

AGENDA ITEM  
#2  
2 & 3

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AGENDA ITEM Nos. 2 & 3

### Via Email and Hand Delivery

Chairperson Mr. Paul Getzelman and Commission Members

Planning Commission

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**Re: Monterey Peninsula Water Supply Plan – Desalination Plant  
(PLN150889) and Carmel Valley Pump Station (PLN150653) Projects**

Dear Chair Getzelman and Commission Members:

We are writing on behalf of **California Unions for Reliable Energy (“CURE”)** to provide comments ahead of the Planning Commission’s public hearing to consider California American Water Company’s (“CalAm”) applications for permits to construct and operate the Reverse-Osmosis Desalination Plant (“Desalination Plant”) and the Carmel Valley Pump Station (“Pump Station”) (collectively, “Projects”). The Desalination Plant requires a Use Permit, an Administrative Permit and a Design Approval. The Pump Station requires a Use Permit and Design Approval. Both are part of the project to deliver water to the CalAm

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Monterey District service area called the Monterey Peninsula Water Supply Project ("MPWSP"). The Desalination Plant is proposed at 14175 Del Monte Blvd, Marina, CA 93933, off of the private Charlie Benson Road, north of the City of Marina (Assessor's Parcel Number 229-011-021-000), and the Pump Station is proposed at 26530 Rancho San Carlos Road in Carmel Valley (Assessor's Parcel Number 015-251-030-000).

The MPWSP includes the construction of up to seven subsurface slant wells and a desalination plant, producing approximately 6,752 acre-feet per year ("AFY") of water and approximately 875 AFY of water to return to the Salinas Valley Groundwater Basin. The Project would also include improvements to the existing Seaside Groundwater Basin aquifer storage and recovery ("ASR") system facilities to enable CalAm to inject desalinated product water into the groundwater basin for subsequent extraction and distribution to customers. The MPWSP includes over 30 miles of pipelines, two pump stations, and water storage tanks. The components under Monterey County jurisdiction are the Pump Station and the Desalination Plant.

Based on our review of the April 24, 2019 Desalination Plant and Pump Station Staff Reports, and pertinent agency records, we conclude that both Projects are inconsistent with the County's General Plan and/or Zoning Ordinance. We therefore urge the Planning Commission to deny the permits for both the Desalination Plant and the Pump Station.

We prepared these comments with the assistance of Phyllis Fox, Ph.D., and Renée Owens, M.Sc. Their technical comments are attached hereto and submitted to the Planning Commission, in addition to the comments in this letter.<sup>1</sup> Ms. Fox and Ms. Owens also provided technical comments on the CPUC-certified FEIR, which are also incorporated herein.<sup>2</sup>

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<sup>1</sup> See Letter from Phyllis Fox to Yair Chaver, re: Comments on The California American Water Company Combined Development Permits (hereinafter, "Fox Comments"), **Attachment A**. See Letter from Renee Owens to Yair Chaver, re: Monterey Peninsula Water Supply Plan – Carmel Valley Pump Station (PLN150653) Project (hereinafter, "Owens Comments"), **Attachment B**.

<sup>2</sup> See Letter from Renee Owens to Ms. Sobczynski (hereinafter, "Owens EIR Comments"), **Attachment C**. See Letter from Phyllis Fox to (hereinafter, "Fox EIR Comments"), **Attachment D**.  
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## I. STATEMENT OF INTEREST

CURE is a coalition of labor unions whose members construct, operate, and maintain industrial facilities throughout California. CURE has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand along the Monterey Bay, and by making it less desirable for businesses to locate and people to live in the area, including the Project vicinity. Continued degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

CURE members live, work, recreate and raise their families in the Project vicinity along the Monterey Bay. Accordingly, CURE's members would be directly affected by the Project's adverse environmental impacts. The members of CURE's member unions may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants and other health and safety hazards that exist on the Project sites.

## II. THE PROJECTS ARE NOT CONSISTENT WITH THE MONTEREY COUNTY ZONING ORDINANCES AND GENERAL PLAN

### A. The Desalination Plant and Pump Station are Inconsistent with Zoning Requirements and General Plan Policies for Issuing a Use Permit

Projects require a Use Permit but fail to comply with the requirements for approval of a Use Permit. The Pump Station is located on a parcel zoned Low Density Residential ("LDR").<sup>3</sup> The Desalination Plant is located on a parcel zoned Permanent Grazing ("PG").<sup>4</sup> In each case, development of "[w]ater system facilities including wells and storage tanks serving fifteen or more service connections" require a Use Permit.<sup>5</sup>

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<sup>3</sup> Zoning Ordinance § 21.14.050.

<sup>4</sup> Zoning Ordinance § 21.34.050.

<sup>5</sup> Zoning Ordinances § 21.14.050, subd. Q, and § 21.34.050, subd. O. respectively  
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The issuance of a Use Permit is regulated by Zoning Ordinance section 21.74.050, which states in relevant part:

B. In order to grant any Use Permit, the findings of the Appropriate Authority shall be:

- 1) The establishment, maintenance, or operation of the use or structure applied for, will not, under the circumstances of the particular case, be detrimental to health, ... of persons residing or working in the neighborhood of such proposed use; or be detrimental or injurious to property and improvement in the neighborhood; or to the general welfare of the County.

The Proposed Findings in support of the Draft Resolutions for the Pump Station and Desalination Plant state that both Projects comply with Ordinances for issuing a Use Permit. Specifically, Finding 3 states:

[the] establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.<sup>6</sup>

However, these findings are not supported by substantial evidence showing that the developments will not be detrimental to the health of persons residing or working nearby.

1. *Noise*

The Pump Station Staff Report states that the FEIR prepared for the entire MPWSP Project identified mitigation measures that will reduce noise levels to below significance consistent with Zoning Ordinance 10.60.030.<sup>7</sup> The Desalination Plant Staff Report states that noise levels are not anticipated to exceed limits set by Zoning Ordinance 10.60.030 (limiting day time noise to 85dBA measured within 50

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<sup>6</sup> Desalination Plant Staff Report Exhibit B, at p. 7; Pump Station Staff Report Exhibit B, at p. 4.

<sup>7</sup> Pump Station Staff Report, at p. 5.

feet) or 10.60.040 (limiting nighttime noise) at the nearest sensitive receptors.<sup>8</sup> The Desalination Plant Staff Report identifies the nearest sensitive receptors as two residences located 2,200 and 3,900 feet to the west.<sup>9</sup> However, the Zoning Ordinance does not limit its requirements to “sensitive receptors” in residences. Instead, the Zoning Ordinance protects “persons residing or working in the neighborhood of such proposed use.” The Desalination Plant will be within 1,000 feet of people working at the Last Chance Mercantile, the Monterey Regional Waste Management District building, and the Monterey One Water Treatment Plant. Therefore, the nearest sensitive receptor is within 1,000 feet of the Desalination Plant. The FEIR does not provide analysis of noise impacts to persons within 1000 feet of the plant, the County must perform this analysis in order to assess the Project’s consistency with the Zoning Ordinance. The County lacks substantial evidence that noise levels will not exceed the Zoning Ordinance limits within 1,000 feet of the plant and that the noise will not harm persons working nearby.

## 2. *Air Quality*

The Staff Reports lack substantial evidence supporting the conclusion that the health of persons living and working nearby will not be harmed by air quality impacts. As explained above, section 21.74.050 of the Zoning Ordinance prohibits uses that will be detrimental to the health of persons nearby.

Furthermore, General Plan Goal OS-10 is to “[p]rovide for the protection and enhancement of Monterey county's air quality without constraining routine and ongoing agricultural activities.” General Plan Policy OS-10.6 states: “[t]he Monterey Bay Unified Air Pollution Control District’s air pollution control strategies, air quality monitoring, and enforcement activities shall be supported.” The County requires that projects support the goals set out by OS-10 to protect and enhance the air quality in Monterey.

Finding 3 of both Staff Reports states that the FEIR found that construction of the MPWSP elements “[w]ould have significant and unavoidable impacts to ... air

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<sup>8</sup> Desalination Plant Staff Report, at p. 7.

<sup>9</sup> *Id.*

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quality.”<sup>10</sup> The Staff Reports include mitigation measures identified in the FEIR that will minimize air quality impacts, though not to levels below significance.<sup>11</sup>

Indeed, both Staff Reports recognize the FEIR’s conclusions that the projects are potentially inconsistent with Policy OS-10.6.<sup>12</sup> As such, to ensure consistency with Policy OS-10.6, the County must require that all feasible mitigation measures be undertaken, not just those proposed in the FEIR. For example, the County can require the Project to use engines with better emissions standards.<sup>13</sup> Furthermore, the County can require that the 5-minute idling policies<sup>14</sup> be replaced by enforceable idle reducing technology.<sup>15</sup> Therefore, the Staff Reports lack evidence that would allow a reasonable person to conclude that the projects are consistent with General Plan Policy OS-10.6.

Furthermore, there is substantial evidence that health impacts from Projects will be greater than anticipated in the FEIR and Staff Reports as the FEIR did not analyze or consider all the air quality impacts generated by Projects. This evidence further contradicts the statement that the Projects are consistent with Zoning Ordinance section 21.74.050.<sup>16</sup> As Dr. Fox explains in her Comment Letter, the FEIR did not model impacts of NO<sub>2</sub>, Ozone, PM<sub>2.5</sub>, lead or sulfates on ambient air quality.<sup>17</sup> These air pollutants can cause significant health impacts, but were neglected in the FEIR’s analysis. Furthermore, the FEIR did not include any air dispersion modeling, thereby excluding any information on Project impacts near the Project sites.<sup>18</sup> In addition, the FEIR’s air quality analysis only evaluated diesel emissions from construction and operation of the Desalination Plant and Pump Station on an annual and a maximum daily basis,<sup>19</sup> but failed to analyze acute health impacts of diesel exhaust.<sup>20</sup>

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<sup>10</sup> Desalination Plant Staff Report Exhibit B, at p. 7; Pump Station Staff Report Exhibit B, at p. 5.

<sup>11</sup> Desalination Plant Staff Report, at p. 4; Pump Station Staff Report, at p. 7; See Condition 21 and Condition 19.

<sup>12</sup> Desalination Plant Staff Report Exhibit B, at p. 6; Pump Station Staff Report, at p. 7.

<sup>13</sup> Fox Comments, at p. 4

<sup>14</sup> FEIR, at p. 4.10-25.

<sup>15</sup> Fox Comments, at p. 5.

<sup>16</sup> Desalination Plant Staff Report Exhibit B, at p. 7; Pump Station Staff Report Exhibit B, at p. 4.

<sup>17</sup> *Id.*, at p. 6-7.

<sup>18</sup> *Id.*, at p. 8.

<sup>19</sup> FEIR, Appendix G1.

<sup>20</sup> Fox Comments, at p. 8-9.

In addition, both facilities include back up diesel generators to supply power during outages – a 750-kW diesel generator for the Desalination Plant, and a 50-kW diesel generator at the Pump Station.<sup>21</sup> The FEIR evaluated air quality impacts from testing and maintenance of these generators, anticipating a maximum of 50 hours a year, and less than 5 hours a month.<sup>22</sup> However, the FEIR did not evaluate health risks from emissions resulting from emergency use of these generators.<sup>23</sup> Substantial concern exists, especially at the Pump Station, that persons residing nearby will experience acute health impacts from the use of the generators during power outages.<sup>24</sup> Furthermore, the FEIR only evaluated air quality (and noise) impacts from the minimum amount of time these generators would operate. However, the County is required to evaluate all reasonably foreseeable impacts, not just the minimum impacts. Reasonably foreseeable impacts that remain unanalyzed and undisclosed include public health impacts when generators work for multiple days during a prolonged power outage.

In this case, the Pump Station is located within 50 feet of the closest residences,<sup>25</sup> with many more within 1000 feet.<sup>26</sup> The Desalination Plant is located within 1000 feet of local businesses and county facilities.<sup>27</sup> In both cases, impacts from diesel exhaust from construction and operation, and extended back-up generator use, would have significant acute health impacts<sup>28</sup> that were not accounted for in the FEIR. Health impacts can include adverse respiratory health outcomes, adverse cardiovascular health outcomes and central nervous system effects.<sup>29</sup>

Therefore, the Desalination Plant and Pump Station Staff Reports lack substantial evidence supporting the assertion that diesel exhaust from construction and operations will not harm persons residing or working in the neighborhood. The County must conduct the analysis in order to evaluate whether Projects are consistent with General Plan Policy OS-10.6 and support the Monterey Bay Unified

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<sup>21</sup> Desalination Staff Report, at p. 8; Pump Station Staff Report, at p. 3.

<sup>22</sup> FEIR, at p. 4.10-19.

<sup>23</sup> Fox Comments, at p. 1.

<sup>24</sup> *Id.*, at p. 2.

<sup>25</sup> Pump Station Staff Report, at p. 4.

<sup>26</sup> Google Earth, accessed April 17, 2019.

<sup>27</sup> *Id.*.

<sup>28</sup> Fox Comments, at p. 8.

<sup>29</sup> *Id.*

Air Pollution Control District's measures to protect air quality. Similarly, the Staff Reports lack evidence that Projects are consistent with the Zoning Ordinance's requirement that the Project not be detrimental to the health of persons residing or working in the neighborhood.

The Staff Reports' findings fail to show that the projects are consistent with the health requirements of the General Plan, and of Ordinance 21.74.050. Thus, the Planning Commission must deny the permits.

### 3. *Valley Fever*

In addition to failing to adequately evaluate noise and air quality impacts from the Projects, the FEIR fails to appropriately mitigate the potential health impacts from Valley Fever (*Coccidioides immitis*). The Staff Reports, in turn, don't mention Valley Fever. Therefore, the Projects are not consistent with Zoning Ordinance 21.74.050.

In this case, both the Desalination Plant and the Pump Station are located within an endemic area for *Coccidioides*, the fungus that causes Valley Fever.<sup>30</sup> Both Projects require grading as part of the work – the Desalination Plant will require 51,000 cubic yards (“cy”) of cut and 40,000 cy of fill, whereas the Pump Station will require 36 cy of cut and 720 cy of fill.<sup>31</sup> The FEIR only states that measures aimed at controlling fugitive dust will “[e]nsure that fugitive dust that could contain *coccidioides immitis* spores would be controlled to the maximum extent feasible.”<sup>32</sup>

As Dr. Fox explains in her comment letter, the FEIR did not conduct on-site soil sampling in either location to assess the presence/absence of *Coccidioides immitis* spores.<sup>33</sup> Therefore, the FEIR, and by extension the Staff Reports, cannot state with any level of accuracy whether ground disturbance at the Project sites will not expose workers and persons living and working nearby to Valley Fever. Furthermore, the dust control measures proposed in the FEIR are not effective at controlling Valley Fever. The measures focus on PM10 dust particles, whereas

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<sup>30</sup> Fox Comments, at p. 11.

<sup>31</sup> Desalination Plant Staff Report, at p. 3-4; Pump Station Staff Report, at p. 3.

<sup>32</sup> FEIR, at p. 4.10-29.

<sup>33</sup> Fox Comments, at p. 11.



Valley Fever spores are 5 times smaller. Therefore, Valley Fever health risks are not controlled by the fugitive dust control measures proposed in the FEIR.<sup>34</sup>

As a result of the above issues, Finding 3 of both Staff Reports lacks evidence to support the assertion that the projects will not harm persons residing or working in the neighborhood of the projects, as required by the health requirements of Ordinance 21.74.050. Thus, the Planning Commission must deny the permits.

**B. The Desalination Plant and Pump Station are Inconsistent with Standards for Environmentally Sensitive Habitats.**

Zoning Ordinance 21.06.440 defines Environmentally Sensitive Habitat to mean “[a]n area known or believed, based on substantial evidence, to contain rare or endangered species.”

Zoning Ordinance 21.66.020 provides standards for development in, or near, Environmentally Sensitive Habitat in order to “[a]llow for the protection, maintenance, and, where possible, enhancement and restoration of environmentally sensitive habitats.”<sup>35</sup> This ordinance goes on to state in relevant part:

**C. Regulations: Biological Survey Requirement.**

1. A biological survey shall be required for all proposed development meeting one or more of the following criteria:

a. The development is proposed within a known environmentally sensitive habitat, based on the most current resource maps, other reliable other available resource information, or through the planner's on-site investigation;

b. The development is located within 100 feet of an environmentally sensitive habitat, and has potential negative impact on the long-term maintenance of the habitat.

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<sup>34</sup> *Id.*, at p. 11-12.

<sup>35</sup> Zoning Ordinance 21.66.020, subd. A.  
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2. The survey shall be required, submitted, and meet approval of the Director of Planning and Building Inspection prior to the project application being determined complete.

3. The survey shall be prepared by a qualified biologist, as selected from the County's list of consulting biologists maintained by the Planning and Building Inspection Department. Report preparation shall be at the applicant's expense.

4. The biological survey shall contain the following elements:

a. Identify the property surveyed, with accompanying location map and site plan showing topography and all existing and proposed structures and roads, and the proposed project site or sites;

b. Describe the method of survey;

c. Identify the environmentally sensitive habitat found on the site and within 100 feet of the site with an accompanying map delineating the habitat location or locations.

d. Describe and assess potential impacts of the development on the environmentally sensitive habitat(s) identified in the survey found on the site or on neighboring properties;

e. Recommend mitigation measures which will reduce impacts;

f. Assess whether the mitigation measures will reduce the development's impact to an insignificant level.

#### D. General Development Standards.

1. Development, including vegetation removal, excavation, grading, filling, and construction of roads and structures shall be prohibited in environmentally sensitive habitats. As an exception, resource dependent uses, including nature education and research, hunting, fishing and aquaculture, may be allowed within environmentally

sensitive habitats if it has been determined through the biological survey that impacts of such uses will not harm the habitat's long-term maintenance.

2. Development on parcels containing or within 100 feet of environmentally sensitive habitats, shall be permitted only where they will not have a significant adverse impact on the habitat's long-term maintenance, either on a development or cumulative basis. Development shall only be approved where conditions of approval are available which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat, as determined through the biological survey.

3. Removal of indigenous vegetation and land disturbance, such as grading, excavation, paving, and fill, in or within 100 feet of environmentally sensitive habitats shall be limited to that necessary for the structural improvements and driveway access. Modifications to the proposal shall be made for siting, location, design, bulk, vegetation removal, and grading where such modifications will reduce impacts to the habitat.

In the case of the Pump Station, the Staff Report states that Monterey County GIS identifies the parcel as potential "Environmentally Sensitive Habitat for Monterey Pine, California red-legged frog, steelhead, and Carmel Valley bush-mallow."<sup>36</sup> Furthermore, the Pump Station Staff Report states that the FEIR found that special status species could potentially be impacted during construction.<sup>37</sup> Similarly, the Desalination Plant Staff Report states that special status species are located on site, and that species could be impacted due to proximity to the Salinas

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<sup>36</sup> Pump Station Staff Report, at p. 3.

<sup>37</sup> *Id.*, at p. 5.

River.<sup>38</sup> Therefore, it is clear that Zoning Ordinance 21.66.020 is applicable to both Projects.

**1. The FEIR Mitigation Measures Adopted by the Staff Reports are Unsupported, Vague and Inadequate.**

Finding 1 of both Staff Reports states that the FEIR found a number of special status species at the parcels, and that the projects are consistent with Section 21.66.020 of the Zoning Ordinance. The Staff Reports recommend mitigation measures in the FEIR claimed to reduce impacts to less than significant.<sup>39</sup> Thus, the Staff Reports rely on the FEIR for their findings regarding impacts to biological resources. However, as explained by Ms. Owens, the mitigation measures in the FEIR are insufficient because they rely on a lack of data and have not been clearly defined in the FEIR but deferred to the future.

As explained by Ms. Owens, the FEIR relied only on reconnaissance level surveys and databases, such as the California Natural Diversity Data Base (“CNDDDB”), “[n]ot only to predict presence/absence of species, but the degree to which such a predicted species' status may be mitigated if and when Project impacts to the species are deemed significant based upon this prediction.”<sup>40</sup> The surveys conducted for the project were of limited efficacy, as explained by Ms. Owens, in preparation of the FEIR:

[t]here are virtually no focused, species-specific, or taxon-specific wildlife surveys for nearly all of the 57 sensitive wildlife species that may occur on the Project site. As in the 2017 DEIR/S, the FEIR/S relies almost entirely on databases and outdated reports (some over 10 years old) not only to provide evidence of presence/absence of species, but for the degree to which such a predicted species may be impacted, and therefore how it should be mitigated if and when Project impacts to the species are deemed significant based upon this prediction.<sup>41</sup>

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<sup>38</sup> Desalination Plant Staff Report, Attachment B, at p. 4.

<sup>39</sup> Desalination Plant Staff Report, Attachment B, at p. 4; Pump Station Staff Report, Attachment B, at p. 3.

<sup>40</sup> Owens EIR Comments, at p. 4.

<sup>41</sup> *Id.*

Furthermore, the data provided in the CNDDDB is anecdotal, based on observations made by individuals in the field, and not on structured surveys.<sup>42</sup> As such, a lack of CNDDDB records does not mean a species is absent from a given location, an issue addressed by the California Department of Fish and Wildlife.<sup>43</sup> To make a reasonable conclusion about impacts on species, the County must obtain focused surveys to evaluate presence, density, breeding status and specific locations for the many special status species. Only when this information is available, can meaningful mitigation measures be crafted.<sup>44</sup> Since the FEIR failed to conduct adequate surveys and analyses for sensitive species occurrences, it underestimated the presence and density of such species.<sup>45</sup> As a result, it is impossible to evaluate whether the Mitigation Measures provided in the FEIR are adequate to reduce impacts.<sup>46</sup>

In addition to insufficient information on which to base mitigation measures, the mitigation measures provided in the FEIR often lack specificity or are deferred.<sup>47</sup> For example, both Staff Reports cite Mitigation Measure 4.6-1b, requiring “[t]raining for all construction workers to ensure they are aware of special status species and measures to avoid, minimize, and/or mitigate impacts.” as a means of reducing impacts to less than significant.<sup>48</sup> However, the Crew Training program<sup>49</sup> does not specify what measures these are.<sup>50</sup> Similarly, Mitigation Measure 4.6-1e is intended to reduce impacts to special status plants,<sup>51</sup> stating that “[s]ensitive plants will be flagged and avoided where possible, or salvaged, or otherwise impacts will be mitigated as a result of a consult with USFWS and/or CDFW.”<sup>52</sup> However, the details about mitigations from consultation with USFWS and/or CDFW are clearly absent since such consultation has not taken place at the time the FEIR was drafted. The County has no other evidence that consultation with USFWS and/or CDFW has occurred since then. As such, it is not clear whether

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<sup>42</sup> *Id.*, at p. 5.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, at p. 6.

<sup>45</sup> *Id.*, at p. 4.

<sup>46</sup> Owens EIR Comments, at p. 3; Owens Comments, at p. 3.

<sup>47</sup> Owens EIR Comments, at p. 7; Owens Comments, at p. 5.

<sup>48</sup> Desalination Plant Staff Report Exhibit B, at p. 12; Pump Station Staff Report Exhibit B, at p. 8.

<sup>49</sup> FEIR, at p. 4.6-171-172.

<sup>50</sup> Owens EIR Comments, at p. 8.

<sup>51</sup> FEIR, at p. 4.6-178-3.

<sup>52</sup> Owens EIR Comments, at p. 8.

any such mitigation measures will be crafted, nor what specifics they will contain, and their efficacy cannot be assessed.<sup>53</sup>

**2. The Staff Reports Lack Support to Show Consistency with Monterey County Zoning Ordinance Protecting Environmentally Sensitive Habitat Areas.**

Both Staff Reports fail to provide support for consistency with additional requirements in subdivisions of Section 21.66.020 for seven reasons as shown below.

The purpose of Section 21.66.020 is:

[t]o provide development standards which will allow for the protection, maintenance, and, where possible, enhancement and restoration of environmentally sensitive habitats. The environmentally sensitive habitats of Monterey County are unique, limited, and fragile resources important to the enrichment of present and future generations of County residents and visitors.<sup>54</sup>

Subdivision C.1.a. requires that a biological survey be conducted if development is proposed within a known environmentally sensitive habitat. In her Comment Letter, Ms. Owens described the Pump Station development as within environmentally sensitive habitat.<sup>55</sup> Similarly, the Desalination Plant Staff Report identifies sensitive species and habitat at the development site.<sup>56</sup> Therefore, Zoning Ordinance 21.66.020 is applicable and biological surveys are required. However, as shown below, the specifics required in Section 21.66.020 for biological surveys were not met.

First, Subdivision C.2 requires that the biological survey must be approved by the Director of Planning and Building Inspection before the project application is considered complete. The Staff Reports do not provide any evidence that surveys

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<sup>53</sup> *Id.*, at p. 8.

<sup>54</sup> Zoning Ordinance Section 21.66.020, subd. A.

<sup>55</sup> Owens Comments, at p. 2.

<sup>56</sup> Desalination Plant Staff Report Exhibit B, at p. 26.

were submitted or approved by the Director of Planning and Building Inspection before the project applications were deemed complete.

Second, Subdivision C.3 requires that the biological survey be prepared by a qualified biologist from the County's list. The County relies on the FEIR's terrestrial biological resources surveys to support its findings. However, the FEIR biological surveys were conducted by Environmental Science Associates, which is not a company on the County's list.<sup>57</sup>

Third, Subdivision C.4.c requires the biological survey to "[i]dentify the environmentally sensitive habitat found on the site and within 100 feet of the site with an accompanying map delineating the habitat location or locations." However, none of the documents for both the Desalination Plant and the Pump Station include a map delineating habitat location or locations.

Fourth, Subdivision C.4.e requires the survey to "[r]ecommend mitigation measures which will reduce impacts." However, as discussed above, because the mitigation measures adopted in the FEIR rely on underestimates and deferred measures, there is insufficient evidence showing that the mitigation measures provided in the FEIR/S will actually reduce impacts.

Fifth, Subdivision D provides general development standards for uses that fall under Section 21.66.020. Subd. D.1 prohibits excavation and grading in ESHA, except for resource dependent uses. The Pump Station will be developed in ESHA,<sup>58</sup> and the Pump Station plans show the demolition of existing structures very close to the Carmel River. The Staff Report fails to show that this demolition component will not involve excavation and grading, nor that it is resource dependent. Therefore, the Pump Station is in direct violation of the Zoning Ordinance.

Sixth, even if the Planning Commission provided evidence that the Pump Station is resource dependent, Subdivision D.2 prohibits development on parcels containing ESHA, unless such uses will have no "significant adverse impact on the habitat's long-term maintenance, either on a development or cumulative basis." The Staff Report fails to show that the Pump Station will not have such impacts. In fact, since the parcel contains red-legged frog habitat, there is substantial evidence that

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<sup>57</sup> See Monterey County Biological Consultant List UPDATED 3-28-19. Attachment E

<sup>58</sup> Owens Comments, at p. 2.

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the Pump Station will have significant impacts on the habitat's long-term maintenance.<sup>59</sup>

Furthermore, the Staff Report claims that implementation of mitigation measures recommended by the FEIR will reduce impacts to less than significant. However, Subdivision D.2's standard is that "[d]evelopment shall only be approved where conditions of approval are available which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat, as determined through the biological survey." The Pump Station's proposed Condition of Approval 19 states that the mitigation measures in the FEIR be carried forward. However, as shown above the mitigation measures in the FEIR are insufficient to allow the long-term maintenance of the habitat.

Seventh, subdivision D.3 only allows land disturbance within 100 feet of ESHA limited only "[t]o that necessary for the structural improvements and driveway access." However, in this case, the Pump Station work involves the demolition and removal of the existing water pump, elevated concrete pad, generator concrete pad, and other equipment, all of which are in, or within 100 feet of, ESHA.<sup>60</sup> The Staff Report does not provide any evidence that such land disturbance will not take place at the location where these existing structures are scheduled to be demolished.<sup>61</sup> Furthermore, the Staff Report fails to show that any such possible land disturbance will be for the purpose of structural improvements and driveway access.

Therefore, for all the reasons explained above, the Pump Station is inconsistent with Zoning Ordinance protection of biological resources and ESHA. The Planning Commission cannot approve the Use Permit for the Pump Station until such time as these inconsistencies are remedied.

**C. The Desalination Plant is Inconsistent with Building Site Coverage Limits and with Zoning Requirements for Issuing an Administrative Permit.**

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<sup>59</sup> *Id.*, at p. 8.

<sup>60</sup> *Id.*, at p. 2.

<sup>61</sup> Pump Station Staff Report, Exhibit B, at p. C07.  
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The Desalination Plant Staff Report recommends approval of an Administrative Permit “[t]o allow development in the Site Plan zoning district including ... facilities related to the desalination plant.”<sup>62</sup>

The issuance of an Administrative Permit is regulated by Ordinance 21.70.050, which states in relevant part:

C. In acting on an Administrative Permit, the Appropriate Authority shall make findings as necessary to support its decision on the permit. Such findings shall address, but not be limited to, consistency with the Monterey County General Plan, applicable area plan, master plan, specific plan, site suitability, environmental issues and variances where applicable. The findings shall include a determination that the subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivisions, and any other applicable provisions of Title 21 and that all zoning violation abatement costs have been paid.

The Desalination Plant and related facilities include pretreatment, reverse osmosis (RO), and post-treatment systems; backwash supply and filtered water equalization tanks; treated water storage tanks; chemical feed and storage facilities; brine storage and conveyance facilities; and other associated non-process facilities.<sup>63</sup>

The Desalination Plant is located on a parcel zoned Permanent Grazing (“PG”) which allows for uses such as water facilities with 15 or more services and requires a Use Permit.<sup>64</sup> One of the regulations imposed on uses located on parcels zoned PG limits building site coverage to 5% of the parcel.<sup>65</sup> The parcel is 46 acres in size, and 5% of 46 acres is 2.3 acres, or 100,188.1 square feet. However, the Desalination Plant “[w]ould create approximately 15 acres of impervious surfaces associated with the desalination facilities, buildings, driveways, parking, and maintenance areas.”<sup>66</sup> Fifteen acres is 33% of 46 acres. The Desalination Plant will include “[p]retreatment, reverse osmosis (RO), and post-treatment systems, backwash supply and filtered water equalization tanks, treated water storage and

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<sup>62</sup> Desalination Plant Staff Report, at p. 1.

<sup>63</sup> FEIR, at p. 3-8.

<sup>64</sup> Zoning Ordinance § 21.34.050, subd. O.

<sup>65</sup> *Id.* § 21.34.060, subd. D.

<sup>66</sup> FEIR, at p. 3-21.

conveyance facilities, brine storage and conveyance facilities and an administration building and laboratory facilities.”<sup>67</sup> The total coverage created by these structure as provided in the Desalination Plant Staff Report<sup>68</sup> is 156,892 square feet; substantially more than the 100,188.1 square feet permitted. In fact, the FEIR states “[p]er the zoning regulations, projects such as the MPWSP involving building coverage in excess of the 5 percent limit would require a variance. Chapter 21.72 establishes and outlines the process for obtaining a variance.”<sup>69</sup> The Desalination Plant Staff Report does not make any findings regarding a variance for this Project.

Since the Project exceeds the building site coverage allowed in the zone, the Project violates the code. Furthermore, the Staff Report makes no findings regarding an application for a variance and, therefore, the County cannot approve the application for an Administrative Permit.

### III. CONCLUSION

The Desalination Plant and the Pump Station are inconsistent with General Plan policies protecting biological resources and Zoning Ordinance sections regulating development on LDR and PG zoned parcels, as well as regulations on development in sensitive habitat areas. Because the projects are inconsistent with these policies and ordinances, the County must deny the permits.

Sincerely,



Yair Chaver

YC:acp

Attachments

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<sup>67</sup> Desalination Plant Staff Report, at p. 3.

<sup>68</sup> *Id.*

<sup>69</sup> FEIR, at p. 4.8-29.

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