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February 14, 2019

AGENDA ITEM No. 6a

Via Electronic Mail Only

Chairperson David Burnett and Commission Members
Planning Commission

City of Marina

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Re: CalAm Coastal Development Permit Application -
Monterey Peninsula Water Supply Project

Dear Chair Burnett and Commission Members:

We are writing on behalf of **California Unions for Reliable Energy ("CURE")** to urge the City to deny the coastal development permit ("CDP") for the Monterey Peninsula Water Supply Project ("Project") due to its inconsistencies with the City's Local Coastal Plan ("LCP") and the California Coastal Act.

The Project is proposed by the California American Water Company ("Cal Am") and would include the construction and operation of a seawater desalination plant and conveyance system and associated infrastructure designed to process 6.4 million gallons of water per day. The Project area extends approximately 18 miles, from the town of Castroville in the north to the City of Carmel-by-the-Sea in the south.¹ The desalination plant will be constructed in unincorporated Monterey

¹ FEIR/FEIS, p. ES-7.
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County, northeast of the City of Marina. The Project's source water intake system involves construction of seven (including six new, and one existing) subsurface slant wells at the CEMEX sand mining site in the northern coastal area of the City of Marina, and would extract up to 24.1 mgd of source water through the seafloor in the Monterey Bay National Marine Sanctuary. As approved, the Project will produce approximately 6,752 acre-feet per year of desalinated water to meet service area demand and return water requirements to the Salinas Valley Groundwater Basin.

Two Project components and a paved staging area are proposed within the City of Marina's Coastal Zone, and are thus subject to the City's Local Coastal Plan ("LCP") and associated CDP requirements, including: (i) seven subsurface seawater intake slant wells, associated intake well sites or pods, two surge tanks, a 42-inch diameter source water pipeline, and other associated infrastructure located on the CEMEX Lapis Plant in the northern portion of the City (designated Coastal Conservation and Development under the LCP); and (ii) a 36-inch diameter product water transmission pipeline within an approximately 2-mile long segment of the 100-foot wide Transportation Agency for Monterey County right-of-way corridor.²

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.

² *Id.*

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Based on our review of the June 18, 2018 CDP application and pertinent agency records, we conclude that the Project is inconsistent with the City's LCP and the Coastal Act and must be denied.

First, the project is inconsistent with the Coastal Act's protection of Environmentally Sensitive Habitat ("ESHA") and the City's LCP habitat protection policies and ordinances.³ ESHA is "[a]ny area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."⁴ The Coastal Act states that ESHA "shall be protected against any significant disruption of habitat values, *and only uses dependent on those resources* shall be allowed within those areas."⁵ "Development in areas adjacent to environmentally sensitive habitat areas ... shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat ..."⁶

A review of the project description as provided in the CDP application shows that the slant wellheads would be located in coastal dune vegetation, or in near proximity to, the coastal dunes.⁷ However, the slant wellheads *do not* depend on the ESHA resources and can be located *outside* of the coastal dunes. Furthermore, there is no evidence that the development would be "compatible with the continuation" of these habitat areas which is required for development adjacent to ESHA.⁸

Second, the project is inconsistent with the Coastal Act policy prohibiting development requiring shoreline armoring.⁹ The Coastal Act requires that new development shall not "[i]n any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."¹⁰ Portions of the proposed Project, such as the slant wellheads, would be along the sand bluffs fronting the ocean with each well including a "12-inch-diameter mechanical

³ California Coastal Act Section 30107.5; City of Marina LCLUP policies 19, 25, 26, and 41; City of Marina Zoning Ordinance, Section 17.41.160(C)(2)(c).

⁴ California Coastal Act Section 30107.5

⁵ Pub. Res. Code § 30240(a) (emphasis added).

⁶ Id. at § 30240(b).

⁷ CDP Application Figure 2.

⁸ See also Staff report for Agenda Item #6a Planning Commission February 14, 2019 p. 24.

⁹ California Coastal Act Section 30253(b).

¹⁰ Id.

discharge piping (i.e., flow meter, isolation valve, check valve, pump control valve, air release valve, and pressure gauge). This discharge mechanical piping would be located in a below ground vault (12' x 6' x 6')."¹¹ Other portions of the Project, such as the well casings, would extend below the surface and seaward of the mean high tide.¹² The CDP application fails to include a discussion of armoring or any form of protection over time for these structures that would alter the natural landform, especially in the face of sea level rise and climate change.

Third, the Coastal Act and City of Marina policies require projects to maximize coastal access, which includes coastal dunes.¹³ The application states that construction and operation of the Project would not create permanent impacts on public access and would not "preclude or otherwise have direct effects on beach access."¹⁴ However, the Coastal Act protects access to the coast, including coastal dunes, and is not limited to the beach alone. For this Project, the above ground infrastructure, such as electrical buildings and slant wellheads, will likely be permanently closed off to the public, thereby impeding or discouraging, not maximizing, public access to the coast.¹⁵

Fourth, the project is inconsistent with several LCP and Coastal Act policies requiring protection of the marine environment. For example, the Project is inconsistent with Local Coastal Land Use Plan ("LCLUP") Policy 16 requiring the protection of marine resources for long-term commercial, recreational, scientific and educational purposes. The Project is also inconsistent with LCLUP Policy 17 requiring protection and restoration of the ocean's water quality and biological productivity. Similarly, the Project is inconsistent with Coastal Act Section 30230 which states:

"Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine

¹¹ CDP Application at p. 6.

¹² CDP Application at p. 4.

¹³ California Coastal Act Section 30211; City of Marina LCLUP policies 1, 2 and 3; City of Marina Zoning Ordinance, Section 17.41.160(C)(2)(a).

¹⁴ CDP Application at p. 10.

¹⁵ CDP Application at p. 9.

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organisms adequate for long-term commercial, recreational, scientific, and educational purposes.”

The Project is also inconsistent with Coastal Act Section 30231 which states:

“The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.”

As shown in our comment letters on the EIR,¹⁶ which are fully incorporated herein, Dr. Radek Sobczynski explained how the Project would result in direct and indirect significant impacts from its impingement of particulate, dissolved, and suspended, organic matter (POM, DOM, and SOM respectively) as a result of the slant well suction forces, leading to degradation of marine resources. As such, the Project is inconsistent with LCP and Coastal Act policies related to marine resources and biological productivity.

Fifth, the Project does not qualify for consideration as an exception to the general rule that projects must be consistent with the Coastal Act. According to the Staff Report, “Cal-Am has requested that the City apply the provisions of Coastal Act Section 30260 if it finds that the Project is inconsistent with any policies of the Coastal Act.”¹⁷ Section 30260 states:

“Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section ... if (1)

¹⁶ See Attachment A.

¹⁷ Staff report for Agenda Item #6a Planning Commission February 14, 2019 p. 23.
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alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.”¹⁸

None of these requirements are met in this case.

Coastal-dependent development or use is “any development or use which requires a site on, or adjacent to, the sea to be able to function at all.”¹⁹ A desalination plant is not a coastal-dependent use, since it may draw upon water found in aquifers not connected to the ocean. Also, the Project alternatives analysis shows that alternative locations are feasible, albeit not preferable by Cal-Am. As a result, the Project does not qualify for consideration as an exception to the general rule that projects must be consistent with the Coastal Act.

Finally, the City is required to conduct subsequent environmental review, pursuant to the California Environmental Quality Act (“CEQA”). Under CEQA, if a responsible agency believes that the final environmental impact report (“EIR”) prepared by the California Public Utilities Commission (“CPUC”) is not adequate for use by the responsible agency, the responsible agency must either:

- (1) Take the issue to court within 30 days after the lead agency files a notice of determination;
- (2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;
- (3) Prepare a subsequent EIR if permissible under Section 15162; or
- (4) Assume the lead agency role as provided in Section 15052(a)(3).²⁰

As set forth in the attached comments on the EIR, the CPUC’s EIR is clearly inadequate as a matter of law and lacks substantial evidence to support its conclusions.

¹⁸ California Coastal Act Section 30260.

¹⁹ California Coastal Act Section 30101.

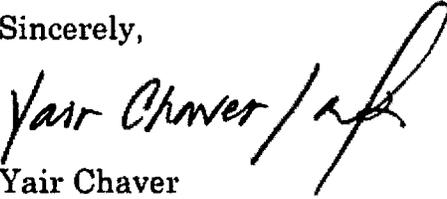
²⁰ 14 CCR § 15096(e).

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For these reasons, we urge the Planning Commission to deny the CDP for the Project, or, at a minimum, direct staff to prepare a subsequent EIR prior to any further consideration of the CDP application.

Sincerely,

A handwritten signature in black ink that reads "Yair Chaver" followed by a stylized flourish.

Yair Chaver

YC:acp
Attachments

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