

April 6, 2015

Via e-mail and hand delivery

Monterey County Board of Supervisors
County of Monterey
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Re: Harper Canyon Subdivision

Dear Members of the Board:

I write on behalf of LandWatch Monterey County to comment on the proposed Harper Canyon Subdivision project (the “Project”). As explained in LandWatch’s previous comments, the approvals sought should be denied because 1) the environmental review is inadequate and 2) the Board cannot make the required findings that the Project would be consistent with General Plan policies related to water supply and traffic. We comment here on the proposed findings, which were not made available until April 2, 2015.

A. The EIR must be recirculated

Proposed Finding 8f and 11 claim that recirculation is not required because new information does not disclose new or more severe significant impacts or identify mitigation that the applicant declines to adopt. Evidence submitted in our prior comments and with this letter demonstrates that new information since the Draft EIR does in fact disclose new or more severe significant cumulative water supply impacts. However, even if that were not the case, recirculation is required because new information demonstrates that the water supply analysis in the draft EIR was so fundamentally conclusory and inadequate that it precluded meaningful public review and comment. As explained in our prior comments, the water supply analysis in the FEIR completely revised the project-level and cumulative water supply analyses, including the description of baseline conditions and the environmental setting and the basis of the impact analysis. These revisions demonstrated that the analysis in the DEIR was incorrect, incomplete, and inadequate.

B. The EIR’s analysis of cumulative water supply impacts is flawed

The proposed CEQA findings at paragraph 9 related to potentially significant impacts do not acknowledge that water supply impacts are among the potentially

significant impacts.¹ Finding 11j regarding recirculation states that the “Final EIR acknowledged the existing overdraft conditions of the groundwater basin, but concluded that the contribution is not substantial.” In fact, the FEIR makes no such conclusion in its analysis of cumulative water supply impacts. Instead, its cumulative analysis section states that the Project’s impact would be mitigated by payment of Zone 2C assessments because the Salinas Valley Water Project provides a regional mitigation strategy. FEIR p. 3.6-36. If the County intended to find that there is a significant cumulative impact, but that payment of Zone 2C assessments is sufficient mitigation, then such a finding should be included in finding 9, which purports to address all of the potentially significant impacts that are rendered less than significant through mitigation.

It remains unclear whether the County’s position is 1) that there is no significant cumulative impact; 2) that there is such an impact, but the payment of Zone 2C assessments is sufficient mitigation; or 3) that there is such an impact, but the project’s contribution is less than considerable for some other reason. Regardless, none of these positions are supported by evidence in the record.

1. There is no evidence that the existing groundwater management efforts, including the Salinas Valley Water Project, are sufficient to prevent long-term overdrafting and seawater intrusion; and there is substantial evidence to the contrary

As set out in our prior comments, the EIR does not provide any substantial evidence that the existing groundwater management efforts are sufficient to restore groundwater levels and halt seawater intrusion. In fact, the evidence is to the contrary.

- The Salinas Valley Water Project (“SVWP”) EIR analysis does not claim that the SVWP will halt future seawater intrusion, and Monterey County Water Resources Agency (“MCWRA”) staff has admitted this.
- The insufficiency of the Salinas Valley Water Project and prior groundwater management efforts is further evident by the fact that actual groundwater pumping has substantially exceeded the Salinas Valley Water Project EIR’s assumed levels of pumping.
- The Geoscience 2013 report documents the need for additional groundwater management projects to restore groundwater elevations and halt seawater intrusion.
- The 2015 State of the Salinas River Groundwater Basin report concludes that it is unlikely that adequate groundwater levels will be restored in the coming years. Brown and Caldwell, State of the Salinas River Groundwater Basin, January 16, 2015, p. 5-7, available at <http://www.mcwra.co.monterey.ca.us/index.php>.

¹ The CEQA findings 9f and 9g address water quality impacts, but not water supply impacts.

- The County's findings in the Ferrini Ranch project admit that additional projects are required to halt seawater intrusion. County of Monterey, Resolution # 14-371, December 15, 2014, p. 17.

None of this information is disclosed in the EIR.

As noted, there are no CEQA findings regarding cumulative water supply impact analysis. However, the proposed findings addressing general plan consistency discuss water supply issues. Finding 3h contends that since the operation of the Salinas Valley Water Project in 2010, groundwater levels near the coast have increased and the rate of seawater intrusion has decreased. As comments objected, the County has repeatedly stated that the benefits of the Salinas Valley Water Project cannot be determined without at least ten years of data. The State of the Basin Report makes it clear that "variability in the year-to-year storage change [is] due to the impact of variability in the natural hydrology." Brown and Caldwell, State of the Salinas River Groundwater Basin, January 16, 2015, p. 4-15. The evidence cited in the EIR regarding the efficacy of the Salinas Valley Water Project is cherry-picked data from that showed some improvement in groundwater levels for one or two water years. Not mentioned in the EIR is that the MCWRA reports since 2011 have shown falling groundwater levels in the Pressure 180-Foot Aquifer and the Pressure 400-Foot Aquifer. MCWRA Salinas Valley Hydrologic Subareas Fourth Quarter reports for 2011-2012 (down 2' and 1'), 2012-2013 (down 1' and 1'), 2013-2014 (down 8' and 7').

The short decline in the rate of seawater intrusion cited in the findings is also misleading because evidence indicates that seawater intrusion will resume over the foreseeable future. Citing the 2013 Geoscience report, the State of the Basin report states that the drought will lead to increased seawater intrusion in the coming years due to a latency effect. Brown and Caldwell, State of the Salinas River Groundwater Basin, January 16, 2015, pp. 5-7 to 5-8. This is confirmed by MCWRA's senior hydrologist, who has stated that he expects new data to show that seawater intrusion will continue down the valley. Monterey Herald, "Salinas Valley groundwater data to go public," March 4, 2015.

Finding 3h admits that the 2015 Brown and Caldwell State of the Basin report concludes that the basin is out of balance. However, finding 3h misstates that report to claim "that offset can be mitigated by an estimated 16 million acre-feet of available groundwater in storage." In fact, the report merely identifies the storage as a water source that can be used to smooth out short-term natural variability in recharge.

Finding 3h states that the impact of the Salinas Valley Water Project on the basin water balance was not within the scope of the State of the Basin report. However, the State of the Basin report clearly identifies a long-term imbalance and declining groundwater elevations due to overpumping: "[t]he average storage decline seen in the

Pressure Subarea and the other subareas is the result of the long-term imbalance between groundwater pumping and aquifer replenishment . . .” *Id.* at 4-15. A key conclusion of the State of the Basin report is that there is no long-term solution in sight for seawater intrusion, with or without the drought:

“The fact that groundwater elevations are well below the documented protective elevations indicates that the P-180 Aquifer continues to be susceptible to seawater intrusion, and it is unlikely that his situation will be reversed in the coming years, particularly if the current drought condition continues.” Brown and Caldwell, State of the Salinas River Groundwater Basin, January 16, 2015, p. 5-7.

Thus, the State of the Basin report recommends pumping decreases in the Pressure Subbasin to address declining groundwater levels. *Id.* at 6-3. Increasing pumping to meet Project demand in the upgradient Corral de Tierra Subbasin, which flows to and recharges the pressure Subbasin, runs directly contrary to this proposed mitigation.

Furthermore, regardless of the scope of the State of the Basin report, other evidence in the record establishes that the Salinas Valley Water Project is not sufficient to balance the basin, including the SVWP EIR itself, the continuing levels of groundwater pumping in excess of the levels assumed in the SVWP EIR, admissions by MCWRA staff, the County’s findings in the Ferrini project, and the Geoscience 2013 report.

In sum, there is no substantial evidence that the existing groundwater management projects will restore groundwater elevations or halt seawater intrusion. The only data cited by the EIR and the findings is very short term data that is admitted by the County and its consultants not to be a reliable indication of longer term trends. All of the substantive analysis and the County’s own findings in the Ferrini project conclude that the existing groundwater management projects, including the Salinas Valley Water Project, are not sufficient to restore groundwater elevations or halt seawater intrusion.

2. Payment of Zone 2C assessments, which fund only the existing groundwater management projects, is not sufficient mitigation because existing groundwater management projects are insufficient to mitigate cumulative impacts

There is no evidence that payment of Zone 2C assessments is sufficient to mitigate the project’s cumulative water supply impacts and there is substantial evidence to the contrary. Payment of impact fees is only sufficient mitigation if the fees will result in projects that will actually mitigate cumulative impacts. Zone 2C assessments were imposed through a Proposition 218 procedure for an identified project.

See MCWRA, Salinas Valley Water Project Engineers Report, January 2003 available at http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/salinas_valley_water_project_I.php; see also MCWRA, Zone 2B Proposition 218 Engineers Report, Nov. 2, 2007(Salinas River Diversion Facility costs paid by separate assessment subject to Prop 218 vote) available at MCWRA, Salinas Valley Water Project Engineers Report,

available at

http://www.mcwra.co.monterey.ca.us/salinas_valley_water_project_I/salinas_valley_water_project_I.php. Thus, the existing assessments only fund the existing groundwater management infrastructure, which, as explained above and in previous comments, is not sufficient to restore groundwater elevations and halt seawater intrusion.

Indeed, MCWRA has not identified or obtained funding for critical future groundwater management infrastructure projects. The current planning for groundwater basin sustainability pursuant to the Sustainable Groundwater Management Act acknowledges that the County has neither identified nor funded the necessary projects to restore groundwater elevations and halt seawater intrusion. Board Report WRAG 15-009, attaching MCWRA, Comprehensive Salinas Valley Groundwater Basin Sustainability Approach – Working Draft, March 24, 2015; Monterey Herald, “Monterey County water agency stretched by mounting demands,” March 23, 2015; see also Board Report WRAG 15-011, March 24, 2015, attaching matrix of potential funding programs for Interlake Tunnel Project. Budgets for some of the possible component projects have not even been estimated, and none have been secured.

Finally, even if there were sufficient funding and programs in place to restore groundwater elevations in the Pressure Subarea – and there are not – as hydrologist Timothy Parker explained in earlier comments, there is no evidence in the record that restoring those elevations in the Pressure Subarea would mitigate long-term cumulative overdraft conditions in the upgradient Corral de Tierra Subbasin from which the Project water supplies would be drawn.

Finding 3h contends that the suite of MCWRA projects provide benefit to the area where the project wells are located. Finding 3h also contends that “[a]ccording to MCWRA and the El Toro Ground Water Study (2007) and the Geosyntec 2010 Supplement, the wells and project site are located within Monterey County Water Resources Agency’s benefit assessment Zone 2C, and receive benefits of sustained groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and the Salinas Valley Water Project.” To the contrary, nothing in Geosyntec’s El Toro Groundwater Study even mentions such benefits. And as expert testimony by hydrogeologist Tim Parker points out, the EIR claim rests only on an unattributed citation to MCWRA without any analysis.

Mr. Parker points out that, in the face of the Geosyntec report that the Corral de Tierra Subbasin is in overdraft conditions, the FEIR retracts the DEIR’s claim that previous groundwater management efforts have benefitted the Corral de Tierra Subbasin. Mr. Parker demonstrates that the hydrologic connection between the Corral de Tierra Area Subbasin and the SVGB will not benefit the Corral de Tierra Area Subbasin for three reasons. First, the Corral de Tierra Area Subbasin groundwater levels are much higher than the levels in the Pressure Subbasin. Second, there is no evidence that the existing groundwater management efforts will in fact stabilize groundwater levels. Third,

there is substantial evidence to the contrary, i.e., evidence that additional projects are required.

Finding 3h contends that “[h]igher groundwater levels in the Salinas River Groundwater Basin (SRGB) will result in a reduction in the hydraulic gradient between the SRGB and the Corral de Tierra subbasin retarding outflow from Corral de Tierra to the SRGB.” Again, there is no support for this claim in the EIR itself other than the unattributed contention that the Salinas Valley Water Project will somehow benefit the project aquifer. As Mr. Parker explained, there is no modeling, discussion, or even qualitative analysis of this contention in either the EIR or the Geosyntec report.

3. The size of Project demand was not identified by the EIR as a basis to conclude that the demand is less than a considerable contribution to a significant cumulative water supply impact; and a finding that it is less than considerable because it is individually minor or relatively small would be based on a fundamental misunderstanding of CEQA

CEQA requires two determinations in cumulative analysis. In step one, an agency must determine whether there is a significant cumulative impact from all projects, including the project under review. In step two, if there is, an agency must separately determine whether the project under review makes a considerable contribution. Although an agency may find that a project’s contribution to a significant cumulative impact is less than considerable, it must provide facts and analysis to support such a finding. As discussed above, the payment of impact fees in the form of Zone 2C assessments does not support such a finding. Nor can the size of the Project demand support such a finding.

While the draft EIR states that the project would have a “negligible effect on the aquifer” (DEIR 3.6-13), this conclusion was in the project-level analysis, not the cumulative analysis. The fact that an impact is individually minor, i.e., it does not rise to the level of significance in the project-level analysis, does not imply that it is not a considerable contribution; otherwise cumulative analysis would be redundant. Thus, the claim that project demand was “negligible” was at most a determination that project-level impacts were not by themselves significant.

In order to make a step two determination whether a contribution is considerable, an agency must accurately assess the severity of the cumulative impact; the worse the cumulative condition, the lower the threshold for what constitutes a considerable contribution. Nothing in the EIR’s discussion related project demand to cumulative conditions. In fact, the DEIR’s statement was made in the context of a claimed water surplus in the subarea, not the water deficit later identified in the 2007 Geosyntec report. The FEIR repeats the “negligible” impact claim. FEIR 3.6-26. Again, the claim was based on and cited an analysis that assumed a water supply surplus, not the deficit revealed by the 2007 Geosyntec report. Laura Laurence, memo to Paul Mugan, Nov. 12, 2002. In sum, the “negligible” characterizations were predicated on an incorrectly rosy analysis of cumulative conditions that concluded that there was no cumulative impact..

Counsel for the applicant argued to the Board of Supervisors on March 2, 2015 that the Project demand would be a less than considerable contribution because it is relatively small compared to basin storage or annual pumping. This contention is not in the EIR. Even if it had been, such a claim reflects a fundamental misunderstanding of CEQA. Courts have repeatedly rejected the “ratio” theory and the claim that a cumulative impact can be rejected out of hand as *de minimis*.

Finally, as noted above, finding 11j regarding recirculation incorrectly states that the “Final EIR acknowledged the existing overdraft conditions of the groundwater basin, but concluded that the contribution is not substantial.” This statement is not explained, but it is either incorrect or irrelevant. As noted, the FEIR did not conclude that the project contribution to cumulative impacts would not be substantial; it concluded (incorrectly) that the Project impact would be mitigated by payment of Zone 2C assessments.

C. The Project is inconsistent with water supply provisions of the 1982 General Plan

As set out in previous comments, the Project is inconsistent with Goal 53, Objective 53.1, and Policies 53.1.3 and 26.1.4.3 of the 1982 General Plan. Finding 3 does not provide substantial evidence of consistency because, *inter alia*, it relies on the sufficiency of the Salinas Valley Water Project and an irrelevant short-term pumping test.

D. Traffic impacts

As set out in previous comments, the EIR relies on uncertain mitigation to conclude that all cumulative traffic impacts will be reduced to a less than significant level. RDEIR 3.10-40 to 3.10-43; FEIR 3-43 to 3-58. Finding 9i improperly continues to cite this uncertain mitigation (MM 3.10-6) as the basis for this conclusion.

As set out in previous comments, the EIR also relies on uncertain mitigation, i.e., the unfunded and untimely State Route 68 Commuter Improvements project, to conclude that impacts under background plus project conditions to the SR 68/Corral de Tierra intersection, the SR 68/San Bernancio Road intersection, and the SR 68 segment between Corral de Tierra and San Bernancio Road are mitigated to a less than significant level. RDEIR, p. 3.10-31. Any finding that these impacts are less than significant cannot be justified. Findings 9i and 10 conclude that these impacts are significant and unavoidable. If that is not an error, the post-EIR acknowledgment of new significant impacts requires recirculation of the EIR. Finally, as set out in previous comments, the project is inconsistent with General Plan transportation policies. The findings fail to address or acknowledge this inconsistency.

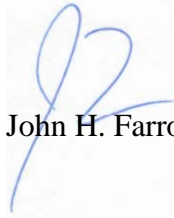
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LandWatch urges the Board of Supervisors not to certify the EIR or to approve entitlements for this project.

Yours sincerely,

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



John H. Farrow

Cc: Amy White
Janet Brennan

Referenced materials, provided on separate CD:

- Brown and Caldwell, State of the Salinas River Groundwater Basin, January 16, 2015, p. 5-7, available at <http://www.mcwra.co.monterey.ca.us/index.php>.
- MCWRA Salinas Valley Hydrologic Subareas Fourth Quarter reports for water years 2003 to 2014, available at http://www.mcwra.co.monterey.ca.us/quarterly_salinas_valley_water_conditions/quarterly_salinas_valley_water_conditions.php.
- Monterey Herald, "Salinas Valley groundwater data to go public," March 4, 2015.
- Board Report WRAG 15-009, attaching MCWRA, Comprehensive Salinas Valley Groundwater Basin Sustainability Approach – Working Draft, March 24, 2015
- Monterey Herald, "Monterey County water agency stretched by mounting demands," March 23, 2015.
- Board Report WRAG 15-011, March 24, 2015, attaching matrix of potential funding programs for Interlake Tunnel Project