divided into five hydrogeologically linked subareas: Pressure; East Side; Forebay; Arroyo Seco; and Upper Valley. The basin is further divided in the Pressure subarea by distinct aquifers: 180-foot aquifer; 400-foot aquifer; and 900-foot deep aquifer. Historically, the 900-foot deep aquifer was thought to be geologically confined in the 400-foot and 180-foot aquifers, meaning that groundwater did not move between the deep aquifer and the 400-foot and 180-foot aquifers. However, recent stratigraphic analyses have indicated that these aquifers are connected hydraulically with water from the 180-foot and 400-foot aquifers recharging the 900-foot deep aquifer. Additionally, the 900-foot deep aquifer is in reality a series of aquifers, not all of which are hydraulically connected.” DEIR 4.8-8 to 4.8-9, emphasis added.

Please identify and cite the analyses that indicate that the 900-foot aquifer is recharged by the 180-foot and 400-foot aquifers. Please explain whether the information that the 900-foot aquifer is hydraulically connected to the 400-foot and 180-foot aquifers post-dates the BRP PEIR.

It is unclear how the 900-foot aquifer can be recharged by the 180-foot and 400-foot aquifers if the 900-foot aquifer itself is a series of aquifers that are themselves not hydraulically connected. Please explain. Are there portions of the 900-foot aquifer(s) that are not recharged by the by the 180-foot and 400-foot aquifers? Alternatively, are all portions of the 900-foot aquifer(s) recharged? Is any recharge to the 900-foot aquifer from a naturally occurring hydraulic connection or does recharge only occur from well penetrations and other anthropogenic sources? Please cite technical support for your responses.

Please explain whether the Fort Ord and Project water supply would be pumped from portions of the 900-foot aquifer(s) that are in fact recharged by the 180-foot and 400-foot aquifers. Please cite technical support for this conclusion.

Has the seawater contamination of the 180-foot and 400-foot aquifers that recharge the 900-foot aquifer contaminated the 900-foot aquifer? If not, please explain why the

purported hydraulic connection to, and recharge from, the 180-foot and 400-foot aquifers, which are contaminated by salinity along the coast, does not result in salinity contamination to the 900-foot aquifer. If saltwater intrusion to the 900-foot aquifer(s) has not yet occurred, please explain whether the 900-foot aquifer is expected to be contaminated by saltwater through recharge from the 180-foot and 400-foot aquifers, or otherwise, in the future. If saltwater contamination to the 900-foot aquifer is projected to occur in the future, please explain when it is expected to render the Fort Ord and Project water sources too saline for potable use, if ever.

If the Fort Ord and Project water supply would be pumped from portions of the 900-foot aquifer that are not recharged by the 180-foot and 400-foot aquifers, then please explain what source of recharge, if any, would support continued pumping for the Fort Ord and Project water supply.

The BRP EIR states that there is no evidence that the 900-foot aquifer is not connected to the ocean, and therefore it must, like the 180-foot and 400-foot aquifers, be assumed to be vulnerable to seawater intrusion. BRP EIR 4-57. The BRP EIR also states that aquitards between the 400-foot and 900-foot aquifers are subject to leakage of degraded water as the water level is lowered. *Id.* Please discuss the vulnerability of the 900-foot aquifer to seawater intrusion from both of these sources. Please explain whether increased pumping will increase this vulnerability. Please identify the technical literature that supports this conclusion, one way or the other.

The DEIR does not present any clear evidence that Fort Ord or the Project would draw water from a sustainable source. Please provide a water balance analysis showing 1) the current (baseline) and projected future cumulative demands on the portions of the 900-foot aquifer(s) from which the Project and Fort Ord will draw water, and 2) the sources and rates of recharge to those portions of the 900-foot aquifer(s). If the water balance shows that existing or projected withdrawals from the 900-foot aquifer exceed recharge, please estimate the volume of the 900-foot aquifer and the expected period for which that aquifer could be mined to supply water to all of the current and projected users.

Please explain what the DEIR means in claiming that the “MCWD’s wells in Central Marina are in the deep aquifer, which have not experienced signs of seawater intrusion and are considered to have a reliable quantity.” DEIR 4.8-34, emphasis added. Does the term “reliable quantity” imply an intent to mine the groundwater? If so, how long will that aquifer support the Project and other existing and foreseeable users? Alternatively, does the term “reliable quantity” indicate that recharge is in excess of existing and foreseeable uses? If so, please quantify those uses and identify the sources and volumes of recharge.

7. Recharge, saline contamination, and sustained yield of the 180-foot and 400-foot aquifers are not adequately discussed.

As discussed above, the DEIR states that the 180-foot and 400-foot aquifers represent a source of recharge for the 900-foot aquifer and implies that MCWD could pump water directly from the 180-foot and 400-foot aquifers to meet Fort Ord and Project demand.

The DEIR compares the MCWD total pumping to the total Salinas Valley Groundwater Basin (“SVGB”) pumping:

“The Project site does not overlay areas subject to seawater intrusion, as identified by the MCWRA. However, the Salinas Valley groundwater basin remains in an overdraft condition with seawater intrusion of about 9,000 acre feet per year (AFY) at its coastal margins. MCWD’s groundwater withdrawals, including the former Fort Ord are approximately 4,670 AFY or less than one percent of the total annual basin withdrawals of approximately 500,000 AFY.” DEIR 4.

Please explain why this comparison is relevant to the analysis of groundwater supply. In particular, is the comparison premised on the assumption that the SVGB as a whole is hydraulically connected to the 900-foot aquifer or that the 180-foot and 400-foot aquifers are the sources of recharge to the 900-foot aquifer?

The DEIR does not present any clear evidence that the 180-foot and 400-foot aquifers are themselves a sustainable or even long term source of water supply or of recharge to the 900-foot aquifer. Recent studies indicate that the efforts to halt overdrafting and seawater intrusion in the SVGB, 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 the temporary slow-down in the rate of seawater intrusion will be reversed as a result of the drought, and that water managers now expect an acceleration of seawater intrusion. The DEIR fails to discuss this.

The DEIR must be revised and recirculated to present relevant baseline conditions for the aquifers that purportedly support the Project water supply, including pumping demand, projected future demand, and sustainable yield for the 180-foot aquifer, the 400-foot aquifer, and the SVGB as a whole. Without this information, the EIR fails to provide relevant information to evaluate the sufficiency of long-term water supply.

8. The DEIR does not justify the geographic scope of cumulative analysis.

A cumulative water supply analysis must determine whether long-term supply and demand are equivalent; and, if not, it must discuss alternative supplies and the environmental impacts of providing those supplies.

The DEIR arbitrarily limits the geographic scope of the cumulative analysis of groundwater supply impacts to Fort Ord projects. DEIR 4.8-47, 4.19-30 to 4.19-32. This

is not adequate. The scope of a cumulative impact analysis should be related to the geographic scope of the affected resource, and the DEIR must justify any restriction of that geographic scope.

Even if the available water supply were restricted to the 900-foot aquifer, the DEIR fails to identify the geographic scope of the 900-foot aquifer and to identify baseline and projected cumulative uses of that aquifer and to discuss that aquifer's yield. (The discussion of the MCWD Urban Water Management Plan ("UWMP") does not suffice because the DEIR does not identify other users of the 900-foot aquifer, although it does acknowledge that there are other users.) Please provide an assessment of whether long-term supply and demand for the 900-foot aquifer are equivalent. If not, please identify the difference between long-term supply and demand and discuss alternative supplies and the environmental impacts of providing those supplies.

Furthermore, the DEIR does not claim that available water supply is limited to the 900-foot aquifer. As discussed, the DEIR implies that MCWD may pump water directly from the 180-foot and 400-foot aquifers and that these aquifers serve as sources of recharge for the 900-foot aquifer. Given the DEIR's reliance on the 180-foot and 400-foot aquifers, there is no justification to limit the geographic scope of the discussion of cumulative groundwater impacts to the Fort Ord area. The 180-foot and 400-foot aquifers extend into the Pressure Subarea, and all five subareas of the SVGB are hydraulically linked.

Accordingly, please provide an assessment of whether long-term supply and demand for the SVGB are equivalent, including a water balance analysis for the 180-foot, 400-foot, and 900-foot aquifers and the SVGB as a whole. If long-term supply is less than long-term demand, please discuss alternative supplies and the environmental impacts of providing those supplies, including the plans, funding, and environmental impacts of any necessary groundwater management projects. In this connection, please understand that groundwater management projects intended to maintain groundwater levels and halt seawater intrusion are essential water supply projects because without them there will be significant environmental impacts from continued groundwater pumping from the SVGB.

9. The DEIR fails to report or discuss the BRP EIR cumulative impact conclusion.

As discussed above, the DEIR cannot function as a subsequent EIR and cannot employ tiering and the City fails to proceed as required by CEQA in claiming to the contrary. However, even if tiering and a subsequent EIR were proper, the relevant question would be the adequacy of the BRP EIR's own cumulative analysis, which purported to consider regional water supply impacts (albeit in an entirely abbreviated discussion). See BRP EIR 5-5. Here, the DEIR simply recites information related to the "BRP development capacities," i.e., the project-level analysis of the BRC buildout contained in the BRP EIR. DEIR, 4.8-45, 4.19-31 to 4.19-32. Nowhere does the DEIR even reference the BRP EIR's actual discussion of regional cumulative water supply impacts.

Had the DEIR actually referenced or summarized the BRP EIR's cumulative analysis, it would have had to acknowledge 1) that the BRP EIR actually found cumulative impacts to be significant and unavoidable, and 2) that the discussion and mitigation of cumulative impacts in the BRP EIR are no longer adequate due to changed circumstances and new information. The discussion and mitigation in the BRP EIR depended on a to-be-developed basin management plan for future regional water supply that has not, after 18 years, actually been implemented. It also depended on Hydrology and Water Quality Policies B-1 and C-3, calling for the City to cooperate to mitigate seawater intrusion and ensure an additional water supply, which outcomes have not occurred.

The DEIR conflates and confuses the project-level and cumulative water supply analyses. The sole basis for this Project's DEIR's conclusion that cumulative water supply impacts are significant and unavoidable is the same reason cited for the project-level significance conclusion: uncertainty in the water supply projects necessary to furnish water to phases 4-6 of the Project. DEIR 4.19-31 to 4.19-32; 4.8-47. In its discussion of cumulative impacts, the Project's DEIR repeatedly misrepresents the BRP EIR's project-level water supply significance conclusion as a cumulative impact conclusion, claiming "[t]he BRP PEIR concludes that since a number of reasonable long-term water supply options exist, impacts would be less than significant following adherence to the BRP policies and programs (as outlined below) and additional recommended mitigation measures." DEIR 4.8-47, 4.19-31. In fact, the BRP EIR concluded that cumulative impacts would be significant and unavoidable in light of the "severe shortage of water supply in the region, as well as the overdraft and seawater intrusion problems in the local aquifer." BRP EIR 5-5. Please explain why the Project DEIR did not cite or discuss the BRP EIR's cumulative impact analysis. Please explain why the DEIR does not discuss the regional context, including information about the existing and projected supply and demand from each aquifer affected by and affecting the Project's water supply.

The BRP EIR's cumulative water supply analysis cited Program C-3.1, which required the City work with other agencies "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." If this has happened, please supply the safe yield information that has been developed for the aquifers underlying Fort Ord. If it has not happened, please explain why not and when this policy will be implemented. If the City has not determined the current safe yield, please explain how the City can continue to approve projects requiring long-term sustainable water supplies.

The DEIR must be revised and recirculated to provide an adequate cumulative water supply impact analysis. An adequate cumulative water supply impact analysis must define and justify the geographic scope of analysis in a relevant regional context.

An adequate cumulative water supply impact analysis must identify past, present, and foreseeable future projects in the relevant geographic area that contribute to water supply impacts. Alternatively, it must provide 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.

An adequate cumulative water supply impact analysis must quantify the baseline and projected future uses of all of the aquifers from which the Project will draw water or which will recharge the aquifer from which the Project will draw water, i.e., the 900-foot, the 400-foot, and the 180-foot aquifers.

An adequate cumulative water supply impact analysis must determine if there is at least a rough equivalency between demand and the long-term supply that can be provided without significant environmental impacts.

If there is not a rough equivalency of supply and demand, an adequate cumulative water supply impact analysis must acknowledge that fact and discuss alternative sources of water such as groundwater management projects that would maintain groundwater levels and mitigate seawater intrusion.

The cumulative analysis from the BRP EIR cannot be relied upon as an adequate current analysis of cumulative impacts in light of changed circumstances and new information. The changed circumstances and new information include the failure to implement the “reasonable long-term water supply options” listed in the BRP EIR. BRP EIR 4-55 to 4-61; see BRP 5-5. The changed circumstances and new information include updated baseline and projected water demand information for the affected aquifers. The changed circumstances and new information also include reports that the SVGB remains in overdraft; that seawater intrusion has not been halted and will not be halted by existing groundwater management projects; and that additional groundwater management projects will be needed to restore groundwater elevations and halt seawater intrusion. It is likely that the analysis will find that the Project pumping will make a considerable contribution to cumulative water supply impacts and that mitigation will be required. That mitigation must include actual contributions to solve the problem, not just a hiatus in development until MCWD generates additional water supplies in excess of the 6,600 afy “entitlement” for total Fort Ord pumping, which, as discussed below, the DEIR incorrectly treats as a baseline or safe-yield.

10. The 6,600 afy “entitlement” is neither a baseline nor a safe-yield and is therefore not a basis for determining the significance of water supply impacts.

In a 1993 agreement between the Army and the MCWRA, MCWRA agreed not to object to pumping by the Army or its successors up to 6,600 afy in exchange for certain actions by the Army, including payment of \$7.4 million and a petition to annex the Fort Ord land to MCWRA assessment Zones 2 and 2A. Pumping from the 180-foot and 400-foot aquifers was limited to 5,200 afy. The agreement recites that the 6,600 afy and 5,200 afy “thresholds correspond to the annual peak (1984) and recent average (1988-1992) amounts of potable water Fort Ord has withdrawn from the Salinas Basin.” See

Agreement No. A-06404 between U.S.A. and MCWRA, Sept 21, 1993, ¶ 4c. The Agreement also acknowledges that pumping by Fort Ord has contributed to seawater intrusion. *Id.* at ¶ 3b. The Agreement recites that MCWRA is working on a regional solution, in the form of the Castroville Seawater Intrusion Project (“CSIP”) and another to-be-identified “Project” that would replace the need for pumping on Fort Ord lands and permit shutting down Fort Ord wells, which would otherwise “eventually become contaminated by seawater.” *Id.* at ¶¶ 2j, 3c. Pumping from Fort Ord wells in the Salinas Basin would be required to cease after implementation of the “Project.” *Id.* at ¶ 4d. The Agreement specifically contemplated the possibility that Fort Ord wells would become contaminated before implementation of the “Project,” in which case MCWRA would assist the Army in finding a replacement water supply. *Id.* at ¶ 4h. MCWRA was to advise the Army periodically of the seawater intrusion and the remaining life of the Fort Ord wells. *Id.*

Citing this agreement, and the subsequent allocation and sub-allocation of the 6,600 afy water “entitlement” to the Army’s successors (MCWD, FORA, its member agencies, and particular development projects), 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. In particular, the DEIR concludes that water supply impacts for Phases 1-3 will be less than significant because Project demand would be less than the remaining unallocated portion of the 6,600 afy controlled by the City. DEIR 4.19-23 to 4.19-26; see also 4.19-32 (cumulative significance conclusion based on demand in excess of unallocated portion of the 6,600 afy “entitlement.”).

Thus, the DEIR’s significance conclusion for water supply impacts is premised on the assumption that 6,600 afy is either the baseline condition or that it represents a safe yield from the affected aquifers. However, the DEIR does not provide evidence to support either conclusion. The evidence is to the contrary.

First, the baseline pumping should be the level determined at the time of the NOP or the commencement of environmental review. The DEIR states that baseline pumping from Fort Ord during the 2001-2010 period was only 2,311 afy. DEIR 4.19-1. Please explain why the analysis of significance is not based on the effect of increased pumping over a current period baseline.

Second, as the Agreement between the Army and MCWRA recites, 6,600 afy was a single year maximum pumping level. Actual pumping levels over the historic period 1988-1992 were only 5,200 afy. Please explain why the analysis of significance is not based on assessing incremental Project water use in relation to an average level of pumping rather than a single peak year.

Third, the DEIR presents no evidence that 6,600 afy is a safe or sustainable yield from the aquifer(s) from which the Project would draw water. The BRP Hydrology and Water Quality Policy C-3.1 requires the City to work with MCWRA to determine the safe yield, and the DEIR has not reported any such determination. As the 1993 Agreement and this

Project's DEIR make clear, seawater intrusion has been ongoing since at least the 1940s and was clearly occurring when the Army pumped 6,600 afy in the single 1984 peak year. Furthermore, it appears that the bulk of historic pumping at the time of the Army use of the site may have been from the 180-foot and 400-foot aquifer. There is no evidence that 6,600 afy has ever been pumped from the 900-foot aquifer. Please provide baseline pumping volumes from each aquifer in the Fort Ord area during the most recent ten year period.

Indeed, the BRP EIR analysis of water supply impacts makes it clear that FORA did not necessarily expect that 6,600 afy could be pumped from beneath Fort Ord without causing further seawater intrusion. 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. Compare BRP EIR p. 4-54 ("Assuming groundwater wells on former Fort Ord were able to supply 6,600 afy . . .") to BRP EIR p. 4-54 ("If 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 . . ."). Unlike this Project's DEIR, the BRP EIR does not assume that the 6,600 afy entitlement is relevant to determining whether there will be a significant water supply impact from continued groundwater pumping.

In sum, seawater intrusion has continued despite baseline pumping that is well below a single year peak pumping of 6,600 afy, and there is no evidence that 6,600 afy can be pumped from Fort Ord aquifers without environmental harm. The DEIR's conflation of an entitlement with a baseline or safe yield is an error here because the DEIR fails to assess the impacts of using the entitlement, i.e., the actual effects of increasing pumping to support the Project. The conclusion that water supply impacts are less than significant through Phases 1-3 is unjustified. Furthermore, the brief references to seawater intrusion are not sufficient because the DEIR makes no effort to relate Project and cumulative water demand to seawater intrusion effects.

11. The DEIR fails to discuss the implications of the Sustainable Groundwater Management Act for the continued overdrafting of the aquifers.

While the DEIR mentions the existence of the Sustainable Groundwater Management Act ("SGMA") (DEIR, 4.8-16), it does not discuss the implications of SGMA for the continued pumping of the overdrafted 180-foot, 400-foot aquifers, or for the likely overdrafted 900-foot aquifer. SGMA will require that the basin from which Project water is taken achieve groundwater sustainability by 2042, which will require that groundwater levels are not declining and that seawater intrusion has been halted. This will require that the Groundwater Sustainability Agency actually determine the sustainable yield of the basin from which Project water is taken. Pumping in excess of that yield (i.e., mining groundwater) will not be permitted. In light of this, the EIR cannot simply assume that there is a sustained yield of 6,600 afy in the local aquifers from which Fort Ord may continue to draw water.

12. The DEIR fails to assess water supply in a manner consistent with the BRP level of service requirements.

In Table 3.11-1, the BRP sets out level of service standards for various amenities including water. A project must provide a safe and secure supply of water with the capacity of 268 gallons per day average. BRP, p. 192. However, the DEIR analysis of water supply is premised on residential demand levels well below 268 gallons per day. DEIR 4.19-19. The DEIR fails to identify this inconsistency with the BRP. Please restate the water supply analysis based on a 268 gallon per day average use as required by the BRP.

13. The DEIR fails to disclose effects of securing water from alternative sources.

Where water supply is not sufficient or is uncertain, and an EIR relies on mitigation in the form of a ban on development if adequate water supplies cannot be secured, the EIR must also identify potential alternative sources and discuss the environmental impacts of those sources. Here, the DEIR mentions that MCWD is “pursuing” a recycled water project and a desalination project (DEIR 4.19-25), but the DEIR provides no information about the environmental effects of these two projects. The EIR must be revised and recirculated to provide this information.

14. 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, an EIR must also discuss the impacts of not building approved development. Here, Mitigation Measure W-1 would bar further approvals of discretionary permits or entitlements for the Project without proof that “current unused water supply is allocated to said proposed development.” 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. For example, is it possible that the residential components might be constructed, but that the commercial and horseracing components might not be? 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 disavows any obligation to follow the proposed phasing plan. Specific Plan, p. 8-2.

15. The DEIR fails to disclose the impacts of denying water to other previously approved projects.

The EIR suggests that the City could reallocate water away from previously approved projects to provide water to the Monterey Downs Project. Mitigation Measure W-1 was apparently written so that it does not foreclose this possibility, since it requires only that “current unused” supply be allocated to the Project, not, for example, that “previously unallocated” supply be allocated to the Project.

If the EIR contemplates and permits the City to take water allocated to previously approved projects in order to supply Monterey Downs, the effect would be to vitiate the prior approvals of those projects, which were based on the assumption that there would be a sufficient water supply. Either those previously approved projects would be permitted to be constructed without a sufficient water supply (e.g., if they do not contain a mitigation or condition similar to Mitigation Measure W-1 here), or the previously permitted projects would not be permitted to be constructed at all due to lack of water supply.

This EIR must disclose or preclude these possibilities explicitly. If previously approved projects might be permitted to be constructed without a water supply because that supply might be allocated to Monterey Downs, this EIR must discuss the impacts of that outcome, e.g., aggravation of existing overdrafting and seawater intrusion. If previously approved projects might not be permitted to be constructed because Monterey Downs is allocated their water supply, then this EIR must discuss the effect of not building these projects. Please identify the projects that might be retroactively denied a water supply because the expected supply may be allocated instead to Monterey Downs. Please include a discussion of secondary impacts to public services, utilities, infrastructure, traffic, GHG emissions, and schools and to the jobs/housing balance if these projects are not build as approved 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 these projects 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.

16. Mitigation purporting to address impacts from construction of water infrastructure is uncertain because the analysis does not identify infrastructure required to provide additional water supply, or to mitigate the effects of continued groundwater pumping, and does not discuss the impacts from construction of that infrastructure.

MM W-3 purports to mitigate environmental impacts of providing water infrastructure that results from or is required by the Project. The mitigation is merely having the

Project contribute fair share to FORA fees, a portion of which is allocated for “water supply augmentation improvements.” The “water supply augmentation improvements” are not identified, and the only improvements identified in the DEIR are water delivery infrastructure projects, e.g., the off-site domestic water pipelines in Figure 2-20.

Delivery infrastructure is not sufficient if there is no supply augmentation project or project to mitigate impacts of continued groundwater pumping. For example, it may be necessary to construct projects to provide desalinated or recycled water, or projects to deliver surface water to coastal users to mitigate the effects of groundwater pumping.

What projects other than delivery infrastructure projects are referenced by the term for “water supply augmentation improvements” in Mitigation Measure W-3? Please identify all relevant projects that may be required to provide additional water supply or to mitigate the effects of additional groundwater pumping. What portion, if any, of the cost of providing additional water supply or of mitigating the impacts of continued groundwater pumping will the Project pay, and what mitigation measure, condition, or cost recovery mechanism would require this?

The analysis claims that “impacts associated with the proposed water infrastructure are addressed within this Specific Plan EIR” (4.19-27), but there is no discussion of environmental impacts from constructing infrastructure for providing additional water supply or mitigating effects of groundwater pumping. Please provide this information. Please also identify the specific sections and pages of this DEIR that purportedly discuss the “impacts associated with the proposed water infrastructure” (DEIR 4.19-27) including in particular all off-site infrastructure.

Reliance on impact fees to mitigate impacts requires evidence that the fees will result in actual mitigation through planned, committed improvement projects; that there will be sufficient funds to accomplish those projects; and that the mitigation project(s) have been environmentally reviewed. Here, however, there is no discussion of the cost of supply augmentation or groundwater impact mitigation projects or whether they are approved or adequately funded. Nor is there any discussion of the environmental review status of the improvements. There is no evidence that necessary projects are even committed as part of an adopted plan. Payment of unspecified amounts for future unspecified projects that have not been environmentally reviewed is not sufficient mitigation.

17. Mitigation calling for design review of project-level recycled and wastewater delivery infrastructure will not mitigate the effects of providing a recycled water supply.

Mitigation Measure W-4 calls for plan approvals by MCWD of water supply infrastructure to serve the Project with recycled water. Again, the mitigation addresses only the infrastructure for delivery of water, not the infrastructure for supplying recycled water. There is no discussion of the Project share of costs for that supply or of the

environmental impacts of providing a recycled water supply. Please provide this information.

Again, the DEIR states that it discusses the “impacts associated with the proposed infrastructure.” DEIR 4.19-29. Please identify the specific sections and pages of this DEIR that purportedly discuss the “impacts associated with the proposed water infrastructure.”

TRAFFIC

18. The DEIR does not provide facts and analysis to justify the assertion that 28% of trips are internal site trips.

Both the Existing and Cumulative conditions analyses assume that 28% of trips would be internal to the Project site. DEIR 4.17-63. This assumption is critical because internal site trips will not add traffic to external roadways, where existing and future capacity is insufficient to accommodate additional traffic. If the internal capture rate is overstated, traffic impacts to external roadways would be worse than disclosed by the DEIR.

The DEIR does not explain how the 28% “internal trip capture” was determined. Nor does the DEIR provide a separate traffic report, which would typically include a discussion and analysis of the basis for determining internal trip capture.

The DEIR does state that Project trip generation was based on the Institute of Transportation Engineers (ITE) Trip Generation, 9th Edition (“ITE 2013”). ITE also provides the standard method for determining internal capture in its Trip Generation Handbook, 2nd Edition (“ITE 2004”). ITE 2004 explains that adjustments can be made to external trip rates for a “Multi-Use Development,” i.e., a development project that includes multiple ITE land use categories, in order to reflect the reduction of total trips originating from off-site as patrons or residents walk or drive from one use to another within the site, a phenomenon termed “internal capture:”

“A basic premise behind the data presented in Trip Generation is that data were collected at single-use free-standing sites. However, the development of mixed-use or multi-use sites is increasingly popular. While the trip generation rates for individual uses on such sites may be the same or similar to what they are for free-standing sites, there is potential for interaction among those uses within the multi-use site, particularly where the trip can be made by walking. As a result, the total generation of vehicle trips entering and exiting the multi-use site may be reduced from simply a sum of the individual, discrete trips generated by each land use. [¶]For example, office workers at a multi-use project walk to retail uses in the same project]. These types of trips are defined as internal to (i.e., ‘captured’ within) the multi-use site.” ITE 2004, p. 85.

ITE 2004 provides instructions and a worksheet template to calculate internal capture for projects that include more than one ITE land use code, based on data from existing Multi-Use Developments. *Id.* at 85-100.

Because the Project includes multiple ITE land uses, it is a Multi-Use Development and its internal capture rate can and should be determined by using the method set out in ITE 2004.

If the 28% internal trip capture was determined by using the ITE method, please provide the worksheets that reflect the application of that method.

If the 28% internal trip capture was not determined by using the ITE method, please explain how it was determined and provide any documentation or analysis that was created before the DEIR was released to support the DEIR's conclusion.

If the 28% internal trip capture was not determined by using the ITE method, please apply the ITE method to determine the internal capture rate consistent with ITE's method and provide the worksheets and conclusions for that analysis.

19. The DEIR does not provide traffic analyses that reflect the possibility that some phases of the Project will not be constructed.

The water supply analysis proposed mitigation that would bar completion of the Project in the event that a sufficient water supply is not available. The water supply analysis assumes that there may not be sufficient water for Phases 4-6 of the Project, which include most of the commercial retail and job-generating uses. DEIR 4.19-23.

Although the water supply analysis makes a particular set of assumptions about Project phasing, nothing in the proposed Project description of the DEIR actually requires that the Project be phased in a particular order, or even completed. The Phasing discussion in section 8.2 of the Specific Plan explicitly states that "the above referenced phasing program is subject to change based upon market conditions, absorption rates, infrastructure extensions and product mix requirements." Specific Plan, p. 8-2. In short, the developer may build any portions of the Project that seem profitable and delay or abandon the rest of the plan. For example, as the Project is proposed, the developer could elect to construct only the residential portions.

In the event that the commercial retail and job-creating uses were not constructed or were significantly delayed, the internal capture rate would be substantially reduced because residents would find fewer on-site shopping and vocational opportunities. External trips by Project residents would necessarily increase. Furthermore, it is unclear whether traffic impact fees from the residential uses that were constructed would be sufficient to build the necessary improvements.

The DEIR should be revised and recirculated to disclose the traffic consequences of the partial development of the Project site based on the admitted possibility that there will not be sufficient water. Furthermore, unless the DEIR proposes a binding phasing plan that would assure a balanced Multi-Use Development that continues to support a 28% internal capture, the partial build-out analysis should be premised on the worst case traffic scenarios, including the scenarios that 1) generate the most external trips (e.g., an all-residential build-out) and/or 2) provide the smallest impact fee revenues to affected jurisdictions. In that analysis, the DEIR should discuss the sufficiency of impact fees and other revenue sources to construct the needed improvements.

20. The Modified Project alternative erroneously assumes proportionate traffic without taking into account the changes to the internal capture rate that would occur.

The discussion of the Modified Project in the Alternatives section concludes erroneously that a project consisting largely of residential uses would have “proportionate traffic volumes” despite the elimination of most of the commercial retail and job-creating uses. DEIR 6-42. This non-quantitative analysis fails to assess the likely change in internal capture which would result as residents were forced to make external trips for shopping and work.

The Alternatives analysis also implies that the efficacy of FORA fees in mitigating traffic impacts would be unaffected by a decision that would substantially alter the assumed balance of jobs, housing, and retail uses. This cannot be correct. The FORA fees were set on the basis of specific assumptions about the mix of uses that would occur.

Any change in this mix of uses should be taken into account in assessing the traffic impacts of a partial project, including the effect on internal capture rate and FORA fees, particularly since the Modified Project would comprise a substantial residential development commitment without a concomitant increase in non-residential development. The Alternative section should be revised to correct the failure to reflect the change in internal capture that would result from an unbalanced project.

21. The traffic analysis fails to identify and discuss the Level of Service and timing standard required by Section 3.11 of the BRP

Section 3.11 of the BRP contains the specific provisions governing implementation of the BRP. It provides that

“Levels of service and timing standards are an integral part of the Reuse Plan and are included in Table 3.11-1. These standards guided the preparation of the CIP and will guide subsequent updates to the CIP.” BRP, p. 191.

Table 3.11-1 provides that the traffic Level of Service Standard “on the road network within the territory of the former Fort Ord” shall be LOS D. BRP, p. 191. Table 3.11-1

provides that the Timing Standard shall be to “[c]onstruct improvements described in the former Fort Ord Reuse Plan CIP at a time such that the LOS does not degrade below the bottom end of LOS D.” BRP, p. 191, emphasis added.

The FORA Development and Resource Management Plan (“DRMP”) is intended to “restrain development to available resources and service constraints.” BRP, p. 194. The first two DRMP objectives are that “[d]evelopment on former Fort Ord lands will be limited by the availability of services” and that “[s]ervice availability is measured by compliance with Level of Service Standards.” BRP, p. 194.

In short, the BRP requires that necessary traffic improvements be constructed before service falls below LOS D.

The DEIR fails to identify or discuss this BRP provision. Although the DEIR recites BRP policies that mandate payments of fair shares toward the improvements, nowhere does the DEIR acknowledge that the BRP unequivocally mandates continuous maintenance of LOS D or better within the former Fort Ord.

The DEIR identifies CEQA thresholds of significance by referencing standards promulgated by Caltrans, the County of Monterey, the City of Seaside, and the City of Marina. DEIR 4.17-47 to 4.17-49. Some of these CEQA thresholds address impacts to roadways and intersections that are already operating at LOS E or F. While these jurisdictions are entitled to set thresholds for significant impacts under CEQA, these thresholds cannot act to permit Fort Ord roads and intersections to operate below LOS D, because that would violate the BRP.

Furthermore, the BRP’s Timing Standard and the DRMP clearly mandate that improvements necessary to maintain LOS D be constructed before the level of service degrades below LOS D. Thus, even if mitigation otherwise required by CEQA were to permit temporary or permanent service levels below LOS D, the BRP does not permit this. And indeed, because the CEQA threshold of significance must identify conflicts with an applicable plan as a significant impact (DEIR 4.17-47, citing CEQA Guidelines, Appendix G), the DEIR should make clear that it would be a significant impact if any roadway within Fort Ord were permitted to drop below LOS D as a result of Project-related traffic in combination with existing and future traffic.

As discussed in the next section, the DEIR fails to provide sufficient information regarding the status and funding of improvements in the FORA CIP to assure the public that needed improvements will in fact maintain LOS D within the former Fort Ord. And, as discussed in the section after that, the DEIR fails to ensure that adopted mitigation will in fact be sufficiently timely to meet the BRP Timing Standard and the requirement of the DRMP that development be limited by the availability of services.

22. The DEIR does not provide evidence that traffic mitigation facilities are part of approved, funded plans that have been environmentally reviewed.

Mitigation Measures TRA-2, 3, 4, 5, 6, and 7 call for payment of fair shares toward needed traffic improvements in the form of FORA impact fees (TRA-2, TRA-7), ad hoc City of Seaside mitigation fees (TRA-3), and fair shares of specific improvements contained in the City of Marina CIP (TRA-4 to TRA-6). The DEIR does not demonstrate that these jurisdictions have adopted plans that contain each of the identified improvements, that these plans have been environmentally reviewed, or that the agencies will have sufficient funding to cover the portion of these improvements not covered by the Project's fair share payments.

Please explain whether each of the five intersection improvements identified in TRA-2 is included in a plan for traffic facilities that has been adopted by FORA or any other jurisdiction. Please identify that plan document and the page number at which each of the improvement is identified. Please identify the environmental review document for the adoption of that plan. Please explain where the balance of funding for that improvement will be obtained according to that plan.

Please explain whether the intersection improvements identified in TRA-3 is included in a plan for traffic facilities that has been adopted by the City of Seaside or any other jurisdiction. Please identify that plan document and the page number at which the improvement is identified. Please identify the environmental review document for the adoption of that plan and explain when that document was certified. Please explain where the balance of funding for that improvement will be obtained according to that adopted plan.

The DEIR states that the intersection improvements identified in TRA-4 through TRA-6 are included in the City of Marina Capital Improvement Plan ("CIP"). Please identify that CIP (by date and title) and the page number at which the improvement is identified. Please identify the environmental review document for the adoption of that CIP and explain when that document was certified. Please explain where the balance of funding for that improvement will be obtained according to that adopted plan.

Please explain whether the widening of Gigling Road to a 4-lane arterial called for by TRA-7 is included in a plan for traffic facilities that has been adopted by FORA or any other jurisdiction. Please identify that plan document and the page number at which this improvement is identified. Please identify the environmental review document for the adoption of that plan and explain when that document was certified. Please explain where the balance of funding for that improvement will be obtained according to that adopted plan.

Finally, the DEIR assumes that the Eastside Parkway will be constructed and operational by 2018. DEIR 4.17-31. Please identify that plan document and the page number at which this improvement is identified. Please identify the environmental review

document for the adoption of that plan and explain when that document was certified. Please explain where the balance of funding for that improvement will be obtained according to that adopted plan.

23. The “trigger point” mechanism to determine when fair share fees should be paid under Mitigation Measures TRA-2 through TRA-6 fails to consider increases in non-Project traffic and thus would not ensure timely mitigation. Furthermore, it permits the Project to free-ride without fair-share payments until after the impact has occurred.

Table 4.17-15, “Existing Conditions With Project Mitigation Phasing,” purports to identify the “trigger point” for requiring fair-share contributions to be made under various mitigation measures. DEIR 4.17-76. The trigger point is explained as the point when the addition of Project-related trips to existing conditions would result in a significant impact. Table 4.17-15 is used to identify the trigger point for fair share payments for Mitigation measures TRA-1 through TRA-6.

There are three fundamental problems with the DEIR’s approach.

First, this approach to mitigation ignores the growth in non-Project traffic that will also affect the same intersections. The point at which physical improvements should be required in order to maintain level of service standards is when exiting traffic plus Project traffic plus future growth in non-project traffic results in unacceptable level of service.

Because Mitigation Measures TRA-2 to TRA-6 do not require payment of fair share impact fees and construction of necessary improvements before the affected intersection actually degrades below acceptable service levels, they do not meet CEQA’s requirements for certain and effective mitigation.

If the Project generates only a portion of the cumulative traffic that will cause an impact, it should not have to pay for the entire cost of needed improvements.¹ However, it

¹ The analysis and mitigation of traffic impacts at issue are essentially cumulative in nature, and that is the only reasons that fair share payments can be considered as mitigation at all. First, the analysis of traffic impacts in the DEIR under the “Existing With Project Conditions” and the “Interim Year 2018 With Eastside Parkway With Project Conditions” scenarios are in fact analyses of cumulative impacts because they take into account traffic from the Project and from other projects – not just Project-related traffic. While the DEIR contains a separate section discussing “Cumulative (Year 2035) With Project Conditions,” the only difference in that analysis is that it includes a longer temporal scope by including traffic from future projects as well as from past and present projects. Second, the DEIR’s proposal of fair share impact fees as mitigation for impacts under the “Existing With Project Conditions” and the “Interim Year 2018 With Eastside Parkway With Project Conditions” analysis scenarios is only permissible if these analyses are cumulative analyses. Payment of fair share impact fees is only adequate mitigation

should have to pay that fair share before the impact occurs so that the necessary improvements can be constructed in time to avoid the impact. It makes no sense to defer any obligation by the Project to pay a fair share until such time as the Project-related traffic would, by itself, have caused the significant impact. Assuming that there is any future growth in traffic from non-Project sources, the impact will already have occurred by then and the mitigation will not be timely.

Furthermore, allowing the initial phases of the Project to evade any responsibility for fair-share payments until Project traffic would, by itself, have caused the impact gives the Project a free ride until that point. For example, Table 4.17-15 indicates that mitigation would not be required of the Project for one of the particular intersection impacts until such time as 54% of the project trips have been generated. DEIR 4.17-76. Postponing any fair share obligation until more than half the Project is constructed means that the first half of the Project will pay nothing to mitigate this cumulative impact.

While some form of “trigger point” analysis might be proper in determining when to construct improvements (assuming it takes into account the non-Project traffic), the trigger point should not be used to determine what phase of the Project should make fair share payments. All phases should make fair share payments based on the best information available about future traffic, future projects, and needed improvements.

Third, the DEIR is also defective in that it does not specify the fair shares called for by its proposed mitigation measures; or explain the fair share mechanism applicable to this large, phased project; or provide a formula for determining the fair shares.² The issue is critical. For example, would the fair share determined after 54% of the Project is built include a share for the trips the Project has already generated, or only a share for the trips to be generated by the Project phase for which building permits are being sought at that moment? It seems unlikely that the fair share assessed after half the Project is built will include any mechanism to reach back to assess the first half of the project. Who would pay this? What assumption will be made regarding the denominator of the fair share fraction, i.e., what projects will be responsible to pay fair shares? Will the denominator include the rest of the Project? What other future project’s trips will be included? How will sufficient funds be collected to provide the improvements timely?

under CEQA for cumulative impacts because a project is required to fully mitigate those impacts that it causes by itself (so-called project-specific or project-level impacts).

² Mitigation measures TRA-11 through TRA-14 imply that “[f]air share costs for cumulative impacts [shall be] based on estimated 2013 Project costs to be adjusted annually on July 1 by the Engineering Record’s Construction Cost Index.” This requirement is not applied to Mitigation Measures TRA-2 through TRA-7, which use some form of “trigger point.” More fundamentally, the phrase does not explain how the fair share of the “2013 Project cost” is to be determined and assessed in the first place.

Set forth below are comments on TRA-2 through TRA-6 in light of these concerns. TRA-7 is discussed in the next section.

a. MM TRA-2

Mitigation Measure TRA-2 provides that if the needed improvements are in the FORA CIP, the Project Applicant need not pay the impact fees until the Table 4.17-15 trigger point is reached. This provision should be revised to provide that the impact fee must be paid and the improvements constructed before exiting traffic plus Project traffic plus future growth in non-Project traffic results in unacceptable level of service.

Mitigation Measure TRA-2 provides that if the needed improvements are not in the FORA CIP, the developer shall fund and implement the improvements prior to an occupancy permit or earlier as determined by the City Engineer based on traffic conditions at that time. Although this language could be interpreted to permit the City Engineer to take into account the growth in non-Project traffic, it does not actually require the City Engineer to do so. The deferral of the actual trigger for requiring mitigation improvements without a binding standard (and to an unelected decision-maker) violates CEQA.

The final paragraph of TRA-2 references taking into account “the running cumulative total,” but it appears that this term applies only to the running total of Project-related traffic. The final sentence provides a possible mechanism to take non-Project traffic into account but it does not require this: the City “may also take actual traffic counts and operations at the mitigation locations into account (funded by the applicant), in determining when specific improvements need to be constructed.” The permissive “may” instead of the mandatory “shall” in this sentence means that taking non-Project traffic into account in determining the timing of the construction of improvements is not enforceable because it is not required. Furthermore, the passive voice (“when specific improvements need to be constructed”) does not clearly impose any mitigation obligation on the Project. Finally, the parenthetical “(funded by the applicant)” is simply unclear.

TRA-2 should be rewritten to eliminate the trigger point concept entirely. TRA-2 should provide that 1) no occupancy permit shall be issued until improvements necessary to maintain adequate levels of service have been constructed; 2) the Project shall pay a fair share of the cost of needed improvements if the improvements are in the CIP and are scheduled for completion before occupancy, and those fair share payments shall be paid by all phases of the Project; 3) if the improvements are not in the CIP or are not scheduled to be completed before occupancy, the Project shall construct the improvement and be credited for cost in excess of its fair share. Unless this revision is made, there is no enforceable, effective mitigation. Furthermore, unless this revision is made, there is no assurance that the Project will be consistent with the BRP, which requires maintenance of a Level of Service D on all facilities.

b. MM TRA-3

TRA-3 only requires a fair share payment when Project-related trips reach a trigger threshold. Again, these trigger thresholds ignore the need to construct improvements as soon as exiting traffic plus Project traffic plus future growth in non-Project traffic results in unacceptable level of service. Again, this would permit free-riding by the initial Project phases.

TRA-3 should be rewritten to eliminate the trigger point concept entirely. TRA-3 should provide that 1) no occupancy permit shall be issued until improvements necessary to maintain adequate levels of service have been constructed, , and those fair share payments shall be paid by all phases of the Project; 2) the Project shall pay a fair share of the cost of needed improvements if the improvements are in the CIP and are scheduled for completion before occupancy; 3) if the improvements are not in the CIP or are not scheduled to be completed before occupancy, the Project shall construct the improvement and be credited for cost in excess of its fair share, where that fair share includes a share for all phases of the Project. Unless this revision is made, there is no enforceable, effective mitigation. Furthermore, unless this revision is made, there is no assurance that the Project will be consistent with the BRP, which requires maintenance of a Level of Service D on all facilities.

c. MM TRA-4 through TRA-6

TRA-4 through TRA-6 apply to traffic facilities within the City of Marina. These measures also only requires a fair share payment when Project-related trips reach the trigger threshold from Table 4.17-15. Again, this ignores the need to construct improvements as soon as exiting traffic plus Project traffic plus future growth in non-Project traffic results in unacceptable level of service. Again, this would permit free-riding by the initial Project phases.

All three mitigation measures should be rewritten to provide that that 1) no occupancy permit shall be issued until improvements necessary to maintain adequate levels of service have been constructed, 2) the Project shall pay a fair share of the cost of needed improvements, which are in the Marina CIP, and those fair share payments shall be paid by all phases of the Project. If for some reason, the City of Marina were to refuse the fair share payments, which seems unlikely, then the only resolution consistent with the BRP is that no occupancy permits be issued where LOS for facilities on the former Fort Ord are projected to operate below LOS D.

24. Analysis and mitigation of segment impacts to Gigling Road are inadequate.

The DEIR identifies significant impacts to two segments of Gigling Road. DEIR, p. 4.17-81. The DEIR proposes Mitigation Measure TRA-7 as mitigation, which calls for

payment of “the appropriate FORA impact fee” but only when the project generates 10,500 daily trips.³ DEIR 4.17-85.

Mitigation measure TRA-7 also employs a trigger point for mitigation to a segment of Gigling Road, identified as 10,500 daily trips. The DEIR does not explain how this trigger point was determined. Please explain the basis of this trigger point.

If the mitigation was based on the same approach as the DEIR employed for intersection mitigation under TRA-2 through TRA-6, then the trigger point would reflect the point at which the Project-related trips plus existing trips would result in unacceptable service. As discussed above, this is not an adequate approach to mitigation under CEQA because it does not account for the actual cumulative impact, it fails to assess the early phases of the project for their share of the impact, and it is inconsistent with the BRP requirement that LOS not be allowed to degrade below LOS D.

TRA-7 should be revised to provide that 1) no occupancy permit shall be issued until improvements necessary to maintain adequate levels of service have been constructed; 2) the Project shall pay a fair share of the cost of needed improvements if the improvements are in the CIP and are scheduled for completion before occupancy, and those fair share payments shall be paid by all phases of the Project; 3) if the improvements are not in the CIP or are not scheduled to be completed before occupancy, the Project shall construct the improvement and be credited for cost in excess of its fair share, where that fair share includes a share for all phases of the Project. Unless this revision is made, there is no enforceable, effective mitigation. Furthermore, unless this revision is made, there is no assurance that the Project will be consistent with the BRP, which requires maintenance of a Level of Service D on all facilities.

25. Analysis and mitigation for traffic impacts of special events is inadequate.

The DEIR fails to explain why the preparation of a Special Events Traffic and Emergency Services Management Plan called for by TRA-8 is deferred. Please explain why this plan, or at least a sample of such a plan based on projected conditions, has not been presented to the public.

TRA-8 lists some possible traffic control measures, but it does not actually require that any of the listed measures be implemented (“[t]hese measures may include . . .”). The

³ The DEIR claims that Table 4.17-14, “Existing With Project Intersection LOS (Without and With Mitigation),” shows that the Gigling segments will operate at LOS A with mitigation. DEIR 4.17-81. The referenced table only evaluates intersections, not segments. The DEIR provides no evidence that the proposed mitigation would be effective, even if it were constructed timely. The omission must be remedied.

public has no idea what measures will actually be employed, and what impacts those measures may mitigate or what impacts they may cause.

TRA-8 contains no performance standards other than the requirement that the Events Management Plan be “deemed feasible and adequate by the City of Seaside Public Works and Emergency Services Departments.” DEIR 4.17-85. CEQA does not permit the deferral of mitigation without performance standards. Here, the DEIR cannot identify performance standards because it has failed to identify what counts as a significant impact from special events traffic. The analysis references a “potentially significant number of vehicles” and “traffic congestion” but does not tell the public what number of vehicles or level of congestion will occur, where the congestion will occur, and what level of congestion is deemed a significant impact requiring mitigation. DEIR 4.17-81. Without that information, there is no way the public or City officials could determine if an Events Management Plan is sufficient mitigation. The EIR must be revised and recirculated to provide an intelligible analysis of special events traffic and enforceable performance standards for necessary mitigation. The performance standards must specify service standards for all affected traffic facilities and describe feasible methods to attain these standards.

CEQA does not permit the delegation of mitigation away from the legislative body that is responsible to approve the Project. The City Council, not the City of Seaside Public Works and Emergency Services Departments, must approve adequate mitigation, and it must do so before approving the Project. While the formulation of certain aspects of the mitigation may be deferred, the City Council must provide guidance in the form of performance standards and acceptable mechanisms for attaining those standards.

Finally, feasibility of mitigation must be determined by the City Council before the City makes findings to approve the Project, not subsequently by the City of Seaside Public Works and Emergency Services Departments. Because the DEIR does not identify the required Events Management Plan elements or the performance specifications for the plan, and because it provides no assessment of the efficacy of an Events Management Plan that would contain these elements and meet these performance standards, feasibility cannot be determined.

26. The DEIR fails to clarify what non-Project traffic is included in the interim year 2018 analysis.

Please explain whether the analysis of interim year 2018 conditions assumed any growth in non-Project traffic over existing conditions baseline traffic.

If so, please identify the source of the assumed increases and what specific assumptions were made about the future cumulative projects contributing traffic.

If not, please explain why growth in traffic was not assumed and provide a new assessment that does include expected growth in non-Project traffic.

27. The DEIR fails to evaluate impacts to freeway ramps and to freeway and road segments under interim year 2018 conditions.

The DEIR presents a scenario for the year 2018 that assumes construction of the Eastside Parkway. The analysis considers only the effect of this new facility and Project traffic on intersection performance. Please provide an analysis of the effect of the new facility and Project traffic on freeway segments, roadway segments, and freeway ramps.

28. The DEIR fails to propose mitigation for impacts to intersection 49 (SR-1 NB Ramps/Reservation Road) under interim year 2018 conditions.

The DEIR identifies a significant impact under interim year 2018 conditions to intersection 49, SR-1 NB Ramps/Reservation Road, in Table 4.17-19. No mitigation is proposed for this significant impact, yet the DEIR does not find that mitigation is infeasible. Instead, the DEIR inexplicably indicates that intersection 49 would have an acceptable service level post-mitigation in Table 4.17-20. Please identify the proposed mitigation for this impact, if there is any.

29. The DEIR fails to evaluate or propose ramp metering as mitigation.

The DEIR identifies significant and unavoidable impacts to numerous freeway ramps. The DEIR concludes that these impacts must remain unavoidably significant because ramp widening is infeasible. However, ramp metering may reduce these significant impacts even if they are not completely avoided. Despite Caltrans request that the EIR consider ramp metering as mitigation, the DEIR fails to evaluate or propose this mitigation strategy. This mitigation must be evaluated and proposed in a revised DEIR.

30. Mitigation Measures for Interim year 2018 conditions are not adequately specified; actual construction of needed improvements must be required before issuance of building permits, regardless of jurisdiction.

The DEIR fails to clarify whether the applicant must ensure actual construction of the improvements identified in Mitigation Measures TRA-9 through TRA-15. Each measure should be revised as necessary to make it clear that the applicant must ensure that the necessary improvements are actually constructed, as opposed to merely paying the fair share. The mere payment of a fair share does not ensure actual mitigation.

Nor is the timing of the required construction of improvements made clear. TRA-9 calls for the Applicant to “install or fund the improvements” prior to issuance of building permits. Although the specification that action must occur before issuance of building permits is appropriate, the action of merely funding the improvements is not sufficient. TRA-10 through TRA-15 are silent on the timing of the construction improvements.

Each measure should be revised to require that the applicant ensure actual construction of the improvements prior to issuance of any building permits for the Project.

TRA-10 through TRA-15 involve improvements that are outside the City of Seaside's jurisdiction. As written, the Mitigation Measures provide that the impact may be deemed significant and unavoidable if the relevant jurisdiction will not permit the improvement to be constructed or accept the fair share payment. However, as discussed above, the BRP bars approval of a project unless improvements are actually in place to maintain LOS D. This means that the Project may not proceed with unavoidably significant impacts to traffic facilities on former Fort Ord lands that involve an LOS below LOS D – no matter what overriding considerations are cited. Accordingly, TRA-10 through TRA-15 should be revised to provide that no building permits shall be issued unless and until agreements have been reached with the affected jurisdictions that would ensure the actual construction of improvements sufficient to maintain LOS D on the former Fort Ord lands.

31. The DEIR fails to assess impacts to SR 68.

SR 68 operates at unacceptable levels of service and is projected to continue to do so through 2030 because mitigation of cumulative impacts is not financially feasible. The DEIR projects that 6% of Project trips will use SR 68 north of Reservation Road. DEIR Figure 4.17-9. Despite this, the DEIR provides no assessment or mitigation for Project impacts to this heavily congested corridor. Note that the DEIR does assess impacts to some facilities that are projected to experience only 4% of project trips, e.g., Broadway Avenue in Seaside. There is no good reason to omit an analysis and mitigation of SR 68 impacts, which are likely to be found to be significant and unavoidable.

32. The DEIR fails to explain its contention that payment of FORA fees will “lessen” freeway segment and ramp impacts.

The DEIR contends that “payment of FORA fees would lessen the Project’s cumulative impacts on SR-1’s freeway on-ramps” even though it is not feasible to widen these ramps. DEIR 4.17-128. The DEIR also contends that “payment of FORA fees would lessen the Project’s cumulative impacts on SR-1’s freeway mainline segments,” even though these segments cannot be widened. DEIR 4.17-127. Please explain how payment of FORA fees would lessen Project impacts to freeway segments and on-ramps. Please identify the specific improvements that would lessen these impacts and by how much these impacts would be lessened.

AIR QUALITY

33. Air quality analysis contains erroneous or irrelevant data and references.

The DEIR references South Coast Air Quality Management District (“SCAQMD”) significance thresholds. DEIR 4.2-1. Please explain the relevance to the North Central Coast Air Basin (“NCCAB”).

Table 4.2-1 identifies air quality data for 2010 to 2012. The Table should be updated to include 2013-2014 data.

Tables 4.2-3 and 4.2-5 identify 550 lbs/day of CO emissions as a threshold for operational emissions. This threshold applies only to stationary source CO emissions, not operational emissions.

The DEIR references the conformity process requiring that certain general and transportation projects conform to the State Implementation Plan (“SIP”) (p. 4.2-11). Since the NCCAB is in attainment of the federal ozone standard, conformity procedures no longer apply.

34. Air quality consistency and cumulative analysis is inadequate.

The DEIR states that consistency with the Air Quality Management Plan (“AQMP”) is based on whether a project is consistent with regional development and transportation plans. DEIR 4.2-8. This is incorrect. Consistency is based on a project’s consistency with Association of Monterey Bay Area Governments (“AMBAG”) regional population and housing forecasts.

Please see Monterey Bay Unified Air Pollution Control District (“MBUAPCD”) CEQA Guidelines Consistency Procedure, which is available on-line. Per the procedure,

“A consistency determination is a process by which the Lead Agency demonstrates that the population associated with the proposed growth inducing projects in their area is accommodated by AMBAG’s regional forecasts. AMBAG’s regional forecasts for population and dwelling units are embedded in the emission inventory projections used in the regional Air Quality Management Plan (AQMP). Project which are consistent with AMBAG’s regional forecasts have been accommodated in the AQMP and are therefore consistent with the AQMP. Typical growth inducing projects include housing, apartment and condo developments.”

The procedure outlines the steps to determine consistency.

The DEIR states, “[p]roject emissions that are not accounted for in the AQMP’s emission inventory are considered a significant cumulative impact to regional air quality.” DEIR 4.2-11. This is correct; however, it conflicts with the earlier statement at DEIR page 4.2-8.

The Air Quality Plan Consistency analysis (p. 4.2-26) and Cumulative Impact Analysis (p. 4.2-27) must be revised to address the Consistency Procedure referenced above. The data should be included in a revised DEIR.

GHG EMISSION IMPACTS

35. Sustainable Communities Strategy adoption.

The DEIR states that AMBAG is required to adopt a Sustainable Communities Strategy (“SCS”) in the next Metropolitan Transportation Plan. The DEIR should be amended to state the SCS was adopted in 2014.

36. Construction emissions should be amortized over 10 years.

Table 4.6-1 shows a total of 1459.62 MT/Y of CO₂eq construction emissions amortized over 30 years. Table 2.1 Mitigated Construction (Appendix 10.2, p. 158) shows construction occurring over a 10 years; therefore, emissions should be amortized for 10 years rather than 30 years. Table 4.6-1 should be amended to show a total of 3378.84 MT/Y of CO₂eq mitigated construction emissions for the first 10 years. Table 4.6-1 should identify total emissions for the first 10 years (51,093.49 MTCO₂eq/year) and total emissions for the last 20 years (47,714.65 MTCO₂eq/year).

37. DEIR fails to assess GHG impacts from loss of 41,000 trees.

The DEIR fails to account for the carbon release and loss of carbon sequestration from the loss of 41,000 oak trees. This information should be included in a recirculated DEIR.

38. DEIR fails to assess methane emissions.

The DEIR fails to evaluate and quantify the methane emissions from Project-generated manure. Methane is a much more potent GHG than carbon dioxide. Methane impacts should be included in a recirculated DEIR.

39. The DEIR takes credit for GHG reductions that are not enforceable and may not occur.

The DEIR identifies a number of Project design features that would reduce GHG emissions. DEIR 4.6-15 to 4.6-17. The DEIR acknowledges that Architectural Design Guidelines are not compulsory (DEIR 4.6-17) and, therefore, purports to set out the design features that would mitigate GHG emissions in Mitigation Measure GHG-1. However, the mitigation measure does not require implementation of each feature for which the DEIR takes a GHG emission reduction credit.

The following GHG reduction features are identified as “Project design features and mitigation measures incorporated in the emissions modeling” (DEIR 4.6-17 to 4.7-18) but are not included in Mitigation Measure GHG-1:

- Increased transit accessibility
- Expanded transit network

- Provide transit subsidies to employees
- Install high efficiency lights for public street and area lighting
- Water-efficient irrigation systems
- No more than 30% of single-family residential lot coverage can use turf material
- Institute recycling and composting services to reduce solid waste . . . by at least 50%

Mitigation credit for these features should not be taken unless they are identified as enforceable mitigation measures. Note, for example, that provision of transit subsidies to employees is not listed in GHG-1 and is not otherwise identified as an enforceable condition; the DEIR includes this feature in the list of the (non-compulsory) Architectural Design Guidelines as a requirement merely to “encourage” commercial and retail owners to provide free or low-cost transit passes. DEIR 4.6-17.

Each of these features should be identified as required mitigation.

Furthermore, as discussed further below, some of these features are not adequately specified. Please explain what constitutes “increased transit accessibility,” “expanded transit network,” “high efficiency lights,” and “water-efficient irrigation systems.” Please identify an objective standard by which the public can determine whether the Project does in fact provide these features and by which the public can monitor the implementation of mitigation.

40. The DEIR fails to provide facts and analysis to support the “mitigated” GHG emissions.

The DEIR purports to identify both unmitigated (“business as usual”) and mitigated GHG emissions in Tables 4.6-1 and 4.6-2. The CO₂eq data in these tables are apparently derived from Appendix 10.2 (pdf pages 252-266), which are the output from the “CalEEMod” emissions modeling software. The DEIR fails to provide any coherent analytical route to connect the design features purportedly reducing GHG emissions with the large reductions in GHG emissions stated by category in Table 4.6-2. As set out below, the DEIR fails adequately to describe, specify, quantify, or justify each GHG emission reduction feature.

a. The DEIR must consistently describe GHG reduction features.

The DEIR does not consistently describe the GHG reduction features or measures in the four places they are listed in the DEIR and Appendix 10.2. These four places include the list of Project design features in the Architectural Design Guidelines (DEIR pp. 4.6-15 to 4.6-17); the bullet points listing “Project design features and mitigation measures incorporated in the emissions modeling” (DEIR pp. 4.6-17 to 4.6-18); the mitigation measures in GHG-1 (DEIR 4.6-19 to 4.6-20); and the CalEEMod emissions modeling in Appendix 10.2 (see the two to four word captions in the CalEEMod output at sections

4.1, 5.1, 6.1, and 7.1). The features are identified with different verbiage in these four places.

Thus, the public cannot track the inconsistently and poorly described features identified in three places in the DEIR and place each feature into a one-to-one relation with the mitigation features very cursorily identified and quantified in broad categories in the CalEEMod output.

For example, the CalEEMod output lists the following under section 7.1 for the broad category of water mitigation features: “use reclaimed water, install low flow bathroom faucet, install low flow kitchen faucet, install low flow toilet, install low flow shower, turf reduction.” Mitigation Measure GHG-1 calls for low-flow faucets and toilets, but makes no mention of reclaimed water or turf reduction. The design features in the Architectural Design Guidelines (DEIR pp. 4.6-15 to 4.6-17) mention that reclaimed water may be available eventually and that pipes will be installed for it, but elsewhere the DEIR acknowledges that the reclaimed water project is uncertain and accordingly may not be assumed as a source of water supply. And, as noted, there is no mandate for turf reduction and no specification of a turf reduction standard. Credits cannot be taken for features that are neither enforceable mitigation nor clearly part of a committed Project design.

The CalEEMod output lists “institute recycling and composting services” under section 8.1 but GHG-1 makes no mention of it.

The CalEEMod output lists low VOC paint and exclusive use of natural gas hearths in section 6.1, but again GHG-1 makes no mention of these requirements, which are also not listed in the Architectural Design Guidelines (DEIR pp. 4.6-15 to 4.6-17) or the bullet points listing “Project design features and mitigation measures incorporated in the emissions modeling” (DEIR pp. 4.6-17 to 4.6-18).

The CalEEMod output lists “install high efficiency lighting” in section 5.1, but this feature is not in GHG-1 or in the Architectural Design Guidelines (DEIR pp. 4.6-15 to 4.6-17, but it does appear in the bullet points listing “Project design features and mitigation measures incorporated in the emissions modeling” (DEIR pp. 4.6-17 to 4.6-18).

b. The DEIR must adequately specify the GHG reduction features.

The DEIR does not adequately specify the GHG reduction features. For example, CalEEMod lists a number of features under section 4.1 related to transportation, including “increase density, increase diversity, increase transit accessibility, integrate below market rate housing, improve pedestrian network, expand transit network, implement trip reduction program, and transit subsidy.” However, there is no standard identified in the DEIR for what counts as “increased density” or “increased diversity” or an “expanded transit network” or a “water-efficient irrigation system.”

Some of these terms may be defined in the literature, but the EIR does not tell the public if it is relying on the literature, and, if so, what definition is being applied and from what study. For example, the California Air Pollution Control Officers Association (“CAPCOA”) publication *Quantifying Greenhouse Gas Mitigation Measures* defines terms like “increased density” and “increased diversity,” but the public cannot determine if the EIR is using that definition or another. See CAPCOA *Quantifying Greenhouse Gas Mitigation Measures*, 2010, pp. 155-161, available at <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.

Each GHG measure must be defined so that the public can determine what specific characteristics of the Project or mitigation measures the EIR claims will actually reduce GHG emissions. If the definition is based on the literature, that literature should be cited. If not, the DEIR must explain the source of its assumption that a particular feature will result in a particular reduction in GHG emissions.

- c. The DEIR must identify the GHG reduction taken for each measure or feature.

The DEIR does not identify the GHG reduction taken for each measure or feature. Instead, the public is asked to accept a black-box approach in which all the moving parts of the analysis occur in a model (CalEEMod) for which only the output is provided. Unfortunately, that output is aggregated by broad category (e.g., mobile, area, energy, water, waste) in the CalEEMod output and in Table 4.6-2, so the public cannot even guess at the assumed efficacy of the individual measures within that category.

The public has no means to determine if the reductions for particular features are reasonable if those reductions are not even identified. For example, what is the reduction taken for each feature listed in CalEEMod at section 4.1 including “increase density, increase diversity, increase transit accessibility, integrate below market rate housing, improve pedestrian network, expand transit network, implement trip reduction program, and transit subsidy?” What is the credit taken for increased pedestrian access network, bicycle and walking paths, voluntary trip reductions, low flow faucets, Energy Star appliances, dual pane windows, and recycling containers in Mitigation Measure GHG-1? What credits are taken for each of the bulleted items listed at the top of DEIR page 4.6-18?

The DEIR must be revised and recirculated to provide the specific GHG reduction taken for each measure.

- d. The DEIR must provide facts and analysis to justify the effectiveness (e.g., percent reduction in emissions or vehicle miles travelled) of each measure or feature.

The DEIR does not explain or justify the particular reduction claimed for each feature. GHG and vehicle trip reduction measures typically may have a wide range of effectiveness, which depends on an analysis of the specific measure implemented and the surrounding circumstances. For example, CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures* identifies a wide range of effectiveness in reducing vehicle miles travelled ("VMT") for the following transportation mitigation measures that are claimed in the DEIR (or are similar to the reductions claimed):

- Increase Density 1.5 to 30%
- Increase Diversity 9.0 to 30%
- Increase Transit Accessibility 0.5 to 24.6%
- Integrate Below Market Rate Housing 0.04 to 1.2%
- Improve Pedestrian Network 0.1 to 2%
- Expand Transit Network 0.02 to 2.5%
- Implement Trip Reduction Program (Voluntary) 1.0 to 6.2%
- Transit Subsidy 0.3 to 20%. (CAPCOA, Table 6.2, pp. 65-67)

For example, according to CAPCOA, the percent reduction attributable to increased density depends on the number of housing or job units per acre; an assumption about the elasticity of VMT with respect to that density measure, which must be justified from empirical studies in the literature; baseline VMT data from the ITE Trip Generation manual; and application of caps on the percentage increase in units per acre and on the maximum percent VMT reduction. CAPCOA, pp. 155-158. If the DEIR uses this method, it should provide this information. If it uses some other method, it should spell out the relevant parameters and values and cite the empirical basis for the reductions. For most of the transportation-related VMT reductions, CAPCOA cites empirical studies that justify the conclusion that the feature will in fact reduce VMT. If the DEIR is relying on studies, they must be cited.

CAPCOA identifies similarly large ranges of effectiveness for other, non-transportation measures, which also depend on the specifics of the feature and the surrounding circumstances. CAPCOA provides methods for estimating the actual effectiveness of proposed measures; and these methods are based on identified empirical research identified in CAPCOA. For example, according to CAPCOA, the GHG reduction attributable to installing higher efficiency public street and area lighting depends on the number of lighting heads, the power rating of the lights, and the carbon intensity of the local utility. CAPCOA, pp. 115-117. Again, the DEIR provides no information that would enable the public to understand how the specific percent reductions in non-transportation GHG emissions were determined and justified.

The DEIR must be revised and recirculated to provide the missing facts and analysis for each specific VMT or GHG reduction claimed.

- e. The DEIR must assess and apply the upper limits applicable to GHG reductions since multiple features are proposed.

CAPCOA provides empirically-based methods for determining the upper limits of combined GHG mitigation measures, because many of the measures tend to overlap. For example, increased density facilitates use of transit and other alternative transportation modalities. In order to avoid double-counting the benefits of various land-use and transportation measures, CAPCOA provides an analysis of the maximum benefits from combined strategies. Here, the DEIR provides no discussion or analysis of the possibility that the total emissions reductions claimed may involve double-counting the benefits of overlapping features. For example, the total VMT reductions of 15% exceed the upper limit of 10% that CAPCOA finds to be applicable for suburban land uses, even for those suburban land uses that include diverse uses, workforce housing, and project-specific transit (and project-specific transit is not present here). CAPCOA, p. 58. The DEIR must explain whether and how its analysis took any cognizance of the empirical studies that limit total GHG reductions when multiple GHG reduction features are proposed.

41. The GHG analysis fails to assess the effects of partial Project construction.

As discussed above, the water supply analysis proposed mitigation that would bar completion of the Project in the event that a sufficient water supply is not available. The water supply analysis assumes that there may not be sufficient water for Phases 4-6 of the Project, which include most of the commercial retail and job-generating uses. DEIR 4.19-23. Although the water supply analysis makes a particular set of assumptions about Project phasing, nothing in the proposed Project description of the DEIR actually requires that the Project be phased in a particular order, or even completed. The Phasing discussion in section 8.2 of the Specific Plan explicitly states that “the above referenced phasing program is subject to change based upon market conditions, absorption rates, infrastructure extensions and product mix requirements.” Specific Plan, p. 8-2. In short, the developer may build any portions of the Project that seem profitable and delay or abandon the rest of the plan. For example, the developer could construct only the residential portions.

As discussed above, in the event that the commercial retail and job-creating uses were not constructed or were significantly delayed, the internal capture rate would be substantially reduced because residents would find fewer on-site shopping and vocational opportunities. External trips and VMT by Project residents would necessarily increase.

The DEIR should be revised and recirculated to disclose the VMT and GHG consequences of the partial development of the Project site based on the admitted possibility that there will not be sufficient water. Furthermore, unless the DEIR proposes a binding phasing plan that would assure a balanced Multi-Use Development that continues to support a 28% internal capture, the partial build-out analysis should be premised on the worst case traffic scenarios, including the scenarios that generate the most external trips (e.g., an all-residential build-out).

Again, as discussed above, the DEIR's discussion of the Modified Project in the Alternatives section concludes erroneously that a project consisting largely of residential uses would have "proportionate traffic volumes" despite the elimination of most of the commercial retail and job-creating uses. DEIR 6-42. This non-quantitative analysis fails to assess the likely change in internal capture and VMT which would result as residents were forced to make external trips for shopping and work. This should be taken into account in assessing the GHG impacts of a partial project; and the Alternative section should be revised to correct the failure to reflect the change in internal capture that would result from an unbalanced project.

42. Appendix 10.2 VMT data are not consistent.

Appendix 10.2, pdf p. 237, Table 4.2 shows unmitigated and mitigated winter VMT of 62,824,956 and 53,910,831, respectively. Appendix 10.2, pdf p. 246, Table 4.2 shows summer VMT data that is the same as on p. 237. Appendix 10.2, pdf p. 255, Table 4.2 shows unmitigated and mitigated annual VMT of 62,824,956 and 52,709,469 respectively. Please explain why annual VMT data vary if the summer and winter VMT are the same.

Please explain why the tables include trip rates for the Arena land use but do not contain VMT data for that use.

43. Additional GHG mitigation should be proposed.

The DEIR concludes the Project would have significant and unavoidable cumulative impacts on climate change. DEIR 4.6-22. This conclusion requires that the DEIR propose adoption of all feasible mitigation measures.

While the DEIR identifies mitigation measures included in the Architectural Design Guidelines, the DEIR indicates that these measures are not compulsory. DEIR 4.6-17. Their inclusion in the Design Guidelines indicates they are feasible measures. Even if some of these measures might be considered to be features of the Project itself, the DEIR's inconsistency in identifying and specifying these features, and the lack of commitment in the Specific Plan to the actual construction of all phases of the Project, requires treatment of these features as enforceable conditions to ensure that they are actually adopted.

Therefore, the following additional mitigation measures should be proposed:

- Incorporate Title 24, Part 6, California Energy Efficiency Standards for Residential and Nonresidential Buildings and Title 24, Part II, California Green building Standards for low-rise residential apartments and dwellings.

- 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.
- Use reclaimed water when available for commercial and multi-family landscaping and design outdoor water features for low flow pumps and places where shading can be provided.
- Use non-turf material for 70% of the Project’s residential lots, including the footprint of the houses.
- Install water efficient irrigation systems.
- Use low-impact development practices.
- Construct reclaimed water service infrastructure for the eventual availability of recycled water service.
- Provide educational information about water conservation.
- Integrate reuse and recycling facilities into the Project.
- 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.
- 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.

The following mitigation measures were identified in the Pebble Beach Affordable Housing DEIR (p. 3.4-16, Monterey County Planning, April 2015) as feasible. They should be used to reduce GHG construction emissions:

- 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.

The following mitigation measures were identified in the Pebble Beach Affordable Housing DEIR (p. 3.4-18, Monterey County Planning, April 2015) as feasible. They should be used to reduce operational GHG emissions:

- 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 solar water heaters.
- Install tankless water heaters.
- HVAC duct sealing.
- Increase roof/ceiling insulation.
- Alternative Energy Generation
- Install onsite solar facilities.
- Install high-efficiency area lighting.
- Maximize interior day light.
- Provide electric vehicle charging stations.
- Install rainwater collection systems.
- Install low-water use appliances and fixtures.
- Restrict the use of water for cleaning outdoor surfaces and prohibit systems that apply water to non-vegetated surfaces.
- 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

Guidance for specifying and quantifying these mitigation measures is available in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures*, Chapter 7. The DEIR should assess the efficacy of these additional mitigation measures and re-determine the significance of the GHG impact under post-mitigation conditions.

NOISE

44. Duration of noise measurement is inadequate

Baseline noise measurements were taken on a single day at four locations. DEIR 4.10-2 to 4.10-3. Each location was measured for a total of ten minutes. A ten-minute sample is not sufficiently representative of existing noise levels to determine baseline conditions for analysis.

For example, the City noise standards are expressed in terms of the Community Noise Equivalent Level (CNEL) descriptor and some of the BRP noise standards are also expressed in terms of the CNEL or Day/Night Average (DNL) descriptors. DEIR, 4.10-7 to 4.10-10. Both the CNEL and DNL descriptors purport to describe a 24-hour average noise level, with appropriate penalties for noise at night. A ten-minute sample taken at mid-day cannot provide a meaningful basis to identify baseline 24-hour average noise levels.

As discussed below, baseline noise levels are critical to determining whether Project-related noise constitutes a significant impact due to Project-related increases in ambient noise levels. For example, BRP Noise Policies B-6, B-7, and B-8 bars new development that increases ambient noise levels by more than five dBA where ambient noise levels remain within the normally acceptable range, or by three dBA where ambient levels are above the normally acceptable range, all as measured by the DNL descriptor. Without adequate baseline measurements to determine ambient DNL levels, noise increases cannot be determined.

Please revise and recirculate the DEIR to include noise measurements that are of sufficient duration that they can reasonably represent existing 24-hour average noise conditions. As noted below, additional noise sampling locations are also required.

45. Selection of noise measurement locations is inadequate.

One critical threshold of significance for noise is whether there is a substantial permanent increase in noise levels above the levels existing without the Project. DEIR 4.10-12. In order to determine whether there will be such a substantial increase, ambient noise levels must be measured at all relevant areas that will be affected by Project-related noise increases.

Even if noise thresholds are not exceeded, there may be a significant impact due to a substantial increase in noise. Therefore, noise increases have the potential to significantly affect these areas. However, without ambient noise measurements, this cannot be determined.

Ambient noise levels were not measured at any of the areas to the east of the Project, which include open space used for passive recreation. No measurements were taken at any open space used for passive recreation or at any areas used for habitat management. DEIR 4.10-4.

The BRP clearly requires protection of open space from noise. The BRP establishes 50 dBA CNEL or LDN as the normally acceptable standard for open space, applicable to all noise sources, including non-transportation and transportation. DEIR 4.10-9, Table 4.10-6. Open space is also subject to the BRP's statistical noise performance standards for non-transportation sources expressed in terms of the number of minutes of various noise levels permitted in an hour (i.e., the Ln standards). DEIR 4.10-9, Table 4.10-7. Open

space is also subject to BRP Noise Policy B-8, limiting noise increments to three dbA Ldn at the property line.

Please revise and recirculate the EIR to include ambient noise monitoring at locations in the County/FORHA open space, the California State University at Monterey Bay (“CSUMB”) open space, and the Bureau of Land Management (“BLM”) open space/Fort Ord National Monument at locations that may be affected by Project noise.

46. Sensitive receptors are not identified.

The list of sensitive receptors at DEIR page 4.10-5 should be revised to include users of the open space surrounding the Project, including those using County/FORHA open space, the CSUMB open space, and the BLM open space/Fort Ord National Monument for recreation.

47. Thresholds of significance are not adequate.

Purportedly based on the CEQA Guidelines, the DEIR adopts thresholds for significance for noise impacts as follows:

- Project-level traffic noise: an increase of three dB from the Project where applicable exterior noise standards are exceeded for noise-sensitive land uses. DEIR 4.10-13.
- Cumulative traffic noise: Step one: there is a significant cumulative impact if the combined effect of future traffic, including the Project traffic, increases noise by three dB where applicable exterior noise standards would be exceeded for noise-sensitive land uses. DEIR 4.10-13. Step two: the Project itself causes one dB of the increase.
- Stationary noise: the Project causes noise in excess of the absolute standards in the City’s noise ordinance, SMC § 17.30.060.

As discussed below, these thresholds are not consistent with the CEQA Guidelines, the Base Reuse Plan, or with the City’s own noise ordinance.

- a. Statistical noise standards (Ln standards) from the BRP should be applied.

The DEIR fails to apply the BRP’s statistical noise standards for non-transportation sources, i.e., the standards that are expressed in terms of the maximum number of minutes permitted for various noise levels in a given hour. The DEIR identified these descriptors as “Exceedance Level (Ln)” standards and sets them out in its regulatory discussion, but then ignores them in its analysis. DEIR 4.10-3, 4.10-9, Table 4.10-7. The omission is critical because many of the stationary noise sources discussed would exceed these statistical noise Ln standards. For example, daytime event noise is not permitted to exceed 65 dBA at all, nor to exceed 60 dBA for more than one minute, nor to exceed 55 dBA for more than 5 minutes, nor to exceed 50 dBA for more than 15 minutes, nor to

exceed 45 dBA for more than 30 minutes, all measured at the property line. Nighttime Ln standards are five dBA stricter.

The DEIR does not consider or determine whether event noise or any other noise sources would meet these statistical Ln standards. Instead, the DEIR cites only the daily average (CNEL or DNL) noise standards in its discussion of stationary noise impacts, even when discussing short term noise impacts.

In this regard, we note that the City has failed to implement BRP Noise Element Program A-1.2. See FORA, Fort Ord Reuse Plan Reassessment Scoping Report, August 15, 2010, p. 4-135. This Program requires the City to adopt a noise ordinance that controls noise from non-transportation noise, including construction noise, based on the BRP's Noise Level Performance Standards for Non-Transportation Noise Sources, which are expressed as statistical Ln noise standards. See DEIR 4.10-9. The only quantitative standards in the City's noise ordinance are expressed in terms of daily average noise levels (CNEL standards). The statistical noise standards from the BRP are simply ignored.

- b. Noise increases should be considered significant even if an absolute standard is not exceeded as per the CEQA Guidelines.

The DEIR fails to recognize that a substantial noise increase may be significant regardless whether the resulting noise level does exceeds an absolute standard. The only noise increases that the DEIR treats as significant impacts are those that occur when an absolute noise standard is exceeded. This is inconsistent with the CEQA Guidelines, which treat substantial increases in noise as an independent and distinct significance criterion. DEIR 4.10-12. It is also inconsistent with BRP Noise Policy B-6, which prohibits approval of new development that increases noise by five dBA even where ambient DNL is within the normally acceptable noise range. DEIR 4.10-10.

The omission is critical because the DEIR fails to consider whether noise increases to relatively pristine open space areas may be significant even if some absolute standard is not exceeded. The DEIR also treats as less than significant the substantial increases from traffic noise in other areas, e.g., 5+ dBA increases.

- c. City's absolute standards apply to transportation as well as non-transportation sources as per the City code.

The DEIR thresholds of significance would permit transportation noise sources to exceed the City's noise standards by up to three dBA without mitigation. However, SMC § 17.30.060F bars new noise sensitive land uses where the standards will be exceeded by either existing non-transportation noise generators or by "projected levels of transportation noise." Thus, the City's noise ordinance bars siting any new uses, including any part of the Project, where unmitigated transportation noise would exceed the noise standards. Note that the City code bars any noise increase where existing noise

standards are not met. SMC § 17.30.060E)(a)(i). The error here is critical because the traffic noise analysis identifies a number of locations in which traffic noise at the property line would exceed standards. New development cannot be located in such areas.

48. Construction noise analysis is inadequate.

Construction noise was not adequately evaluated and is likely to be significant. The DEIR presents a table showing that construction equipment noise is substantial, but it provides no analysis that would demonstrate that the relevant noise standards would not be exceeded at the property line or for sensitive receptors beyond the property line. At a distance of 50 feet, every single source of construction noise in the DEIR's table 4.10-8 exceeds the statistical Ln standards mandated by the BRP. Compare DEIR Table 4.10-8 to 4.10-7. Even at much greater distances than 50 feet, these noises would exceed the statistical Ln standards. For example, grader noise is indicated to be 85 dB at 50 feet for 50% of the time. It is highly unlikely that grader noise could possibly meet the BRP's statistical noise Ln standard, which bars noise sources over 45 dB for more than 30 minutes in an hour at the property line.

The DEIR provides no analysis of the noise levels that would occur with the actual proposed construction equipment uses. Where will this equipment be deployed in relation to the property line and/or off-site sensitive uses? How many pieces of equipment will be uses simultaneously? How many minutes in the hour and how many hours in the day will it be used?

In addition, it is possible that construction noise may exceed the City's or the BRP's average daily noise standards (CNEL and DNL standards), based on the duration of equipment use. The DEIR fails to assess actual effects on average noise levels based on the expected use of construction equipment on the site.

The EIR must be revised and recirculated to provide an actual analysis of the impacts of construction noise based on the actually proposed use of noise-generating construction equipment. This is particularly critical given the expected duration of project buildout.

There is no evidence that proposed construction noise mitigation would result in meeting all applicable noise standards.

- Provisions for notice to adjacent residents will not reduce noise.
- There is no evidence that merely requiring that mufflers be operational will result in meeting noise standards; presumably the construction equipment noise data in Table 4.10-8 reflect equipment with operational mufflers, yet those data show noise levels well above the statistical noise standards.
- Provisions for complaint responses cannot assure that noise standards are not violated, particularly in the absence of any noise monitoring or performance standards in the mitigation provisions.

- There is no assurance that placing stationary noise sources to emit noise away from sensitive receptors will result in meeting noise standards; and, in any event, this will not mitigate mobile noise sources.
- Limiting construction hours to daytime hours will not ensure meeting the standards that do apply during daytime hours, e.g., the daytime statistical noise Ln standards.

Given the uncertainty of the analysis of impacts and the fact that the proposed mitigation is not known to be certain, the EIR may not defer the specifics of mitigation. Mitigation must be proposed that will ensure that relevant noise standards are actually met. Failing that, the City must acknowledge that construction noise is significant and unavoidable.

49. Vibration impacts analysis is inadequate.

The DEIR acknowledges that human annoyance caused by vibration impacts may be a significant impact and that this occurs when vibration is over the threshold for human perception for extended periods of time. The DEIR fails to provide any analysis to determine whether this would occur, focusing instead exclusively on impacts associated with structural damage. The DEIR must be revised and recirculated to provide this analysis and any necessary mitigation.

50. Stationary noise impacts analysis is inadequate.

The analysis of stationary noise impacts is deficient in a number of respects.

- a. Noise sources are not compared to the applicable BRP statistical noise standards.

The omission of any consideration whether Project noise would exceed the BRP statistical noise Ln standards is critical because many of the stationary noise sources discussed would apparently exceed these standards. For example, under the statistical noise standards, daytime event noise is not permitted to exceed 65 dBA at all, nor to exceed 60 dBA for more than one minute, nor to exceed 55 dBA for more than five minutes, nor to exceed 50 dBA for more than 15 minutes, nor to exceed 45 dBA for more than 30 minutes, all measured at the property line. Nighttime standards are five dBA stricter. Yet the DEIR did not consider whether event noise (or any other noise sources) would meet these standards.

The DEIR cites only the daily average (CNEL or DNL) noise standards in its discussion of stationary noise impacts, even when discussing short term noise impacts.

It is improbable that noise from swim events and equestrian events, especially outdoor events, could comply with the statistical Ln standards, as measured either at the property line or at the location of more distant receptors. The DEIR admits that these events will generate instances of noise up to 120 decibels; however, the maximum instantaneous allowed noise level is only 65 dBA at the property line. Even noise from the tennis

events may violate these standards, since the DEIR acknowledges that shouts can range to 105 decibels. The DEIR makes no effort to assess the statistical noise levels that may occur over periods of one minute, five minutes, fifteen minutes, or 30 minutes at the property line, but it appears likely that horse-racing events could easily generate noise levels over the Ln standards. The DEIR must be revised and recirculated to assess noise impacts based on the BRP's statistical noise standards applied at the property line.

b. Average noise impacts are not assessed for most stationary noise events.

The DEIR discussion of stationary noise impacts references daily average CNEL or LDN standards, but it fails actually to determine these average noise levels. See, e.g., DEIR 4.10-21 (citing the 55 dBA CNEL or LDN normally acceptable noise limit for residential uses according to the BRP). Instead, the analysis focuses on peak noise events and does not even purport to determine the actual 24 hour average noise levels generated by such activities as equestrian events, the corporation yard, and all-day swim meets. Indeed, the analysis confusingly compares maximum noise levels to standards for average daily noise. The DEIR must be revised and recirculated to assess noise impacts from these activities on a 24-hour average basis and to compare this noise to applicable daily average (CNEL or DNL) standards.

c. Impacts on open space are not assessed.

The DEIR ignores impacts to open space from stationary noise sources. The analysis focusses on residential receptors. However, open space uses will be closer to many noise sources than residential uses. The DEIR must be revised and recirculated to assess impacts to open space, based on both the statistical Ln standards discussed above and on the 50 dBA CNEL/LDN noise standard for passively used open space in the BRP. DEIR 4.10-9, Table 4.10-6.

d. Noise exceeding standards is a significant impact even if it is exempt from regulation.

The DEIR admits that noise from the City Corporation Yard and Fire Station will exceed applicable standards, but treats this noise as less than significant because, it claims, this noise is exempt from regulation under the City Code. If the noise may not legally be regulated, then the EIR may conclude that mitigation is infeasible. However, the impact itself must be acknowledged to be significant and the DEIR must be recirculated.

e. Limits on noise events are not enforceable.

In several places, the DEIR purports to minimize the severity of noise by asserting that noise events will be limited in number. For example, the DEIR states that there will be "only" 125 days of equestrian events annually with approximately 2,500 in attendance. DEIR 4.10-21. It states that a maximum of six all day swim meets are "expected" annually. DEIR 4.10-22. Even if these were tolerable impacts, there is nothing in the

mitigation measures or proposed conditions of approval that would limit noise events to this number or crowds to this size.

- f. Limiting events to daytime does not ensure that daytime standards will be met.

The DEIR repeatedly cites the fact that sports events are expected to occur during daytime hours. This fact is not relevant to determining whether the daytime statistical noise standards will in fact be met. Furthermore, as noted, the DEIR makes no effort actually to determine the stationary noise impacts based on the applicable average daily noise standards (CNEL or LDN standards).

51. Traffic noise analysis is inadequate.

The traffic noise analysis is deficient in a number of respects.

- a. Noise impacts are not assessed at the property line.

Although the purpose of exterior noise standards is to protect outdoor uses, the DEIR fails to identify the level of traffic noise that would occur at outdoor use areas in affected properties. The City's exterior noise standards are determined by measurement at the property line of the receiving property. SMC § 17.30.060E(a).

Instead of providing noise levels at affected property lines, the DEIR provides noise levels at 100 feet from the roadway centerline. This distance would include portions of affected properties that are adjacent to roadways. The DEIR must be revised and recirculated to provide traffic noise levels at the affected property lines so that the public can determine whether impacts are in excess of City and BRP standards.

- b. The DEIR fails to provide sufficient information to determine traffic noise impacts.

The DEIR makes it difficult to determine how the Project will affect noise levels at uses adjacent to affected roadway segments for two reasons. First, as noted above, the DEIR fails to determine noise levels at the property line of affected properties. Second, the DEIR fails to identify the land uses and the applicable noise standards for the uses that are adjacent to each roadway segment. The DEIR must be revised and recirculated to provide this information.

- c. The DEIR applies the wrong standard for normally acceptable residential land use noise levels.

The DEIR traffic noise analysis repeatedly states that 60 dBA CNEL is within the normally acceptable land use compatibility criteria for residences. DEIR 4.10-28, 4.10-25. This is not true, and not consistent with the discussion of stationary noise impacts, which admits that the relevant residential noise standard is at most 55 dBA. See, e.g.,

DEIR 4.10-19. Both the City and the BRP identify 55 dBA as the maximum normally acceptable residential land use. DEIR 4.10-7 (Table 4.10-5 – City standard for all residential uses), 4.10-9 (BRP standard in Table 4.10-6 for low-density, single-family, duplex, and mobile homes). Note that the DEIR does not even provide noise contour information for the 55 dBA level. However, the DEIR does identify numerous residential segments that would experience cumulative traffic noise in excess of 55 decibels at 100 feet from the centerline. See, e.g., DEIR 4.10-34 to 35. The DEIR must be revised and recirculated to provide an assessment based on the correct standard.

d. The DEIR fails to consider traffic noise impacts to passively used open space.

The BRP sets as standard of 50 dBA CNEL or LDN as normally acceptable for passively used open spaces. DEIR 4.10-9. The DEIR fails to assess how the Project traffic will affect open space adjacent to road segments affected by the Project. For example, CSUMB open space is adjacent to segments that will experience substantial noise increases and that may experience noise in excess of the open space standard. The DEIR must be revised and recirculated to provide an assessment of open space impacts.

e. The DEIR fails to apply the City's absolute noise standards to traffic noise in both the project-level and cumulative analyses.

As noted above, the DEIR thresholds of significance would permit transportation noise sources to exceed the City's noise standards by up to 3 dBA without mitigation. However, SMC § 17.30.060F bars new noise sensitive land uses where the standards will be exceeded by either existing non-transportation noise generators or by "projected levels of transportation noise." Thus, the City's noise ordinance bars siting any new uses, including any part of the Project, where unmitigated transportation noise would exceed the noise standards. Note that the City code bars any noise increase where existing noise standards are not met. SMC § 17.30.060E)(a)(i). The error here is critical because the traffic noise analysis identifies a number of locations in which it is likely that traffic noise at the property line would exceed standards. New development cannot be located in such areas and impacts to existing uses should be identified as significant.

Despite this, the DEIR improperly permits additional unmitigated noise even where the City's absolute standards are exceeded. This error is made in both the project-level and cumulative analyses.

Furthermore, the cumulative analysis improperly focuses only on noise increases from the combined effect of future projects. CEQA requires cumulative analysis to consider the combined effects of past and present projects, not just changes from future projects. The only way to incorporate this mandate into the analysis is to consider whether all sources of noise – past, present, and future – will exceed an absolute standard. For example, if the relevant planning standard is 55 dBA CNEL, then the DEIR must acknowledge that there is a significant cumulative impact if that standard is exceeded, regardless whether the cause of the absolute noise level is past, present, or future projects,

or any combination of these projects. Thus, for example, the DEIR must acknowledge that the standard may already be exceeded, and that there is already a significant cumulative impact, under existing conditions. The DEIR's approach to cumulative analysis misses this point entirely.

The DEIR must be revised and recirculated to identify each segment at which cumulative traffic noise exceeds the applicable standard for adjacent land uses. The DEIR must acknowledge that this exceedance constitutes a significant cumulative effect, regardless whether it is due to future projects or to existing and past projects. For each instance in which the relevant absolute standard is exceeded, the DEIR must then separately assess whether the Project makes a considerable contribution.

- f. The EIR fails to recognize that the worse the cumulative condition, the smaller the Project noise increment that should be deemed a considerable contribution.

The DEIR uses the same threshold, 1 decibel, to determine whether the Project noise increment is a considerable contribution to all significant cumulative noise impacts, regardless of the magnitude of that cumulative impact. DEIR 4.10-13. This is contrary to CEQA, which recognizes that a relatively small increment may be a considerable contribution when the cumulative impact is relatively large.

The stated rationale for the 1 decibel threshold for "considerable contribution" is that this is the threshold of perception. However, it is clear that repeated approvals of projects with individually imperceptible noise increments can result, and has resulted, in noise levels above absolute thresholds. The EIR provides no evidence that providing mitigation only for perceptible noise increments will provide an actual solution to the problem of cumulative traffic noise.

- g. Noise impacts are not acknowledged to be significant when the Project causes an absolute standard to be exceeded.

Furthermore, the DEIR fails to assess whether the Project itself causes an applicable noise standard to be exceeded. This is contrary to the CEQA guidelines, which identify a project-caused noise impact as significant if it would result in noise levels in excess of applicable standards. DEIR 4.10-12. For example, but for the Project, future noise on several Reservation Road segments would be less than 70 CNEL, but with the Project it will exceed this standard.

Furthermore, the Project will add noise to other segments that may not be in excess of existing standards without the Project, but which may cross the threshold with the Project; however, the DEIR does not assess this impact. Again, because the analysis fails to disclose the relevant noise standards and land uses for each affected segment, the DEIR fails assist the public or decision makers in assessing this impact.

The DEIR must be revised and recirculated to 1) determine noise levels at the property line of affected properties; 2) identify the land uses and applicable City and BRP noise standards for the affected land uses; and 3) identify any Project-caused exceedance of the applicable standard as a significant impact.

52. The Project fails to comply with BRP Noise Policies

The DEIR's contention that the project is consistent with BRP Noise Element Policies is inaccurate. DEIR 4.9-13 to 4.9-14. As discussed above, the Project does not comply with BRP Noise Policies.

- It fails to comply with Policy B-1 because noise exposure to existing uses will exceed the standards set out in Tables 4.10-6 and 4.10-7 and there is no evidence that compliance is infeasible.
- It fails to comply with Policy B-2 because noise from new development will exceed the standards set out in Tables 4.10-6 and 4.10-7.
- It fails to comply with Policy B-6 because noise from new development would be permitted to exceed the standards for noise increments at the property line identified in that policy.

There is no evidence of compliance with Policy B-8 because the EIR failed to evaluate ambient noise at any open space areas affected by the Project. Based on the EIR's discussions of both stationary and traffic noise, it is likely that the Project is inconsistent because it would be permitted to exceed the standards for noise increments at the property line identified in that policy.

FORA has acknowledged that the City has not implemented BRP Noise Programs A-1.2 requiring incorporation of statistical noise standards in its noise ordinance. FORA, Fort Ord Reuse Plan Reassessment Scoping Report, p. 4-135. Nor has the City implemented Noise Program B-1.1 (reduce adverse noise impacts to existing developed areas) and B-2.2 (ensure new development does not adversely affect existing or proposed uses), both of which depend on incorporating the statistical noise standards in its noise ordinance. Id. at 4-136 to 4-137.

LAND USE AND PLANNING

53. The DEIR fails to clarify the source of the purported development capacity limits, the status of the FORA consistency determination for the Seaside General Plan, or the remaining unused development capacity for the affected jurisdictions

The BRP set development capacity limits in order to protect various environmental resources. However, it is not clear that the Project is consistent with the development capacity limits in the BRP.

DEIR Table 4.9-1 purports to show the permitted development capacity of the Project site under the 1997 Fort Ord Reuse Plan Land Use Concept and Ultimate Development (“1997 Capacity Limit”) and, separately, under the 2012 Base Reuse Plan Reassessment Land Use Concept and East Garrison/Parker Flats Land Use Modification MOU (“2012 Capacity Limit”). DEIR 4.9-5.

The 1997 and 2012 capacity limits differ materially. For example, the 2012 Capacity Limit includes 2,248 residential units, which include 844 multi-family and high density residential units, whereas the 1997 Capacity Limit includes only 1,559 residential units, all of which must be single-family low-density residential units. Non-residential square footage is identified as substantially higher under the 2012 Capacity Limit as well. The DEIR states that the 1997 vs. 2012 capacity differences are due to “actions taken by various agencies since the 1997 BRP was adopted.” DEIR 4.9-4. However, the DEIR admits that “the BRP has not been revised to reflect these updated capacities.” DEIR 4.9-31. It is clear that the residential uses proposed by the Project are not consistent with the 1997 Development Capacity because the 1997 Development Capacity limits do not permit as many residential units and do not permit any high density units.

Please identify each action by taken by the “various agencies” that resulted in changes to the development capacity of the Project site between 1997 and 2012.

Please identify each amendment to the 1997 BRP that affected the permissible development capacity of the Project site.

The BRP Table 3.3-1 allocates future development capacity in Fort Ord to Marina, Seaside, and Monterey County. BRP Table 3.4-2 allocates types of development to each of these jurisdictions, including low, medium, and high density residential units, retail uses, mixed use development, visitor serving uses, and institutional/public facility uses. Please update these tables to reflect each amendment to the 1987 BRP that affects the development capacity for Seaside and Monterey County.

If there was not an amendment to the BRP to alter the 1997 development capacity limits applicable to the Project site, please explain how the Project could remain consistent with the BRP. For example, Table 4.9-6 indicates that the August 2004 Seaside General Plan designation permits 1,055 units of high density residential housing on the site. DEIR p. 4.9-22. Please explain how this could be consistent with the BRP, which does not permit high density housing at this location in its land use map.

Please indicate whether and when FORA found the 2004 Seaside General Plan to be consistent with the BRP. If FORA has not in fact found the current General Plan consistent with the BRP, please explain why not, and please explain what plans the City has to resolve its obligation to have FORA approve its General Plan before the City exercises land use authority over the Project site.

We note that FOR A may ignore the actual BRP land use designations in approving projects as consistent with the BRP as long as the jurisdiction does not exceed its Table 3.4-2 development capacity. This practice makes it impossible to assume that a project remains within the jurisdiction's development capacity entitlement just because it is consistent with BRP land use designations. We note also that this Project is not in fact consistent with the BRP's land use designations, which the DEIR fails to disclose.

Accordingly, please indicate the remaining unused development capacity for Seaside and Monterey County in terms of each of the land uses set out in Table 3.4-2. In responding, please show the Table 3.4-2 unit totals for all previously approved development capacity for Seaside and Monterey County by land use type, e.g., the numbers of previously approved units of low density residential, medium density residential, high density residential, Planned Development Mixed Use, etc. for each jurisdiction. Please provide the details of approved units by land use type for each previously approved project. Please also identify each amendment to the 1997 BRP or other planning action or development approval by FORA that affect the development capacity limits for Seaside and the County reflected in BRP Tables 3.3-1 and 3.4-2. Without this information, it is impossible to determine if there is in fact sufficient remaining development capacity in each category of land use to permit the Project..

54. The DEIR fails to discuss how the Project could be consistent with the BRP provisions for specific Planning Areas and Districts

The BRP explains that the Planning Areas and Districts were intended to reinforce the community design vision for the former Fort Ord to ensure coordinated development. BRP p. 142. The proposed project appears to ignore these Planning Area and District provisions.

The DEIR explains that the Project is located in City of Seaside's University Planning Area and Residential Planning Area and Monterey County's Eucalyptus Planning Area. In sections 3.9.2, 3.9.3, and 3.10.4, the BRP sets out specific provisions for each of these three Planning Areas and associated Districts, including projected uses by land use type; reserved acreage for specific land uses such as parks, schools, and roadways; and general development character and design objectives. The Project is not apparently consistent with the provisions. The DEIR does not address this issue.

Please explain how the Project could be consistent with the provisions for the three BRP Planning Areas and associated districts. Please address the provisions for land use types; reserved acreage for specific land uses such as parks, schools, and roadways; and general development character and design objectives.

55. The DEIR fails to explain how the Project could be consistent with the East Garrison/Parker Flats Land Swap Agreement

Table 4.9-1 purports to reflect development capacity for the Project site as a whole, and Table 4.9-3 purports to reflect development capacity for the portion of the Project site within the County of Monterey. DEIR 4.9-5 and 4.9-15. In both instances the Tables claim that the analysis reflects the East Garrison/Parker Flat Land Use Modification MOU.

In its December 14, 2012 Final Reassessment Report, FORA explained that the East Garrison/Parker Flat Land Use Modification MOU and the Zander report prepared in connection with the East Garrison/Parker Flats Land Swap Agreement (“LSA”) failed to resolve how the LSA affects land uses. Reassessment Report, pp. 3-73 to 3-74. The Final Reassessment Report suggests that these issues might be resolved in the context of a future consistency determination for the County’s 2010 General Plan. Id. at 3-74. However, FORA has declined to find that the 2010 Monterey County General Plan is consistent with the BRP. Without a resolution of this issue, the DEIR cannot claim that the Project is consistent with the LSA.

- a. The BRP originally called for 3,184 residential units on 520 acres with an acre of commercial use and a hotel at Parker Flats, but that level of development was altered by the LSA

As adopted, the BRP called for two Planning Districts in the Eucalyptus Road Planning Area: the University Corporate Center District and the Residential/Recreational Center District, also known as Parker Flats. Parker Flats was to include a large low-density residential area of about 520 acres accommodating about 3,184 units with some limited retail and a hotel, as follows:

“This District is designated to include a significant new residential area at the perimeter of the BLM lands and to link the POM Annex residential district in Seaside with the CSUMB housing areas north of Intergarrison Road. This district is designated as SFD Low Density Residential in order to provide the flexibility to retain portions of the significant oak woodland community. A focal point of this community could be a golf course and visitor-serving hotel.

Projected Land Uses:

Residential Land Use. This area will accommodate various density of residential land use in a total area of approximately 520 acres and accommodating approximately 3,184 dwelling units.

Retail and Services Land Use. A one-acre site is projected for convenience retail and services accommodating approximately 11,000 sq. ft..

Visitor-Serving Land Use. A 300-room hotel is projected with an 18-hole golf course on a total of approximately 194 acres.” BRP, p. 181.

However, in order to adopt the East Garrison Specific Plan, the County agreed to reduce the proposed future development at Parker Flats as mitigation. In particular, the East Garrison Specific Plan provides that loss of vegetation and wildlife habitat at East

Garrison will be “mitigated through the designation of 450 acres of habitat reserve at Parker Flats previously designated for development.” East Garrison Specific Plan, p. 5.

The 2010 Monterey County General Plan Land Use Policy LU-2.24 references the East Garrison Specific Plan and development agreements and provides that “[t]he General Plan shall, as applicable, be construed in a manner consistent with development as provided for in these specific plans and development agreements.” Thus, the County and the City in this EIR are bound to honor this East Garrison Specific Plan provision limiting future development at Parker Flats in interpreting the 2010 Monterey County General Plan.

The Zander Report, prepared in support of the MOU for the Land Swap Agreement, clearly contemplated that Parker Flats residential use would be reduced if not eliminated:

“The modifications proposed for Parker Flats would change the Base Reuse Plan designations for the area by removing the residential, light industrial, golf course and other uses to accommodate the MPC officer training and EVOC facilities. Parker Flats would also provide areas for the Central Coast Veterans Cemetery, the Monterey Horse Park and other potential development (Figure 5). The MPC facilities would require minor adjustments to the existing HMP and Base Reuse Plan boundaries associated with Range 45 (HMP polygon E21b.3, Base Reuse Plan polygon 21b) to allow improvement and reuse of the existing range area (Figure 6). The line between HMP-designated development and habitat reserve areas, which currently bisects Range 45, would need to be extended to the south to accommodate the entire improved range area. The polygon boundaries would also be adjusted to balance species gains and losses and avoid recently identified populations of listed plants (see discussion below). This revised use concept for Parker Flats would reduce the development footprint originally envisioned for the area and resolve outstanding land use conflicts on properties at Fort Ord scheduled for transfer to the County. The revised use designations would also allow approximately 380 acres adjacent to the NRMA and primary habitat corridor area to be added to the existing habitat reserve areas. In addition, large areas within the Monterey Horse Park section of Parker Flats, notably a central oak woodland reserve area comprising about 70 acres would remain in native habitat. With development of appropriate resource conservation and management requirements and identification of suitable resource management entities, the new habitat reserve areas would provide greater than a 2:1 replacement ratio for the habitat acreage lost at East Garrison as a result of the proposed expanded development there.³ These new reserve areas would also expand and enhance the habitat corridor connections to reserve areas (UC Natural Reserve, CSUMB, Landfill) to the north. However, because much of the maritime chaparral in the new reserve areas has been mechanically cleared to remove unexploded ordnance in preparation for transfer and development, the existing habitat values and species diversity in those areas may have been compromised (see further discussion below).” Zander, p. 11, emphasis added.

Significantly, the Zander Report contemplated that the changes would be made by changing the Base Reuse Plan. LandWatch is unaware that FORA has acted to implement the changes that were intended by the Land Swap Agreement, but we believe that it has not in fact taken any formal action on the matter.

- b. The 2010 Monterey County General Plan provisions state that allowable land uses at Parker Flats have been modified, but do not say how; thus, the 2010 Monterey County General Plan is incomplete and insufficient to guide future development or a consistency review

2010 General Plan's Fort Ord Master Plan ("FOMP") references the Land Swap Agreement and the requirement to preserve approximately 447 more acres at Parker Flats. FOMP, p. FO-2 to FO-3. However, the Fort Ord Master Plan's description of the Eucalyptus Road Planning Area Residential/Recreation Center District at Parker Flats is incomplete, because it does not identify the allowable uses, density, or intensity:

“Residential/Recreation Center District (Parker Flats). This Planning District totals approximately 946 acres. The District was intended to accommodate a residential community of up to 3,184 residential units on 520 acres, at an overall density of up to 5 units per gross acre, neighborhood serving retail commercial uses on a one-acre site, visitor-serving uses (potentially including hotel and golf course development) on 194 acres, and 231 acres of open space preserve. As explained earlier, the Land Swap Agreement modified the allowed uses in this District and in the East Garrison District. The detailed descriptions and arrangement of land uses are subject to the preparation and approval of a Specific Plan or other planned development mechanism. Development constraints related to water allocation and transportation as adopted by FORA shall be addressed by the Specific Plan or other mechanism and may limit the number of residential units permitted.” FOMP, p. FO-11.

This language is entirely opaque. The 2010 Monterey County General Plan provides that the originally intended uses at Parker Flats have been “modified” but it does not say how. Instead, it simply punts the issue until the “preparation and approval of a Specific Plan or other planned development mechanism.”

The language of the 2010 Monterey County General Plan is wholly insufficient to guide future development in the area since it acknowledges that the originally intended land uses have been modified but does not say how.

More problematically, neither the City of Seaside nor FORA can determine if the 2010 Monterey County General Plan provisions for development at Parker Flats are consistent with the BRP without knowing what those provisions are. All we know at this point is that the originally intended uses, which are still the allowable uses set out in the BRP itself, have been “modified,” somehow.

- c. The EIR should clarify how land uses have been modified by the LSA, and FORA should amend the BRP as necessary

As discussed above, the 2010 Monterey County General Plan's Fort Ord Master Plan states that the allowable land uses in Parker Flats were "modified" by the Land Swap Agreement, although it does not say how. FOMP, p. FO-11. Thus, the East Garrison Specific Plan, the Zander Report, the 2010 General Plan Fort Ord Master Plan, and the Fort Ord Final Reassessment Report all indicate that the allowable land uses at Parker Flats have been modified, but none of these documents, other than the Zander Report, purport to provide a definitive statement of what land uses are now allowed. Modifications to the allowable land uses should be reflected in a revision to the BRP, or at least in an explanation as to what those modifications are and how they remain consistent with the BRP's original provisions governing Parker Flats.

The BRP is intended to control the land use plans of the County and the other member jurisdictions, and the County's General Plan must be found consistent with the BRP before it takes effect. Government Code, §§ 67675.3, 67675.7. The Project must be consistent with the BRP. Thus, it is incumbent on project EIR to clarify how the Land Swap Agreement modified the BRP.

If, as the Zander Report and the East Garrison Specific Plan indicate, residential use has been reduced or eliminated at Parker Flats but increased at East Garrison, and FORA has not taken action to revise the BRP accordingly, then there is no assurance that the allowable density and intensity at Parker Flats and East Garrison are in fact consistent. The Project EIR should explain in detail what the allowable density and intensity provisions are at East Garrison and Parker Flats under both FORA's BRP and the County's Fort Ord Master Plan. Since land use designations are reflected both in land use designation maps and in summaries of allowable development by planning area, this explanation should update as necessary the relevant land use designation maps and summaries of allowable density by planning area contained in both the BRP and the Fort Ord Master Plan.

If FORA still needs to take legislative action to implement the Land Swap Agreement's modification of land uses, then it should do so before considering this Project. Since the City apparently contemplates stepping into the shoes of the County through annexation of the portion of the Project site currently in the County's area, the City or the County should avail itself of the FORA Act provision for revisions to the Fort Ord Reuse Plan initiated by a member by requesting a change. Government Code, § 67675.8(a). The City or the County should follow this process by requesting a revision in the Fort Ord Reuse Plan that implements the effect of the Land Swap Agreement. In addition, the DEIR must be revised and recirculated to explain how the LSA affected the permissible uses in the Parker Flats area and how the Project would be consistent with the LSA and BRP provisions.

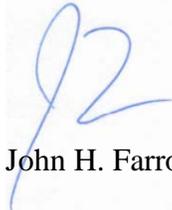
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In summary, the land use designations of the BRP and the County's Fort Ord Master Plan must be consistent. These designations are reflected in land use designation maps and in summaries of allowable development by planning area. Thus, the Fort Ord Master Plan land use designation maps must be consistent with the BRP land use designation maps. And Fort Ord Master Plan summaries of allowable development by planning area must be consistent with the BRP summaries of allowable development by planning area. Consistency can be judged only if the land use designation maps and the summaries of allowable development by planning area are provided and are adequately detailed. Since neither FORA nor the County has clarified the matter, and since the City now intends to act in reliance on what it construes as the LSA provisions, the EIR must provide clear maps and summaries of allowable development by planning area for both Parker Flats and East Garrison so that the public can be assured that the Project and the Fort Ord Master Plan are consistent with the BRP with regard to the Parker Flats area land uses.

Yours sincerely,

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



John H. Farrow

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