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May 12, 2014

Board of Supervisors
County of Monterey
168 West Alisal Street
Salinas, CA 93901

Re: Harper Canyon Appeal – PLN000696

Dear Chair Calcagno and Members of the Board:

LandWatch urges the Board to deny the appeal of the Planning Commission's decision not to approve the Harper Canyon project ("Project"). This letter will focus on the inadequacy of the CEQA review with respect to water supply. However, LandWatch joins in the comments made by other Project opponents.

The County must recirculate the EIR for public comment and response based on changes made to the water supply analysis between the draft EIR and final EIR. Recirculation of a draft EIR is required if new information, including changes in the project or environmental setting or other information, shows that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. CEQA Guidelines, § 15088(a)(4). Here, the public was denied the opportunity for meaningful comment and response on the water supply analysis because the FEIR changed the basis of its analysis of water supply impacts.

Both the draft EIR and the final EIR conclude that water supply impacts would be less than significant and that the Project would not make a considerable contribution to a significant cumulative impact. However, the DEIR and FEIR reach these conclusions based on entirely different analyses. The original DEIR relied on an analysis purporting to show a surplus of recharge over pumping in the portion of the El Toro Basin in which the Project is located. However, after it became evident that this area is in fact overdrafted, the FEIR revised the DEIR's analysis to rely instead on the purported benefits of the Salinas Valley Water Project ("SVWP") as the basis of its conclusions.

The public has been denied the opportunity to comment and receive responses on this new information. The omission is prejudicial because much of the new analysis in the FEIR is unfounded, incorrect, or simply unexplained.

Without an EIR that benefits from public comment on the DEIR and responses in the FEIR, the County simply does not have a credible basis for its CEQA conclusions. To the extent that the General Plan findings regarding sufficiency of water supply are predicated on the CEQA document, the County lacks a credible basis for these as well.

A. DEIR significance conclusions are based on the purported local surplus of recharge in the El Toro Basin

PROJECT-SPECIFIC ANALYSIS: The DEIR bases its analysis of long-term impacts to groundwater resources, Impact 3.6-1, on the Project Specific Hydrogeology Report (MCHD 2002, 2003). The project specific impacts are found to be less than significant on the basis of Table 3.6-2, El Toro Groundwater Basin Water Balance Upon 1995 Estimated Build-Out.” This analysis concludes that the predicted water demand for four interconnected subareas of the El Toro Basin would be less than the recharge rate, providing a 320.7 AFY water surplus for this area.

CUMULATIVE ANALYSIS: The DEIR also found cumulative impacts to be less than significant because these four interconnected subareas of the El Toro Basin would have a net surplus of recharge. The claim that there would be a local surplus of recharge was essential to the conclusion that impacts would be less than significant because the DEIR standards of significance require a finding of significance if there is a “net deficit in aquifer volume.” The DEIR’s cumulative analysis made no reference to the SVWP.

B. FEIR significance conclusions are based entirely on the SVWP, not any purported surplus of recharge in the El Toro area

The FEIR notes that numerous comments were received regarding the 2007 Geosyntec report and its 2010 supplement. The FEIR acknowledges that the Geosyntec report concludes that the primary aquifer for the El Toro Basin is in overdraft, but that groundwater pumping could be sustained for decades in areas where there are large stores of groundwater. FEIR, Revised Section 3.6, p. 3.6-24. Thus, the Geosyntec report indicates that, contrary to the DEIR’s claim of a local surplus of recharge, there is in fact a net deficit in aquifer volume in the El Toro area. The Geosyntec report does state that the County could consider lifting its moratorium on new development in the B-8 Zoning area, but only if it is willing to pump from an overdrafted aquifer.

In short, whereas the DEIR claims that recharge exceeds water use in the Project vicinity, the Geosyntec Report admits that the area is in overdraft and that water can only be supplied by mining the groundwater resource. The public was denied the opportunity to challenge, and obtain responses regarding, the conclusion that mining an overdrafted

aquifer can provide a long-term sustainable water supply, because the DEIR's claim that there was a local recharge surplus in the Project vicinity obscured the fact that the aquifer is in overdraft.

The FEIR reaches the same less-than-significant impact conclusions as the DEIR. It does so by invoking the SVWP as the sole solution to the El Toro area water supply problems and by changing the scope of geographic analysis.

FEIR FAILS TO DISCLOSE ITS ACTUAL CHANGES TO THE DEIR: Preliminarily, LandWatch objects that the FEIR misrepresents the extent of the changes to the DEIR analysis. The FEIR completely revises the DEIR's water supply analysis in section 3.6. However, the FEIR fails to disclose what new information has in fact been added to the new version of section 3.6. Contrary to the contention at FEIR page 3-6, the revised section 3.6 does not indicate all changes from the DEIR in strikethrough and underline format. For example, the FEIR revision to section 3.6 adds several new paragraphs to the cumulative analysis at Impact 3.6-4, including information regarding the SVWP, without underlining the new paragraphs to indicate that they are in fact changes to the DEIR. As noted, the original DEIR's analysis of cumulative impacts makes no reference to the SVWP.

FEIR ABANDONS CLAIM OF LOCAL SURPLUS: The FEIR's revision of section 3.6 of the DEIR continues to invoke the 2002 reports claiming that the project would have a long term sustainable water supply. However, the FEIR does not acknowledge that these reports were based on the contention that there was a local surplus of recharge, a contention that the FEIR's revised section 3.6 completely abandons. The FEIR's revision of the DEIR simply strikes out the original version of Table 3.6-2, which previously purported to show a surplus of recharge in the Project vicinity, and which was the primary basis of the significance conclusion for DEIR Impact Analysis 3.6-1. The FEIR's revision to the table now shows that the Project effects on existing conditions will result in a net deficit after the project is implemented. Thus, the material basis of the DEIR's significance conclusion has been excised from the FEIR's revision. The public has not had the opportunity to comment and receive responses to an analysis that no longer rests on the argument that there is a local recharge surplus in the relevant area.

FEIR RELIES ONLY ON SVWP TO FIND IMPACTS LESS-THAN-SIGNIFICANT, BUT NEITHER THE DEIR NOR THE FEIR EXPLAIN HOW THE SVWP BENEFITS THE OVERDRAFTED AREA IN THE PROJECT VICINITY: Having abandoned the "local recharge surplus" argument, the FEIR's sole positive basis for the significance conclusion is the purported "regional mitigation strategy" of the SVWP, which neither the DEIR nor the FEIR explain.

The original DEIR and the FEIR describe the Salinas Valley Groundwater Basin and mention that the 2007 Geosyntec Consultants Report found that the water bearing formations in the Project area flow toward the interconnected Salinas Valley Basin. The

original DEIR states that “according to MCWRA” the Project portion of the El Toro Basin will receive benefits from the SVWP. The FEIR’s revision is more qualified: the benefits to the project area from the SVWP are identified as “indirect.” However, neither the DEIR nor the FEIR explain how those benefits will accrue, whether direct or “indirect.” In particular, the FEIR does not explain how the SVWP could benefit a water basin area that is upgradient from the Salinas Valley.

The County has previously rejected the contention that impacts to an overdrafted upgradient area to the Salinas Valley can be mitigated by the SVWP without some evidence of a mitigating mechanism. In its 2010 General Plan deliberations, the County found that the upgradient North County area was hydrologically interconnected with the Salinas Valley because water flows from that North County area toward the Valley. However, the County found that there was no evidence of a long term water supply for the North County area because there was no evidence that water from the SVWP could be supplied to this upgradient area unless and until there are both financing and infrastructure to deliver water to it, which financing and infrastructure do not yet exist.¹ We submit that neither the DEIR nor the FEIR explain how the SVWP will mitigate impacts to the Project area in the El Toro Basin. As long as the DEIR relied on the claimed local recharge surplus, this may not have mattered. However, now that the FEIR admits that there is no such surplus and that the local aquifer is in overdraft, the EIR relies crucially on the SVWP for its significance conclusion. The EIR must, therefore, explain how the SVWP will actually benefit the El Toro area. The public has been denied the opportunity to challenge the contention that there will be any such benefit and receive comment responses in the FEIR. The DEIR must be revised and recirculated to address this issue.

THE FEIR INTRODUCES SHORT-TERM EVIDENCE OF THE SVWP EFFICACY FOR THE FIRST TIME, BUT THE PUBLIC NEVER GOT THE OPPORTUNITY TO COMMENT AND RECEIVE RESPONSES ON THIS NEW INFORMATION: In support of its significance conclusion, the FEIR now contains contentions based on 2011 data that the SVWP has already improved groundwater levels within the Salinas Valley Groundwater Basin. These contentions do not address groundwater levels in the El Toro area, and, at any rate, they were not in the 2008 DEIR. Thus, the public was denied an opportunity to comment and receive responses on this material. The omission was prejudicial because the contention that data are now available to support any conclusion about the efficacy of the SVWP is inconsistent with the County’s other recent statements about this issue:

- In a presentation by MCWRA staff to the Planning Commission on December 12, 2012 on current conditions in the Salinas Valley Groundwater Basin, staff expressly disclaimed any conclusion regarding the long term response of the Salinas Valley Groundwater Basin to the SVWP. Howard Franklin, a senior

¹ We incorporate the 2010 General Plan, its EIR, and the Board of Supervisors General Plan hearings in August, September, and October 2010 by reference in support of this point.

hydrologist and licensed professional geologist for the MCWRA, repeatedly explained that any increases in groundwater levels between 2009 and 2011 are short term phenomena and “in no way indicate a long term trend in groundwater levels.”² Mr. Franklin acknowledged that the long term trend shows declining groundwater levels. Mr. Franklin suggested that the rate of increase of sea water intrusion may have declined, but acknowledged that sea water intrusion continues to advance. Mr. Franklin effectively acknowledged that even his conclusion regarding a slowed rate was not well informed since historic monitoring data for sea water intrusion is not robust.³

- Staff’s acknowledgement – that there is simply not sufficient information to conclude that the SVWP is effective yet – is consistent with recent information provided by the MCWRA. For example, in an August 15, 2012 letter, the MCWRA advised the public that at least 10 years of data would be required to determine if the SVWP is working:

“Question 19 is asking whether the data already collected is showing positive benefit of the SVWP for North County. Since the SVWP went on-line in April 2010, it is too early to tell the magnitude of benefit that can be attributed to the project. As with the answer above, it will take extensive analysis of various amounts of data to determine the success of the SVWP. Staff is estimating that roughly 10 years of data would be a good place to start for evaluation of the project's success.” Robert Johnson, Chief of Water Resources Planning, MCWRA, letter to Margie Kay, August 15, 2012.⁴

- Furthermore, in an August 27, 2012 presentation to the MCWRA Board of Directors, MCWRA staff explained that “[r]esearch has shown that success of these types of projects are measured in decades” and that 10 years of data are required for “meaningful evaluation.”⁵

² Testimony by Howard Franklin, MCWRA, at Planning Commission Hearing December 12, 2012.

³ Furthermore, pumping data do not support the notion that agricultural water demand is declining. The Regional Water Management Group responsible for the Integrated Regional Water Management Plan admits that it is unable to project future agricultural water demand based on the Ground Water Extraction Summary Reports “as the data suggests no significant trend.” Regional Water Management Group, Greater Monterey County Integrated Regional Water Management Plan, October 2012, pp. ES-10, B-66, available at <http://www.greatermontereyirwmp.org/documents/plan/>.

⁴ Available at <http://www.mcwra.co.monterey.ca.us/BOD/BOD/agenda/BOD%20Pkt%20082712.pdf>.

⁵ Available at http://www.mcwra.co.monterey.ca.us/Agency_data/Hydrogeologic%20Reports/GroundwaterInformationalPresentation_8-27-2012.pdf.

In sum, the FEIR's inclusion of claims regarding the purported efficacy of the SVWP without recirculation denies the public the opportunity for meaningful comment and response on these new contentions. The DEIR must be revised and recirculated to address this issue.

THE FEIR RELIES ON THE PROMISE OF FUTURE STUDIES OF THE SVWP EFFICACY, WHICH THE PUBLIC DID NOT HAVE THE OPPORTUNITY TO CHALLENGE: In addition to the new claims that short-term data show that the SVWP is effective, the FEIR claims that future studies will evaluate the effect of the SVWP. If the SVWP is supposed to mitigate the effects of the Project, it is improper to rely on a future study to demonstrate its effectiveness. The public did not have the opportunity to comment and receive responses on this issue.

THE FEIR CHANGES THE BASIS AND GEOGRAPHIC SCOPE OF THE CUMULATIVE ANALYSIS: As noted, the cumulative analysis in the original DEIR made no reference to the SVWP. Furthermore, the cumulative analysis in the original DEIR was based on an entirely different geographic scope.

An EIR must define and justify the geographic scope of a cumulative impact analysis. The original DEIR purported to adopt the "list method" of defining relevant cumulative projects. The DEIR's list included projects throughout the County, including projects that were clearly not in the El Toro or even the Salinas Valley aquifer. However, the geographic scope of the original DEIR's cumulative analysis was clearly confined to the El Toro Groundwater Basin. Furthermore, the cumulative analysis section of the original DEIR made no reference whatsoever to the SVWP or to areas outside the El Toro groundwater basin. The DEIR must be revised and recirculated to explain and justify the actual geographic scope of the cumulative impact analysis.

The FEIR's revision of the cumulative groundwater impact analysis is not confined to the El Toro Groundwater Basin. Like the new analysis of project-specific impacts, the new cumulative analysis admits that the El Toro area is in overdraft, that the Project will exacerbate this overdraft, but claims that pumping could continue by mining the aquifer. However, the FEIR's analysis then goes on to claim that the Project's financial contributions to the SVWP provides a "regional mitigation strategy" for cumulative impacts to Zone 2C. The new analysis also claims that the SVWP was developed to meet water demands based on population forecasts even though it will not deliver water to the site. It then claims that the Project is consistent with AMBAG's 2008 population forecasts, "which was used for forecasting demands for the SVWP."

The public was not given the opportunity to comment on the new cumulative analysis or the new geographic scope of cumulative analysis contained in the FEIR. The omission was prejudicial. For example, the claim of consistency with AMBAG's 2008 population projections is simply irrelevant because the SVWP was approved in 2005, and

the SVWP EIR was based on even earlier population projections.⁶ The FEIR simply fails to connect the dots here. There is no evidence that AMBAG's 2008 population forecasts are relevant to any analysis of the efficacy of the SVWP. The DEIR must be revised and recirculated to address this issue.

More fundamentally, the FEIR does not make any effort to explain the relevance of the SVWP or its larger geographic scope of analysis (apparently all of Zone 2C) to the cumulative analysis. As noted above, the FEIR does not explain how the SVWP would mitigate impacts on the upgradient El Toro Basin. Furthermore, the FEIR does not explain how the Project would affect the cumulative impacts to the downgradient Salinas Valley basin. In short, the FEIR does not explain how the Project protects downgradient aquifers or how the SVWP protects upgradient aquifers.

In fact, neither the DEIR nor the FEIR provide any information about whether the Project's development was assumed in the previous analyses of the efficacy of the SVWP. As LandWatch has pointed out in comments on the Ferrini Ranch project, absent evidence that the SVWP EIR evaluated the Project area and included the Project's demand, there is no basis for concluding that the SVWP mitigates the project's contribution to cumulative impacts in either the El Toro Basin or the Salinas Valley Basin.⁷ The DEIR must be revised and recirculated to address this issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Amy L. White', written in a cursive style.

Amy L. White
Executive Director

⁶ We incorporate the SVWP EIR by reference on this point.

⁷ We incorporate by reference LandWatch's comments on the Ferrini Ranch draft EIR.