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**Via FedEx**

Camille Leung  
Project Planner  
County of San Mateo  
455 County Center, 2nd Floor  
Redwood City, CA 94063

Re: Draft Environmental Impact Report for Big Wave Wellness Center  
and Office Park

Dear Ms. Leung:

This firm represents the Committee for Green Foothills (CGF) with respect to the proposed Big Wave Wellness Center and Office Park (project). We respectfully submit this letter containing comments on the Draft Environmental Impact Report (DEIR) circulated by San Mateo County for the project pursuant to the California Environmental Quality Act (CEQA), Public Resources Code § 21000 et seq. and the CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. (CEQA Guidelines). CGF is submitting a separate comment letter as well.

The project as proposed and described in the DEIR is enormously complex, including residential, office, and industrial uses, agricultural production, a commercial kitchen, possible farmers' market, dog-walking business, and facilities, such as the indoor swimming pool, that will be open to the public. It also proposes several state-of-the-art, onsite utilities, such as wastewater recycling, a wastewater treatment plant, and solar and natural gas power generation. Yet, in its analysis of the project's environmental impacts, these complexities are all but ignored. In many instances the DEIR improperly defers both analysis and mitigation of the project's impacts to some future, post-approval date.

In doing so, the DEIR notes that the project applicant has not yet submitted crucial information relating to, for example, the project's wastewater treatment facility, lighting or draining infrastructure. This deferral is particularly problematic given the nature of the proposed project site, which has significant geotechnical and hydrological issues (e.g., expansive and clayey soils, high groundwater, proximity to fault line). Deferring development of mitigation measures to handle the project's increased stormwater run-off, for example, leaves open the question whether any mitigation measures will be feasible in this environment, or whether the measures selected will, in fact, reduce the impacts to a less-than-significant level.

The inadequacies of the DEIR's description of the project, its impacts, and mitigation measures and alternatives, undermines the very purpose of CEQA. The EIR is "the heart of CEQA." *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 392 (1988) (citations omitted) ("*Laurel I*").

[It] is an environmental "alarm bell" whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." Because the EIR must be certified or rejected by public officials, it is a document of accountability.

*Id.* (citations omitted).

Where, as here, the environmental document fails to fully inform decisionmakers, and the public, of the environmental consequences of the proposed actions, it does not satisfy the basic goals of CEQA. *See* CEQA § 21061. "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." *Id.* The DEIR here fails to fulfill this purpose.

In sum, it is our opinion that the DEIR does not comply with the requirements of CEQA. The DEIR violates CEQA by, among other deficiencies, (1) failing to adequately describe the project, (2) failing to adequately analyze the significant environmental impacts of the project, and (3) failing to propose and analyze feasible mitigation measures and alternatives to reduce the project's significant environmental impacts. As a result of the DEIR's inadequacies, the County must revise and recirculate

the DEIR to provide the public a complete, comprehensible description of the project and its alternatives, an accurate assessment of the environmental issues at stake, and a mitigation strategy—developed before project approval—that fully addresses the project’s significant impacts.

## **I. THE DEIR’S DESCRIPTION OF THE PROJECT IS INADEQUATE.**

“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713, 730 (1994) (quoting *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977)). As a result, courts have found that, even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor*, 27 Cal. App. 4th at 730. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* (citation omitted); *see also Silveira v. Las Gallinas Valley Sanitary District*, 54 Cal. App. 4th 980, 990 (1997). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

While extensive detail is not necessary, CEQA mandates that an EIR describe a proposed project with sufficient detail and accuracy to permit informed decision making. *See* CEQA Guidelines § 15124 (describing the requirements for an EIR). As explained below, the DEIR fails to meet this basic standard.

*Project Elements.* The project as proposed is extraordinarily complex, incorporating not only an office park and residential development for developmentally disabled (DD) adults and their assistants, but also wetlands restoration, a fire-road that also is proposed to function as a trail, onsite and offsite farming, a native plant nursery, recycling and composting facilities, dog walking and grooming facilities, a variety of alternative energy-generating facilities, new systems for provision of water and disposal of wastewater, a communications building with microwave dishes, a storage facility, and “various project-related business operations,” including a commercial kitchen, catering services, and the production and sale of food products such as yogurt, chicken, ice cream and eggs. Ordinarily, any one of these project elements, if presented as a stand-alone project, would require its own EIR. Here, each element receives only a cursory description. For example:

- The DEIR provides virtually no explanation of what is planned for the “Communications Building.” Will these facilities serve individuals and businesses offsite as well as on site? What kinds of equipment will be

used? This information is necessary to determine the project's environmental impacts, including energy consumption and possible hazards, among other impacts.

- Similarly, there is almost no description of the proposed production and sale of yogurt, chicken, ice cream and eggs by BW Farms. Where will these facilities be? How will the raw materials and finished product be transported to and from the project site? Are additional permits necessary for this industrial use?

Much more detail is required for each of these project elements for an adequate analysis of the environmental impacts of this complex project.

*Restrictions on Residential Units.* The DEIR asserts that the Wellness Center would provide housing affordable to low-income DD adults and staff employed to assist them. DEIR at III-18, -20. However, the project does not define who would qualify as a developmentally disabled individual. Nor does it describe any mechanisms the project would employ to ensure that only DD adults and their aides would occupy these residential units. This information is critical to determining the project's conformity with the existing land use designation at the project site. The project applicant is seeking a use permit for the Wellness Center as a "sanitarium." DEIR at IV.I-29. Assuming that a residential facility for DD adults justifies such a use permit—an assumption we question below—an enforceable requirement that Wellness Center residents be DD is necessary to ensure that the Wellness Center continues to function as a "sanitarium," and is not simply used for residences. Additional information about the proposed DD residents is also important because the DEIR assumes that they will not drive in its analysis of parking impacts. DEIR at III-50 ("The proposed parking assumes that all of the Wellness Center staff would live at the Center, and that the DD residents would not drive."). If this assumption is incorrect, the DEIR's analysis of parking and traffic impacts must be revised.

Similarly, the DEIR does not define what income would qualify as "low income" or indicate that the project applicant would place deed restrictions on the residential units to ensure that purchasers are, in fact, low-income. Without such information and requirements, the DEIR's description of the project as affordable is misleading.

*Office Park Use.* The DEIR includes a description of the kinds of uses that will be allowed within the Office Park: 40% of the space will be used for General Office, 25% for Research and Development, 15% for Storage, and 20% for Light Manufacturing. DEIR at III-19. According to a conversation with County Planner, Camille Leung, the

County will include a condition of approval requiring that this mix of uses be maintained throughout the project's life, and will impose a term limit on the permit for the Office Park so that the County can check compliance with this condition every few years. These conditions of approval are necessary to prevent a change in the mix of uses at the office park, which could result in potentially significant impacts not analyzed in the DEIR, such as increased traffic, increased exposure to hazardous substances, etc.

Any condition of approval must also take into account the phased development of the Office Park, by which the applicant will only construct a subsequent building in the Office Park once the previous building has been sold or rented. This phased approach suggests that the project could be stopped after one building is constructed and leased for 100% "General Office" or "Research and Development" use. In the absence of a requirement that the project maintain the proposed use mix, the potentially significant impacts resulting from this foreseeable change to the proposed use of the project must be analyzed in the DEIR.

*Discretionary Approvals.* CEQA requires that an EIR include a "list of permits and other approvals required to implement the project" and a "list of the agencies that are expected to use the EIR in their decision-making." CEQA Guidelines § 15124(d). The DEIR does not comply with this requirement. Instead, the DEIR indicates a use permit, tentative map, and coastal development permit are required in addition to "other discretionary approvals and requirements, including compliance with applicable ordinances and policies (e.g., Subdivision Ordinance, Green Building Ordinance, and General Plan) and various permits (e.g., use permits, off-street parking exception, building permits, grading permit)." DEIR at III-64. The land use and planning discussion does not provide any more detail. *Id.* at IV.I-29. A complete list of permits and approvals—not just a few, vaguely defined examples—must be provided in a revised and recirculated DEIR.

*Public Facilities.* Several passages in the DEIR indicate that at least some of the facilities included in the proposed project would be open to the public. For example, at page III-38, the DEIR states that the Wellness Center would include "a multipurpose auditorium for performing arts, large meetings and movies." Page III-43 states that "[t]he Community Center facilities would include the pool, fitness center and locker rooms, which would be available to the public as well." More information is needed about how and when the public would be able to use these facilities. For example, would the public be invited to movies at the Wellness Center every night? Once a week? Once a month? Would the public have to pay for access to the pool and basketball courts? This information is necessary to determine the environmental effects of the project, including impacts on traffic, parking, and utilities, as well as consistency with the land use designation.

*Lighting Plan.* The DEIR states that “a detailed lighting plan” is not available at this time, and goes on to describe in the most general terms the lighting that will likely be used. This general description is insufficient. Without a detailed lighting plan, it is impossible to analyze the potential impacts caused by the project’s lighting. For example, outdoor lighting that may be required to ensure the safety of people using the parking lot or trails may impact the birds and other species residing nearby. The lighting may also interfere with airport operations. Thus, the DEIR must be revised to include a more detailed description of the project lighting.

*Wastewater Treatment Plant.* The project includes construction of an onsite wastewater treatment plant yet critical details associated with the design and operation of this plant have not been planned. For example, the DEIR admits that the final design parameters and sizing have not yet been completed. DEIR at IV.N-13. Nor are the specifics of the internal combustion equipment associated with the treatment plant known. *Id.* at 4.C-20. Critically, the DEIR admits that the basis of design for the treatment plant’s odor removal system has yet to be provided by the project applicant. *Id.* at IV.C-28. Even the location of the sewer collection lines has not been decided since the DEIR explains that the line would either be installed within the roadway, or under a seasonal creek. *Id.* at IV.N-11.

*MBR, UV Wastewater Treatment Plant & Emergency Generator.* Although the DEIR lists the project’s advanced technologies—such as an onsite Membrane Bioreactor (MBR) wastewater treatment plant, an ultraviolet (UV)-disinfected tertiary wastewater treatment plant and sludge treatment/handling facilities, and a 600 kW natural gas engine generator—it provides no specifics about these facilities. In fact, the DEIR recognizes this lack of information. DEIR at IV.C-20 (“[T]he specifics of the internal combustion equipment associated with the MBR, UV wastewater treatment plant and the emergency natural gas engine generator (make, model, emission factors, hours of operation, etc.) are not known at this time.”). Without this information, the DEIR cannot adequately analyze the environmental impacts of these systems. Thus, this information is essential to a complete and accurate project description.

*Wastewater Recycling.* The description of the project’s proposed wastewater recycling program is inconsistent. While the DEIR states in one sentence that the proposed project “would recycle all wastewater,” the very next sentence refers to “excess wastewater [that is] not recycled.” DEIR at III-54. In another section, the DEIR states that “[a]ll water pumped from the ground would be used, recycled (providing irrigation for food crops) and then returned to the ground.” DEIR at III-56. Confusing matters further, the DEIR also includes an alternative wastewater processing scenario, in which the project would connect to Granada Sanitary District for the discharge and treatment of sewage and sludge. *Id.* If the project connects to the Granada Sanitary

District, will the project still recycle some of its wastewater? A complete and accurate description of the project's plan for wastewater disposal must be included in the DEIR.

*Water Supply.* The DEIR's description of the project's water supply is similarly confusing. The project proposes to use a combination of recycled water from an onsite wastewater treatment plant as well as water from an onsite well. The DEIR also states that the project site is "eligible for annexation" to the Coastside County Water District (CCWD) and that the project would rely on water from the CCWD for "emergency back up and fire flow and operation of a private water system or provision of domestic water . . . in lieu of a private system." DEIR at III-55. These statements are both confusing and misleading. If CCWD does not annex the project site, how will the project obtain an adequate water supply? The DEIR must provide a clear and coherent description of how the project will satisfy its water supply needs.

The DEIR's description of water supply available for the project is also incomplete and inadequate because it fails to discuss whether the existing, onsite well was ever permitted under the San Mateo Local Coastal Program. According to information provided to us by members of the community, the well never received this required permit. As a result, the project application cannot rely on this unpermitted water source to serve the proposed project.

In addition, the DEIR states that water from the onsite well will be used to provide irrigation for food crops. DEIR at page III-56. However, there does not appear to be any plan to grow food crops on the project site. The DEIR must explain this discrepancy. If the well-water will be used for agriculture offsite, the DEIR must explain how the water will be transported and analyze the potential environmental impacts of using the water in this way.

*Phasing and Schedule.* The DEIR's description of the schedule for project completion is inconsistent. On the one hand, the DEIR states that the construction of the entire project would be completed in 30-36 months. DEIR at III-60. However, the DEIR also states that the Office Park buildings will be constructed one building at a time, and construction of the first office building will take 18 months. Given this plan, it is unclear how the entire project—including four Office Park buildings constructed consecutively—could be completed in 36 months. In addition, the DEIR states that construction of all buildings other than the first Office Park building would only begin after buyers and/or renters have been established for the first Office Park building. *Id.* Given the current state of the economy, this condition may not be fulfilled for years. Indeed, the October 2, 2009 Vernazza Wolfe Associates, Inc. peer review of the Enright & Company, Inc.'s 2007 and 2009 Reports indicates that, "[i]f one assumes that demand will be primarily from Coastside businesses, then build-out could take even longer than is currently

projected.” *Id.* at 2. The June 29, 2009 Enright & Co. Report repeats this conclusion, assuming project build-out in 2025. Thus, it is unrealistic and misleading for the DEIR to maintain that the entire project will be completed within 36 months.

A longer project construction phase could increase the project’s potentially significant environmental impacts. For example, during project construction, a significant portion of the project site will be graded, potentially increasing pollution from stormwater runoff. DEIR at III-59, IV.H-52. As a result, an accurate estimation of the construction schedule is essential for an accurate analysis of the project’s environmental impacts.

*Offsite farming.* The project Description section of the DEIR notes that “BW Farming” would operate and farm “an existing 20-acre offsite farm (located on Lobitos Creek Road)” but then immediately asserts that this offsite farm is not actually part of the project. DEIR at III-40. However, in the analysis of the project’s impacts on biological resources, the DEIR states that “the proposed project proposes 32 acres of farming”—a figure that apparently includes the 20-acre offsite farm. DEIR at IV.D-96. This inconsistent treatment of the 20-acre offsite farm is part of a recurring theme throughout the DEIR, which touts all of the various project elements when doing so helps to sell the project, but is silent about them when it comes time to analyze the potential impacts of the project. Such an approach conflicts with the requirements of CEQA. *See* CEQA Guidelines section 15126 (“All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation.”). If the 20-acre offsite farm is part of the project—or a mitigation measure for the project’s impacts—the DEIR must analyze all of the potentially significant environmental impacts associated with that project element. If, on the other hand, it is not part of the project, the DEIR cannot rely on it for mitigation or to demonstrate that the proposed project will satisfy the project objectives.

It is important to understand, however, that in addition to the obvious CEQA implications, the Big Wave project appears simply to have not been planned. It is especially disconcerting that the County could be this far along in the administrative process for a large-scale and controversial project yet still lack critical substantive project details. This project needs to go back to the drawing board. Once the planning is complete, the County will be in a position to actually evaluate its environmental effects. Only then can it make the intelligent, informed decisions that CEQA requires.

## **II. THE DEIR'S ANALYSIS OF THE PROJECT'S IMPACTS IS INADEQUATE.**

In every section of the DEIR's analysis of impacts, it is apparent that the authors are faced with an impossible task: They must evaluate the environmental consequences of implementing a project that has not been sufficiently planned and designed. As described above, the DEIR includes an insufficient description of multiple components of the project. This void becomes even more clear in the impacts chapters, where time and again the DEIR defers analysis and mitigation because there is no way to determine how the project will affect the environment.

### **A. BIOLOGICAL RESOURCES**

The proposed project is located on undeveloped property bordering on the Fitzgerald Marine Reserve and Pillar Point Marsh. As the DEIR recognizes, if the project site was taken out of agricultural production, portions of the site would likely revert to coastal freshwater marsh, which is highly valuable due to the abundant wildlife it can support. DEIR at IV.D-23. The DEIR also recognizes that, even in agricultural production, the project site contains a riparian corridor separating the northern and southern project parcels, and this corridor leads directly to Pillar Point Marsh. Several special-status bird species use the project site for foraging, and there is at least a moderate chance that several more could occur on the project site. DEIR at IV.D-82-91. Despite the existing environment, the DEIR concludes that the project will not have a significant impact on biological resources. This conclusion is unsupported by the evidence in the DEIR.

*Special-Status Plant Species.* The DEIR concludes that the project's impacts on special-status plant species will be less than significant because "no habitat for any of the special-status plant species with a potential to occur on the site exists on the project site." DEIR at IV.D-94. Not only is this statement internally inconsistent—how can there be a potential for a plant species to occur on the site if there is no habitat there to support it?—it conflicts with the prior analysis in the DEIR, which indicates at least four special-status species are moderately likely to occur on the project site: coastal marsh milk-vetch, bristly sedge, marsh horsetail, and hickman's cinquefoil. DEIR at IV.D-82-83. Moreover, the DEIR expressly states that, if agricultural production were stopped, portions of the project site would revert to coastal freshwater marsh. *Id.* at IV.D-23. This type of marsh is considered to have high wildlife values and thus its *permanent* loss as a result of the project must be considered significant. The DEIR must identify and analyze measures to mitigate these potentially significant impacts. The DEIR's omission of this analysis is a fatal flaw that must be corrected in a recirculated DEIR.

*CRLF and SFGS.* The DEIR is inconsistent in its characterization of the likelihood that the California red-legged frog (CRLF) and the San Francisco garter snake (SFGS) occur on the project site. Table IV.D-2 indicates that the potential for occurrence of these species within the project site is “likely.” DEIR at IV.D-63–64. The text of the DEIR, however, states that these species have only a “moderate” potential to occur. DEIR at IV.D-85, -88, -89. This distinction matters, especially in the analysis of whether the measures identified to mitigate the project’s impacts to these species are sufficient to reduce the project’s impact to a less-than-significant level.

Moreover, the DEIR is incorrect that the nearest recorded occurrences of the CRLF are within Pillar Point Marsh, south of West Point Rd. DEIR at IV.D-89. We have been informed by one member of the community that the Midcoast LCP Update project Map (dated 11/25/2005 Working Draft), located in the San Mateo County Planning Office, shows CRLF sightings even closer to the project site. One such sighting occurred at the culvert under Airport Road adjacent to the project site, the other at the culvert under West Point Road. Because SFGS feed on CRLF (DEIR at IV.D-88), the CRLF sightings near the project site indicate that SFGS are also more likely to use the site than assumed in the DEIR. The DEIR must be revised to accurately reflect the potential for occurrence of the CRLF and SFGS on the project site.

*Operational Impacts.* The DEIR’s analysis of the project’s impacts to special status species concludes with the construction phase. However, given the information in the DEIR, the project will also have potentially significant impacts on special status species during operation. For example, the DEIR recognizes that certain special status bird species use the project site for foraging (northern harrier, white-tailed kite, and salt marsh common yellow throat), and that others have at least a moderate potential for doing so (bank swallow, sharp-shinned hawk, great blue heron). DEIR at IV.D-89–91. Between the physical loss of habitat occasioned by the project and the incompatibility of intensive human use and foraging habitat, the project will result in the loss of approximately 19 acres of foraging habitat for these birds.

The DEIR provides no analysis of whether such a loss would be significant. Instead, it simply concludes that the project will have no impact on these species because “the project proposes 32 acres of farming, 12 in row crop production in the immediate vicinity of the project site.” DEIR at IV.D-96. This reasoning fails, however, because twenty of these acres are already in agricultural production and the other twelve acres are already open space (and possibly even in agricultural production) at the airport across the street from the project site. This existing open space cannot serve to mitigate the project’s destruction of 19 acres of foraging habitat.

Moreover, nothing in the DEIR indicates that the offsite farmland is actually suitable foraging habitat. Indeed, the twelve-acre parcel at the airport site cannot be farmed in a way that encourages birds to fly near the runways, per Federal Aviation Administration (FAA) regulations, on account of the danger posed by birds to aircraft. 14 C.F.R. § 139.337 (Wildlife Hazard Management); *see also* FAA, Wildlife Hazard Management Manual, attached hereto as Exh. A. Even if such farming were permitted, any activity that would attract special-status bird species into the path of aircraft would create a new, significant impact on those species that must be analyzed in the DEIR. The twenty-acre offsite farm is also, according to the DEIR, “not a part of the project,” and thus for this reason as well cannot serve to mitigate the project’s impacts. DEIR at III-40.

Additionally, the DEIR fails entirely to consider the potentially significant “edge effects” caused by the project’s urban/wildlife interface. The project proposes to require over 700 parking spaces, indicating that at least that many individuals will likely be working or living onsite. These individuals will use the trails and other outdoor facilities at the project, drive to and from work and home, and, as a result may interfere with wildlife use of neighboring properties as well as the project site itself. Light and noise from the project could impact the behavior of wildlife at and near the project site. The only mitigation measure relating to lighting (BIO-4a) does not contain any standards for ensuring that lighting will not impact wildlife. DEIR at IV.D-98-99 (“Lighting shall *generally* be kept low to the ground, directed downward, and shielded”) (emphasis added).<sup>1</sup> These potentially significant impacts must be addressed in a recirculated DEIR.

These edge-effects may be exacerbated by the planned restoration of wetlands onsite, which will create habitat suitable for a wide range of native and special-status plant and animal species. These species, once attracted to the project site, will be living in close proximity to the residents and workers at the project site. The project includes a proposed dog-grooming and -walking facility. Although Mitigation Measure BIO-4a states that all dogs must be “confined to individual residences and the fenced portion of the building envelopes,” (DEIR at IV.D-99) it is entirely foreseeable that dogs will occasionally escape these confines into the wetlands areas, potentially harming the plants and animals occurring there. As a result, the operation of the project—not just its construction—could significantly impact special status species.

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<sup>1</sup> This measure is also internally contradictory, limiting lighting to “building envelopes,” but recognizing that lighting must be sufficient “to illuminate roadways and other outdoor areas.” DEIR at IV.D-99.

Similarly, the increased traffic travelling on Airport Street as a result of the project could make it even more difficult for wildlife to cross that road. This potentially significant impact is not discussed in the DEIR.

*Wetlands Buffer and Restoration.* The DEIR recognizes that there is riparian habitat (a “sensitive natural community”) and federally protected wetlands on the project site. DEIR at IV.D-84, -91. However, the DEIR concludes that the project’s impacts to these resources will be less than significant because the project proposes (1) a 100-foot buffer between these areas and the development, and (2) to restore nine acres of “wetlands” onsite. DEIR at IV.D-98, III-43. This reasoning suffers from several flaws. First, as is apparent from Figures III-9 and -16, the project would develop an approximately 20-foot wide fire-road/trail within the “buffer zone.” Not only could the road itself impact the wetlands, but presumably people using the trail could step off of it and damage the wetlands as well.

Second, the restoration plan is entirely vague, and includes no provision for monitoring the restoration to ensure that the native plants become permanently established. Moreover, it appears that no restoration will occur within the drainage basin between the two parcels, as that land is owned by the County. *See* DEIR at IV.H-40. If invasive and non-native species are not removed from this drainage basin, it is entirely probable that these species will spread to the restored wetlands onsite, thus eliminating any benefit of the restoration plan. If, on the other hand, the applicant proposes to restore the County-owned wetlands, such a measure must be included and analyzed in the DEIR.

The DEIR also makes much of the interactive relationship between the residents of the wellness facility and the occupants of the office park. However, these two parcels will be divided by the drainage basin. The only proposed walkway between the two parcels will be along Airport Street. *See* DEIR Figures III-10 and -16. It is unclear how such a walkway will be developed without impacting the drainage basin, as Airport Street does not, apparently, have a sidewalk. *See* DEIR Figure III-8, View 5.<sup>2</sup> All of this information must be included in a recirculated DEIR.

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<sup>2</sup> It appears that at one time the applicant considered constructing a pedestrian bridge over the drainage swale instead of (or as an alternative to) a sidewalk along Airport Street. DEIR, App. F at 110 (3 April 2007 Letter from Treadwell & Rollo) (noting that project would include a pedestrian pathway either as a sidewalk along the road or a “clear-span bridge”); *id.* at 118, 120 (same). If this alternative remains a possibility, the DEIR must analyze its potentially significant environmental impacts, including impacts to wetlands and special-status species.

The DEIR's discussion of riparian habitat is also insufficient. While the DEIR states that riparian habitat will be discussed in detail in the Biological Resources section (DEIR at IV.D-84 (Riparian habitat and Northern Coastal Salt Marsh "are discussed in more detail below.")), no such discussion occurs. Thus, the entirety of the DEIR's analysis of this sensitive community consists of one sentence: "Riparian habitat and its associated corridor are 'present' on the project site along the drainage that separates the northern and southern parcels and flows to Pillar Point Marsh." (*Id.*) This level of detail is woefully inadequate, and leaves the reader to wonder how much habitat is present on the site and what types of plant and animal species occupy this habitat. All of this information is essential for analyzing the project's impacts on this sensitive natural community.

*Perched Wetlands.* The DEIR states that only a small portion of the site is California Coastal wetlands. DEIR at IV.D-91. However, the DEIR fails to analyze whether a much larger portion of the site could be a "perched wetland." A perched wetland differs from a typical coastal wetland, and is defined by a layer of impermeable soil lying above the water table. *See* Dr. Claude M. Epstein, Introduction to Wetlands (May 2006) (available at <http://www.stockton.edu/~epsteinc/wetlands.htm>). This distinctive feature often causes drainage problems for structures built upon perched wetlands. *Id.*

A 1994 memo from Sam Herzberg, a County planner, indicates that Pillar Point Marsh and surrounding areas is a perched wetlands. *See* Memo from Sam Herzberg to Patrick Sanchez (Mar. 9, 1994), attached hereto as Exhibit B. This memo also cites to a 1987 wetland delineation report for Pillar Point Marsh by Charles Patterson identifying the perched wetlands in the area. *Id.* The County must consider this report, make it available to the public, and analyze the project's potential environmental impacts in light of this information in a revised DEIR.

*Tree removal.* The DEIR suggests that trees may need to be removed in constructing the project. DEIR at IV.D-96. However, there is no discussion of how many trees will be removed, what size they will be, and whether their removal will trigger any requirements under the County's "significant" or "heritage" tree ordinances. DEIR at IV.D-11. This information must be provided to decisionmakers and the public. If the project requires the removal of significant or heritage trees, or if tree removal otherwise will cause potentially significant impacts, the DEIR must identify mitigation measures and be recirculated.

*Mitigation Measures for CRLF, SFGS, and WPT.* Mitigation Measure BIO-1a provides for the construction of "exclusion fencing" to keep listed species (specifically CRLF, SFGS, and western pond turtle (WPT)) out of the construction area.

DEIR at IV.D-94–95. According to the DEIR, if any life stage of the CRLF, SFGS, or WPT is found during the erection of this fencing, “activities that could result in take shall be postponed until appropriate actions are taken to allow project activities to continue.” DEIR at IV.D-95. Such a vague description fails to provide any indication of what such measures might be, and thus improperly defers their development. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 302 (1988). Moreover, this language leaves open the distinct possibility that Measure BIO-1a could be infeasible, if these species are found during the construction of the fence and there is no way to remedy the situation.

*Marine Species.* The DEIR dismisses without any analysis the project’s potential impacts on special status species restricted to marine habitats, such as the black abalone, white abalone, and Guadalupe fur seal. DEIR at IV.D-9. Even though the project site does not “support habitat used by these species,” the project can—and likely will—impact them. For example, polluted stormwater or insufficiently treated wastewater from the project site could enter the marine habitat of these species; pile-driving noise and vibrations could disrupt their activities; occupants, residents, and visitors at the project site will likely increase human use of the beaches and waters below the project, resulting in increased impacts to these species. Of particular concern is the possibility that the Fitzgerald Marine Reserve could be contaminated with cat feces from residents’ pets. Significant recent research has shown that cat feces can carry a parasite lethal to sea otters. *See, e.g.,* Parasite Shed in Cat Feces Kills Sea Otters, [www.csgc.ucsd.edu/RESEARCH/PROJPROF\\_PDF/Conrad\\_CZ169.pdf](http://www.csgc.ucsd.edu/RESEARCH/PROJPROF_PDF/Conrad_CZ169.pdf); What’s Killing California Sea Otters?, [www.seaotterresearch.org/latestresearch.shtml](http://www.seaotterresearch.org/latestresearch.shtml); Report on the Monterey Bay, 2009 Condition Report, [www.sanctuaries.noaa.gov/science/condition/mbnms/pressures.html](http://www.sanctuaries.noaa.gov/science/condition/mbnms/pressures.html). The DEIR’s failure to analyze these impacts requires recirculation.

*Wildlife Movement and Connectivity.* According to the DEIR, the project’s impacts on wildlife movement and habitat connectivity will be less than significant because “wildlife species movement across the site is [already] limited.” DEIR at IV.D-98. However, no evidence is presented to support this assertion about existing wildlife movement. Moreover, the photographs and diagrams presented in the DEIR clearly show that the project site currently provides unobstructed, undeveloped access to Pillar Point Marsh and neighboring undeveloped property, down to the coast. This open space is bordered on both sides (to the northwest and southeast) by residential and industrial development. *See* DEIR Figure III-4. The project will develop almost the entire width of the site, cutting off this access. That the project will maintain a narrow strip of land (the drainage basin) mitigates this loss somewhat, but cannot mitigate it to a less-than-significant level.

Similarly, the elements of Mitigation Measure BIO-4a do little to reduce the project's impacts on wildlife movement. For example, "fencing that obstructs wild life movement" must be limited to building envelopes. DEIR at IV.D-99. However, buildings are proposed to extend across a significant portion of the property. Moreover, human activity on the site—even without fencing—will deter wildlife from crossing the developed project site. Mitigation Measure BIO-4a's lighting provision is equally ineffective. For example, lighting must be kept "at the minimum level necessary to illuminate roadways and other outdoor areas." *Id.* However, nothing in the DEIR explains how bright these lights must be. Similarly, there is no requirement that all lighting be directed downward and shielded—instead, there is only the requirement that this type of lighting "generally" be used. *Id.* Finally, the requirement that dogs and cats be confined to individual residences and the fenced portion of the building envelopes is inconsistent with the element of the project calling for the use of the property for a dog-grooming and dog-walking business. As such, this portion of Mitigation Measure BIO-4a is clearly infeasible.

*Cumulative Impacts.* By developing a currently undeveloped linkage to Pillar Point Marsh and the coast, the project will contribute cumulatively to the loss of connected habitat and, more specifically, foraging habitat for special status bird species. DEIR at IV.D-100. To mitigate this impact, the DEIR states that the project will "creat[e] additional wetland nesting and foraging habitat" to offset "the temporary loss of foraging habitat." *Id.* This statement is misleading. The net foraging area for special status bird species will actually be decreased by the project, and this loss is not temporary. No additional foraging habitat will be created. The offsite farming areas already exist. While the project does call for the restoration of wetlands and riparian habitat onsite, that area will be relatively small compared to the developed area of the site. The restoration will not occur until after the entire project is completed, which may take many years, or may never happen at all. Nothing in the DEIR indicates this restored area will provide higher quality foraging habitat (or, indeed, any foraging habitat for these species), especially given its location adjacent to the densely occupied Wellness Center and Office Park. In addition, the "restoration plan" as described in the DEIR is extremely vague, and does not require any ongoing monitoring to ensure its success. In short, the DEIR's conclusion that the project will not contribute cumulatively to the loss of habitat and connectivity is unsupported. As a result, the DEIR's analysis of cumulative biological impacts is fatally flawed.

## **B. GEOLOGY AND SOILS.**

*Description of Topography.* The description of the topography of the project site varies significantly throughout the DEIR. In the project description and at various points in the Geology & Soils section, the DEIR describes the project site as

“relatively flat” with “gentle slopes to the south and west.” DEIR at III-1, IV.F-13. At another point, the DEIR describes these slopes as “moderate.” DEIR at IV.F-14. Elsewhere, the DEIR states:

Both portions of the site have a relatively steep topography change at their western edges, which approach the marsh. Steeper topographic changes also exist along the northern edge of the southern parcel and the southern edge of the northern parcel, where the parcels respectively border the drainage swale.

DEIR at IV.F-3. Nowhere does the DEIR provide a quantitative description of these slopes (e.g., 15%, 30%, etc.). These inconsistent qualitative descriptions undermine the DEIR’s conclusion that the project poses no risk of landslide or other slope instabilities.

*Groundwater Elevation.* The DEIR notes that “[g]roundwater was encountered on the project site. . . at depths ranging from 5.5 to 7.5 and 3 to 10 feet bgs on the northern parcel and southern parcel, respectively.” DEIR at IV.F-6. It goes on to state that “[g]roundwater levels fluctuate as a result of seasonal changes.” The DEIR must clarify whether the ranges of groundwater depths presented account for that fluctuation, or whether the groundwater could rise to even shallower depths in the wintertime. This information is essential for analyzing the project’s impacts on groundwater quality and supply, as well as the potential geotechnical risks of constructing the project on this site (and the feasibility of mitigation proposed to reduce these risks).

*Seismic Ground Shaking.* The DEIR recognizes that this project will be located in a seismically active region. DEIR at IV.F-6. In fact, the San Gregorio Fault is located approximately 500 feet to the southwest of the buildable portion of the project site. *Id.* at IV.F-7.<sup>3</sup> The San Andreas Fault is a little more than ten kilometers away. *Id.* As a result of this proximity, the project site could experience an earthquake with an “MM Intensity” of X, which would result in “very violent” shaking and “extreme damage.” *Id.* at IV.F-10, 19.

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<sup>3</sup> The DEIR notes—twice—that “[n]o subsurface trenching was performed on the project site to locate the San Gregorio fault.” DEIR at IV.F-7,-10. Given the proximity of the site to the fault, such testing must be completed and the results included in a recirculated DEIR. *See Exhs. C & D.*

The DEIR glosses over the potentially significant hazards associated with this location, stating “the risk of hazard associated with ground shaking at the project site is comparable to the risk experienced in the project area in general. This is common to virtually all developments in the greater San Francisco Bay Area.” DEIR at IV.F-10. No mitigation measures are identified or analyzed. Instead, the DEIR relies on the project applicant’s compliance with the California Building Code (CBC), which requires new structures to “resist major earthquakes without collapse but with some structural as well as nonstructural damage.” *Id.* at IV.F-19. In addition, the DEIR states that the Office Park and Wellness Center buildings “shall be designed to . . . maintain reasonable ingress and egress.” (*Id.*) With these two conditions, the DEIR concludes that the potential impacts from seismic ground shaking will be less than significant.

This analysis fails to recognize at least two essential facts about the proposed project. First, the project includes not only office buildings and residences, but also a host of onsite utilities, such as a wastewater treatment facility and a natural gas generator. The DEIR must analyze what effect strong seismic ground shaking would have on these facilities. For example, would natural gas pipes rupture? Would untreated wastewater escape into the wetlands? These potentially significant environmental impacts must be evaluated.

The DEIR also fails to analyze the impact of locating a residence for DD adults in this high-risk area. According to the DEIR, these residents will not have cars or be able to drive. Therefore, the DEIR should consider measures such as the development of an emergency response plan and potential evacuation routes as mitigation for the potentially significant impacts of a strong earthquake on these residents.

*Deferred Analysis and Mitigation.* The principal flaw in the DEIR’s analysis of geology and soils at the project site is that it defers entirely any detailed analysis of site conditions and the development of mitigation measures necessary to respond to these conditions. In fact, it appears that just enough research and testing was conducted to determine that the geology of the site poses a significant problem for development there. The groundwater table is shallow, expansive soils lurk right under the surface, and both parcels are underlain by layers of saturated loose- to medium-dense, sandy soil. DEIR at IV.F-6, -12, -14. As a result, liquefaction is likely to occur at the site, resulting in ground surface settlement and such “surface manifestations” as “sand boils” and “lurch cracking.” *Id.* at IV.F-12, -13. “The presence of expansive near-surface soil is a primary geotechnical concern for the project site,” and can “cause damage to building foundations, concrete slabs, hardscape, pavement, underground utilities, and other . . . improvements.” *Id.* at IV.F-14.

Despite these significant issues, the only mitigation identified is to conduct further analysis—after project approval—and to develop final mitigation measures based on that future analysis. DEIR at IV.F-20, -21, -23. This deferral of analysis and development of mitigation is improper under CEQA. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d at 307 (1988). As the DEIR points out, no drainage plan has been prepared, and the erosion-control plan prepared by the applicant to date contains only short- and mid-term controls such as jute mesh or rolls. DEIR at IV.F-22. Long-term controls are especially important here where wetland restoration and other stormwater runoff control measures will not be undertaken until after project completion. According to the DEIR, the project will not be complete for at least thirty months. As stated elsewhere in this letter, thirty months is likely a significant understatement. Regardless, even three years is a long time to have graded soil exposed and no permanent measures in place to reduce soil erosion and loss of topsoil. These impacts are potentially significant; as such, the DEIR must analyze them and identify concrete measures to mitigate them now, prior to the County’s consideration of the project.

An additional flaw in this section of the DEIR is that the descriptions of potential mitigation measures that may be suggested as a result of future geotechnical investigations are vague and cursory. The DEIR does not consider whether these measures would be feasible at the project site or would create additional, adverse impacts, given the sensitive surroundings (onsite wetlands and Pillar Point Marsh) and shallow groundwater there. It is implausible, for example, that “deep foundations” (DEIR at IV.F-21-22) would be feasible where groundwater is encountered five feet below the surface. Similarly, “deep soil compaction techniques” (*id.* at IV.F-21) and “pile-driving” would likely create noise and vibration—and thus associated impacts on wildlife and neighbors—that have not been analyzed in this DEIR. Instead of deferring this analysis and the development of mitigation measures until after project approval, the DEIR must include this information now.

*Inconsistency with General Plan.* The San Mateo County General Plan policy 15.20 provides that the County must “[a]void the siting of structures in areas where they are jeopardized by geotechnical hazards . . . .” DEIR at IV.F-17. Only in “extraordinary circumstances when there are no alternative building sites available” may the County authorize such development. *Id.* Here, the DEIR itself recognizes the geotechnical hazards at the site—significant risk of violent seismic ground shaking and impacts from the expansive soils at the site. Nothing in the DEIR suggests that there are no alternative building sites available for this project. Indeed, the alternatives analysis identifies several potential locations. As such, the project is inconsistent with the County’s General Plan.

*Quantity of Grading and Fill.* The project description states that the project would only require the importation of 4,105 cubic yards (cy) of imported fill. DEIR at III-59. However, several of the proposed mitigation measures appear to call for a significant increase in grading and imported fill. See DEIR at IV.F-20–21 (proposing such measures as “overexcavating and replacing loose sandy soil with compacted engineered fill” and stiffened shallow foundations “bearing on a layer of well-compacted fill”); *id.* at IV.F-23 (proposing the use of permeable base material under the pervious pavement). The nature and quantity of this fill must be described in the DEIR.

### C. HYDROLOGY AND WATER QUALITY

*Stormwater Drainage.* The project proposes to create 80,000 square feet of new, impervious surfaces. DEIR at IV.H-46. The DEIR acknowledges that these new, impervious surfaces would increase stormwater discharges by 80%. *Id.* at IV.H-55. The DEIR further recognizes that pollutants in stormwater runoff could adversely impact water quality both in the short term (e.g., during construction when “disturbed soils become susceptible to water erosion and downstream sedimentation”) and in the long term, when urban pollutants such as trace metals from pavement runoff, nutrients, and pet wastes can enter aquatic and wetland habitats. *Id.* at IV.H-56–57. The only mitigation measure proposed to reduce these impacts is HYDRO-5, which requires the applicant to prepare an erosion control plan and stormwater pollution prevention plan (SWPPP). The SWPPP is to include best management practices (BMPs) that will reduce post-construction “peak flows” to existing levels and post-construction water quality BMPs that control pollutant levels to “pre-development levels, or to the maximum extent practicable (MEP).” *Id.* at IV.H-57–58. Although the development of these BMPs is generally deferred until after project-approval, in violation of CEQA, the possible measures proposed rely heavily on infiltrations systems, such as rain gardens. *Id.* at IV.H-58.

There are several flaws in this proposed approach to mitigation. First, as mentioned already, deferring all development of mitigation measures for this identified, potentially significant impact violates CEQA. This deferral is especially problematic here, where there are significant questions about the feasibility of infiltration systems (such as rain gardens) in handling stormwater runoff. As noted in the San Mateo County NPDES permit, infiltration devices may not be used if they would adversely impact groundwater quality. Municipal Regional Stormwater Permit Order No. R2-2009-0074 (NPDES No. CAS612008)(“NPDES Permit”) at 31 (Oct. 14, 2009) (available at <http://www.flowstobay.org/documents/municipalities/municipalities/NPDES%20Permit%20R2-2009-0074%20Oct142009.pdf>). Here, the groundwater table is very high. Thus, the DEIR must analyze whether infiltration devices will be feasible on the project site,

and must do so before project approval, not after. If they are not feasible, the DEIR must identify other potential mitigation measures, and analyze their effectiveness.

Similarly, it is questionable whether infiltration devices will actually work on the project site given the clayey nature of the surface soils, which do not drain quickly. If the sites soils cannot absorb stormwater quickly enough, that water will run off onto adjacent properties, including Pillar Point marsh, where urban pollutants will cause significant harm.

Finally, the DEIR improperly assumes that the hydromodification management provisions of the County's NPDES permit do not apply. These provisions require that projects adding or replacing one acre or more of impervious surface within non-exempt watersheds:

shall not cause an increase in the erosion potential of the receiving stream over the pre-project (existing) condition. Increases in runoff flow and volume shall be managed so that post project runoff shall not exceed estimated pre-project rates and durations, where such increased flow and/or volume is likely to cause increased potential for erosion of creek beds and banks, silt pollutant generation, or other adverse impacts on beneficial uses due to increased erosive force.

NPDES Permit at 35 (Section C.3.g.ii). The project will create more than one acre of impervious surface and is not within an exempt watershed area. *See* Exh. E (map of areas subject to HMP requirements). As a result, *any* increase in runoff flow or volume caused by the project constitutes a significant impact, and the project must incorporate flow duration controls—such as site design features and detention basins—to reduce the runoff flow and volume.

The DEIR indicates that the project will, in fact, increase the volume of runoff by 80 percent. DEIR at IV.H-55. Similarly, “[b]ased on the estimated precipitation for a 100-year, 24-hour storm and the increase in site impermeability, runoff volume is expected to increase by 17.0 acre-inches.” *Id.* at IV.H-54. The runoff rates will also increase. DEIR at IV.H-55. Given the regulatory framework described above, this increase constitutes a significant impact.

Yet the DEIR provides no evidence to support its conclusion that the project as mitigated will comply with this requirement. In fact, the DEIR notes that “[n]o modeling of the storm drainage systems and infiltration systems, such as in a drainage report, has been provided with the drainage plans, so the expected effect of the storm

drainage systems cannot be fully assessed at this time.” DEIR at IV.H-52; *see also* DEIR at IV.H-54 (no drainage report was provided by the applicant); *id.* at IV.H-58 (“[I]ocations and designs of the stormwater infiltration system should be provided to the County as part of the grading plans during Final Map review”—i.e., after project approval). The scant drainage information provided in the DEIR—which consists of a diagram showing the topography of the project site and the proposed location of the rain gardens (DEIR Figure III-25 and Figure III-26)—cannot support this conclusion without some evidence that the rain gardens are feasible and will reduce project runoff to pre-project levels. Quite to the contrary, the DEIR states that these rain gardens are “likely to handle flows from *only smaller events, such as the 2-year and 10-year storms.*” *Id.* at 10.11-52) (emphasis added). Moreover, as stated above, it is entirely unclear whether rain gardens will be feasible on the site, given the low permeability of the soils there. *See* Exh. F at 104 (SMCWPPP Handbook, Chapter 7) (noting that infiltration devices may not be feasible due to low-permeability of soils).

Simply requiring the applicant to prepare a SWPPP for the project after approval and requiring the applicant to “establish a mechanism for enforcement to assure that BMP functioning is being maintained as designed” is wholly inadequate to mitigate the project’s impacts on drainage patterns. DEIR at IV.H-53. Appropriate mitigation measures must be identified and described to the public in the DEIR. If infiltration devices, such as rain gardens, are infeasible, or will not mitigate the impacts to a less than significant level, other measures—including, potentially, changes to the site design—must be analyzed. Moreover, any adequate mitigation must ensure that stormwater treatment and control devices are properly maintained over time; allowing the applicant to establish enforcement mechanisms provides no such assurance.

*Offsite Flooding.* Because the applicant has not provided a drainage report, the DEIR states that “it is unknown if there are substantial stormwater discharges that would travel onto the site from neighboring areas, particularly the residential development to the northwest.” DEIR at IV.H-54. Nonetheless, the DEIR concludes that the project may have a potentially significant impact on offsite flooding based on an analysis of runoff onto Pillar Point Marsh. The only “mitigation measure” identified to reduce this impact is more deferred analysis: the applicant must submit a drainage report showing the drainage pathways and the extent of offsite drainage. This “mitigation measure” proposes no means to lessen or avoid the project’s impacts. As such, it is inadequate under CEQA. The drainage report must be prepared and analyzed and true mitigation measures must be identified in a revised and recirculated DEIR.

*Capacity of Planned Drainage Systems.* Pursuant to the CEQA Guidelines, Appendix G, a project can have a significant impact if it would create runoff water that would exceed the capacity of existing or planned stormwater drainage systems. Here, the

project apparently intends to incorporate its own stormwater drainage system. *See* DEIR, App. H, Technical Memorandum #1 at 12. However, no drainage report was provided by the applicant or described in the DEIR. DEIR at IV.H-54. Without this report, the DEIR's conclusion that the yet-unplanned drainage system will have the capacity to deal with the increased project runoff is unsupported by any evidence. *Id.* at IV.H-56. This conclusion is even more incredible given the DEIR's acknowledgement that the project will, in fact, increase stormwater runoff and velocity. *See id.* at IV.H-55.<sup>4</sup>

*Deferred Mitigation.* The DEIR relies on the future development of a SWPPP to mitigate both the increased erosion or siltation caused by the project and creation of additional sources of polluted runoff. *See* DEIR at IV.H-53,-57. As discussed above, deferring the development of mitigation measures for these impacts is improper under CEQA. In the absence of any concrete requirements, the DEIR lacks any evidence that the project's admittedly potentially significant impacts will be mitigated to a less-than-significant level. Moreover, the primary measure that may be included in a SWPPP—rain gardens—may be infeasible due to the low-permeability of the soil and the high groundwater table. *See* DEIR at IV.H-58 (“main post-construction water quality enhancement measure indicated by the applicant report is the use of rain gardens”).

In relying on a SWPPP to reduce the project's post-construction water quality impacts to a level of insignificance, the DEIR overlooks the fact that the NPDES permit contains a different standard than CEQA: post-construction BMPs incorporated into a SWPPP need only reduce pollutant levels “to the maximum extent practicable,” not to a level of insignificance. Thus, even if the project's yet-to-be developed SWPPP satisfies the County's NPDES Permit requirements, it may not reduce the project's water quality impacts to a less-than-significant level. For this reason, too, measure Hydro-5 is inadequate under CEQA.

*Cumulative Impacts.* The DEIR concludes that the project will not contribute to significant cumulative impacts on hydrology and water quality in the area as long as the other projects developed in the area comply with local, state, and federal regulations. DEIR at IV.H-62. However, an earlier discussion of the project's impacts

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<sup>4</sup> The actual amount of increase in stormwater runoff (volume and velocity) is never clearly or credibly stated in the DEIR. The DEIR notes that the estimates of pre- and post-project runoff are based on information supplied by the applicant, and does not take into account any effects of a high groundwater table, even though “high groundwater table can also lead to significant stormwater runoff, especially during large storm events.” DEIR at IV.H-54. Thus, these estimates are likely understated.

on groundwater recharge contradicts that conclusion. According to the DEIR, the project will decrease groundwater recharge on the Half Moon Bay Terrace—which supports the Pillar Point Marsh and drinking water supplies in the area—as a result of increased impervious surfaces. *Id.* at IV.H-16. These surfaces and drainage ditches on the project site direct runoff off the surface of the Half Moon Bay Terrace and through Pillar Point Marsh. *Id.* at IV.H-16, 51. According to the DEIR, “if there is further development in the El Granada/Princeton area and along Airport Street, the trend may be towards less recharge area for the marsh.” *Id.* at IV.H-16) This statement presents a perfect example of a potentially significant cumulative impact: even if the project’s impacts can be mitigated to a less-than-significant level, when considered in conjunction with other development in the area, the cumulative impact will be significant. This impact, along with measures to reduce it, must be analyzed in a revised DEIR.

*Floodplain and Sea Level Rise.* The DEIR indicates that both parcels appear to be located within a 100-year flood hazard area as depicted on the Flood Insurance Rate Map (FIRM) for the project area. DEIR at IV.H-17. However, pursuant to a 2001 Letter of Revision Based on Fill and a 2005 Letter of Map Amendment (LOMA), the Federal Emergency Management Agency (FEMA) removed the project parcels from the floodplain, and determined that the base flood elevation for the area is 8.5 feet NGVD. *Id.* The lowest part of the project site is 10 feet. *Id.* Based on this information, the DEIR concludes that the project will not place housing or structures within a 100-year flood hazard area. *Id.* at IV.H-59.

This conclusion improperly overlooks two important considerations. First, Appendix G of the CEQA Guidelines specifically states that a project could have significant impacts if it places housing or structures within a 100-year flood hazard area “as mapped on a federal Flood Hazard Boundary *or* Flood Insurance Rate Map *or* other flood hazard delineation map.” Guidelines App. G § VIII(g); *see also id.* § VIII(h) (emphasis added). Here, even though FEMA removed the project parcels from the FEMA-designated 100-year floodplain, the project site remains within the delineated area for flood hazard on other maps. *See, e.g.,* Exhibit G (Pacific Institute map of region showing project site within area currently at risk from a 100-year coastal flood).

Second, the DEIR fails to analyze the potential effects of global warming on the project and its location with respect to the 100-year floodplain. As discussed at length in the attached memorandum from the Department of Fish and Game (DFG), mean sea level along the California coast is projected to rise from 1.0 to 1.4 meters by the year 2100. *See* Exhibit H at 4 (DFG letter). Given that the lowest part of the project site is a mere 1.5 feet above the base flood elevation (DEIR at IV.H-17), this sea level rise will certainly place at least portions of the project site—if not the entire site—within the floodplain in the near future. The potential for flooding at the project site is further

supported by research indicating that California has experienced a significant increasing trend in extreme winter storms resulting in high sea level residuals, coastal erosion, wave heights and number of waves. Exh. H at 5-6 (DFG letter). These changes could also result in the intrusion of salt water into the project's well. Given these facts, the DEIR cannot simply conclude on the basis of the 2005 LOMA that the project will have no significant impacts related to development in the floodplain. A revised DEIR must be prepared and recirculated.

*Mitigation for Exposure to Tsunami and Seiche.* The DEIR acknowledges that the project site is located in an area vulnerable to tsunamis and seiches, and that exposure of project residents and employees to these events constitutes a potentially significant impact. DEIR IV.H-61. However, in place of an enforceable measure that would actually mitigate this impact, the DEIR states only that "implementing agencies shall, *where appropriate*, ensure that the project incorporates features designed to minimize damage from a tsunami or seich." *Id.* (emphasis added). This measure does not describe what these design features might be, much less require the applicant to incorporate them into the project. The measure goes on to state that "[s]tructures *should* either be placed at elevations above those likely to be adversely affected during a tsunami or seiche or be designed to allow swift water to flow around, through, or underneath without causing collapse." *Id.* (emphasis added). Again, the discretionary nature of this measure makes it unenforceable. Moreover, the DEIR's own analysis indicates that the project's buildings will *not* be at elevations above those likely to be affected.

Similarly, nothing in the DEIR suggests the project buildings as currently designed will "allow swift water to flow around, through, or underneath without causing collapse." *Id.* If the project will be redesigned to comply with this mitigation measure, the new design must be presented prior to approval, and the environmental impacts of the new design must be analyzed in a recirculated DEIR.

Finally, the proposed mitigation measure does not address one key element of the potentially significant impact caused by placing the project within an area subject to tsunamis and seiche: evacuation. An evacuation plan is especially critical here where the residents of the Wellness Center are assumed not to drive or maintain cars onsite. A revised DEIR must include a description of an evacuation plan that would lessen these potentially significant impacts.

*Pervious Pavement.* The DEIR relies heavily on the project's use of pervious pavement to reduce the project's stormwater runoff impacts. DEIR at IV.H-42 However, as the DEIR notes, the soils underlying the pervious pavement actually have slower permeability than the pavement itself. *Id.* Given these facts, the use of pervious pavement will do little if anything to reduce the project's impacts. Instead, it could result

in pooling and adverse impacts to building foundations. To reduce these structural impacts, the DEIR notes that the applicant could grade the soil and place gravel under the pavement to allow better drainage. However, these activities could create additional air quality and other impacts that must be analyzed in the DEIR.

#### **D. HAZARDS AND HAZARDOUS MATERIALS**

The DEIR recognizes that pesticides or other hazardous substances may have been released into the soil or groundwater at the project site, and that such contamination is a potentially significant impact, yet defers the performance of a Phase II Environmental Site Assessment (ESA) until after project approval. DEIR at IV.G-24. The DEIR compounds its error by proposing to mitigate this potentially significant impact with unspecified “recommendations” resulting from the future ESA. Courts have consistently rejected such deferred mitigation as inconsistent with CEQA’s mandates. *See Endangered Habitats League, Inc. v. County of Orange*, 131 Cal.App.4th 777, 793 (2005). (“[A]n agency goes too far when it simply requires a project applicant to obtain a [] report and then comply with any recommendations that may be made in the report.”)

#### **E. NOISE**

*Length of Construction Phase.* The DEIR considers the project’s construction-phase noise to be “temporary.” DEIR at IV.J-18. This conclusion is based on the assumption that total project construction would be complete within 30 to 36 months. As discussed elsewhere in this letter, this estimate is far too low; the phased approach to construction could thus last years longer. As a result, while the construction-phase noise (such as pile driving, which may be necessary to mitigate for the clayey and expansive soils on the project site) may be periodic, it will likely be repeated on numerous occasions over many years. The DEIR must take this fact into consideration when analyzing the significance of the construction-phase noise impacts.

*Building Quality Assumptions.* The DEIR relies on several unsubstantiated assumptions about the quality of construction of the project buildings to conclude that operational noise levels will be less than significant. For example, the DEIR notes that new homes typically reduce exterior-to-interior noise by more than 30dBA. DEIR at IV.J-3. The DEIR then goes on to assert that “[s]imilar reductions are typically provided for new office buildings.” *Id.* at IV.J-21. However, there is no requirement or evidence suggesting that the any of the buildings proposed here will necessarily be designed to meet this standard. Similarly, the DEIR notes that large HVAC systems, such as the one proposed by the project, can result in noise levels that average between 50 and 65 dBA Leq at 50 feet, but that “[s]tandard building parapets typically reduce these noise levels by around 10 to 15 dBA and this type of equipment is generally not audible from nearby

uses.” *Id.* Again, there is no requirement or evidence suggesting that, in the buildings proposed here, the parapets will reduce the HVAC noise levels at all. Without such evidence, the DEIR cannot conclude that the operational noise levels of the project will be less than significant.

*Use of Noise Averages.* Noise from aircraft landing and taking off at the Half Moon Bay Airport across the street from the project site will be an integral, daily part of life for residents and employees of the project. Such activity will produce short episodes of intense noise that would significantly affect the project site. The kind of short-lived and intense noise events caused by aircraft are not well represented by noise averaging metrics, such as Leq, which is used in the DEIR. To properly convey the noise impacts of blasting, the DEIR should have (but failed to) conduct a single event noise analysis.

Single event noise analysis is so important because noise receptors such as residents, employees, and visitors at the project site will experience aircraft noise as a massive and discrete sound, not as an average of noise spread over a period of time. It is impossible for the public and decisionmakers to understand the true noise impacts of the proposed project absent a single event noise analysis of the aircraft operations from the Half Moon Bay Airport.

Accordingly, California courts have rejected EIRs that analyze only average noise impacts because impacted residents do not hear noise averages, but single events. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*, 91 Cal.App.4th 1344, 1382 (2001) (EIR must provide single-event noise information in a form that allows the public to understand the impacts of individual, loud events). Sleep disruption and speech interference, and heightened levels of stress and annoyance are likely to result from single noise events. Moreover, absent such analysis, the DEIR’s conclusion that future noise levels at the site will be below the County’s exterior and interior noise standards is unsupported. Noting that “sound exposure level [SEL] has been found to be the most appropriate and useful descriptor for most types of single event sounds,” the court in *Berkeley Keep Jets* required the Port to prepare a supplementary noise analysis calculating the impacts of single-event sounds. *Id.* Thus, the revised DEIR for the project must analyze the impacts of single event noise (such as that caused by aircraft activity near the project site) to determine whether these events will increase the project’s exterior and interior noise levels above the County’s thresholds of significance, and to determine the effects of this single event noise on sleep, speech, stress and annoyance levels.

Moreover, as discussed below, the DEIR's trip generation rates are incorrect because they do not take into account trips from each Project component. Consequently, the noise analysis also understates traffic-related noise impacts.

## **F. TRAFFIC AND CIRCULATION**

*Site Access.* The DEIR's analysis of transportation impacts is hamstrung in large part by its failure to adequately describe the local roadways in the project vicinity. Because the project site is relatively remote, access to the site is highly constrained. Only a few roads provide direct access to the site and these roads are very narrow and likely substandard. It appears evident that these roads were never intended to support a use as intensive as the Big Wave project. Because the DEIR fails to disclose the highly constrained nature of site access, it necessarily downplays the impacts that would result from construction and operation of the project.

Although several local roadways would be potentially impacted by the proposed project, the DEIR's environmental setting section describes only two of these roads, Capistrano Road and Airport Street. *See* DEIR at IV.M-7. The document omits any description of other critical roadways in the area such as Cypress Avenue and Prospect Way. Indeed, the DEIR's failure to describe the physical constraints and operational characteristics of Cypress Avenue is an egregious flaw inasmuch as the document assumes that *all* project traffic would travel on this extraordinarily narrow roadway. *Id.* at IV.M-25. Cypress Avenue is already well used because it provides access to the existing Princeton, Pillar Ridge and Seal Cove residential neighborhoods and the Fitzgerald Marine Reserve. In addition to its narrow width, Cypress Avenue is further constrained because it has no sidewalks and a steep crown dropping off to deep roadside ditches thereby forcing pedestrians and bicyclists to share the narrow roadway.

Nor does the DEIR acknowledge that Capistrano Road and Prospect Way are also very narrow and are already quite congested during commute hours. Although Capistrano Road is a designated bicycle route, the roadway is so narrow that there is insufficient space for a bike lane. Circulation in the area is further constrained by the intersection at the west end of Prospect (at Broadway) because the through route to Harvard Avenue is offset. Most motorists use Harvard Avenue as the through route yet the DEIR's maps do not even depict the connection between Airport Street and Vassar Avenue.

In order for the public and decision makers to fully understand the traffic consequences of this project, detailed information about the status of each of the area roadways is needed. Such information includes, but is not limited to:

- A description of the County's standards for all project vicinity roadways including their required width.
- A description of the physical and operational characteristics of area roadways, including any known chokepoints.
- A description of locations along each of the streets and intersections where pedestrian and bicycle movements are constrained due to factors including but not limited to inadequate street widths, lack of shoulders, roadside ditches, and lack of appropriate signage.

*Trip Generation.* The DEIR underestimates the project's trip generation as well. The project would include an Office Park and a Wellness Center, the latter of which would include residential uses, a community center and storage facilities. DEIR at III-18. In addition, the project includes other project-related business operations such as catering/food service (selling chickens, eggs, yogurt and ice cream for use in local restaurants and stores); a weekly farmers' market; an organic yogurt local sales outlet; a nursery (which would supply about 15,000 to 30,000 native plants per year for restoration projects along the coast); two offsite farms; and a dog walking and grooming service. *Id.* at III-18; Table III-2 (page III-19), III-38 through III-40, and III-43.

Despite each of these additional uses, the DEIR identifies trip generation figures only for the Office Park and the Wellness Center. *See* Table IV.M-6, project Trip Generation Estimates. Since many of these other uses would appear to be retail-oriented, and thus available to the public, they would generate vehicular trips. Yet, these trips remain unaccounted for in the DEIR. Because the project would likely generate considerably more than the 2,100 daily trips disclosed in the DEIR, the document understates the severity and extent of the project's impact on traffic and circulation.

The DEIR must be revised to include trip generation estimates from each of the project's uses. Project-specific and cumulative traffic impacts must then be reanalyzed in order to accurately disclose the project's effect on local and regional traffic patterns.

*LOS Mitigation.* The DEIR also lacks adequate mitigation for the project's impacts to intersection level of service (LOS) and capacity. Notwithstanding the DEIR's failure to accurately account for the project's increase in vehicular traffic, the document nonetheless correctly concludes that the proposed development would significantly impact the intersection of State Route 1 and Cypress Avenue. DEIR at IV.M-27. Specifically, the eastbound left-turn movement at this intersection would reach LOS F upon implementation of the proposed project. *Id.* The DEIR goes on to state that other

than signalization, there are no improvements possible at this intersection to improve this LOS F operation. *Id.* With signalization, this intersection would operate at LOS A. *Id.*

Incredibly, the DEIR proposes to defer mitigation for this impact (i.e., the installation of a traffic signal at this intersection) to an unknown future date following project occupancy. DEIR at IV.M-28. The DEIR calls for the applicant to submit a bi-annual report indicating whether the intersection warrants a signal. *Id.* In the event the report shows that a signal is warranted, the applicant would coordinate with Caltrans to pay a fair share for the installation of a signal *within five years* of the date of [the] report. *Id.* (emphasis added). It is wholly inappropriate to deem this measure “mitigation” and allow it to be delayed until after project approval. *See Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1396 (1995) (rejecting mitigation measures allowing project applicant to comply with report and measures regarding the Stephens’ kangaroo rat developed *after* project approval).

Moreover, even if it were acceptable to defer this mitigation measure until after project approval—which it is not—the DEIR nonetheless fails to present sufficient evidence that this traffic impact would be mitigated to a less than significant level. The DEIR’s suggestion that the applicant would pay a fair share for the installation of a signal does not ensure that such a signal would be installed. Fee-based mitigation programs for traffic impacts based on fair share infrastructure contributions by individual projects have been found to be adequate mitigation measures under CEQA. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, 87 Cal. App. 4th 99, 140 (2001). To be adequate, however, these mitigation fees must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing. *Id.* at 140-41. *See also Anderson First Coalition v. City of Anderson*, 130 Cal. App. 4th 1173, 1188-89 (2005) (explaining that fee-based traffic mitigation measures have to be specific and part of a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation of the traffic impacts at issue). Here, the DEIR’s proposed mitigation simply assumes that the payment will occur, that it will cause the signal to actually be installed, and that it will adequately mitigate the impacts, without providing a reasonably enforceable plan to achieve those results. Moreover, the fact that the signal may not even be installed for a full five years further demonstrates that the County is not committed to expeditiously solving the traffic problem at this intersection.

The DEIR also fails to consider the traffic impacts resulting from the DEIR’s approach to deferring mitigation. Since the project would cause the intersection of Cypress Avenue and State Route 1 to operate at LOS F and because this unacceptable condition may continue for five years, motorists will seek alternative routes to accessing Route 1. The only alternative route is via Prospect Way to Capistrano. Yet the DEIR fails to analyze the effect that this rerouting of traffic would have on this intersection.

Nor does the document call for any long-term monitoring of traffic operations at this intersection.

In short, the DEIR's conclusion that traffic impacts would be mitigated to a less-than-significant level cannot be sustained.

*Emergency Access Mitigation.* Nor does the DEIR adequately analyze or mitigate the project's emergency access impacts. As discussed above, access to the site is constrained by narrow roads that likely do not meet County standards. In the event of an emergency such as a fire, earthquake or a tsunami, it is critical that emergency response vehicles are able to access the site while allowing project occupants to escape.<sup>5</sup> Unfortunately, the DEIR provides only a cursory discussion of this critical issue.

The DEIR lacks any description of the County's emergency access regulations and standards and does not disclose whether existing roadways meet minimum requirements for emergency access. In addition, the document contains no information whatsoever about the project's design of emergency access streets and driveways, gates and barriers, or any analysis of how the roadways would operate in the event of an emergency.

Instead of a detailed analysis, the document includes the following generic statements:

Impacts related to emergency access are generally site-specific, and the applicant would consult with County departments and is expected to implement any access recommendations provided. Fire lanes, turning radii and back up space around buildings would be designed in cooperation with local officials and County regulations to ensure adequacy for emergency and fire equipment vehicles.

DEIR at IV.M-37. Analysis and mitigation of the project's emergency access issues must happen in the context of this DEIR. As the California Supreme Court has explained, environmental review must happen *before* a project is approved if an EIR is to be

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<sup>5</sup> Since the project site is within the Tsunami Evacuation Zone, the project would include the development of an evacuation plan that is subject to approval by the County OES and Fire District for fires, earthquake, and tsunami. DEIR at III-59.

anything more than a “post hoc rationalization of a decision already made.” *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 81 (1974) (internal quotation marks omitted).

Design issues pertaining to access and emergency access are critical project details; they are not mere implementation measures that can be deferred until after project approval.

*Mitigation for Cumulative Traffic Impacts.* The DEIR’s mitigation for the project’s cumulative impacts on intersection level of service is legally deficient. The DEIR concludes that project traffic volumes, together with cumulative traffic, would result in LOS F at the intersection of Cypress Avenue and State Route 1 in the morning and afternoon peak hours. *See* DEIR Table IV.M-11, Cumulative Intersection Levels of Service. Yet, because the DEIR looks to the same mitigation measure (payment of a fair share payment for the potential installation of a traffic signal within five years), the DEIR’s approach to mitigation for cumulative traffic impacts is legally deficient for the reasons discussed above.

*Pedestrian Safety.* The project proposes to link the two parcels by a sidewalk running along Airport Street. However, the pictures in the DEIR suggest that this sidewalk would have to be very narrow, and would place pedestrians in very close proximity to vehicular traffic. The DEIR does not address the potential safety hazards caused by the sidewalk, or even describe if the sidewalk will be wide enough to serve the pedestrians, wheelchair users, and bicyclists who are likely to use it. These issues must be addressed in a recirculated DEIR.

## **G. AIR QUALITY**

*Inconsistency with the Clean Air Plan.* According to the DEIR, a significant impact may occur if the project would conflict with or obstruct the implementation of the current San Francisco Bay Area Air Basin Clean Air Plan (CAP). DEIR at IV.C-14. To determine if this impact may occur, the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines recommend that the project’s potential to conflict with or obstruct the current CAP be based on an evaluation of the consistency of the project with the local general plan *and* the consistency of the general plan with the current CAP. *Id.* According to the BAAQMD CEQA Guidelines, a local general plan is consistent with the current CAP if: (1) the general plan population projections are consistent with the CAP and Association of Bay Area Governments (ABAG) population projections and the rate of increase in vehicle miles traveled (VMT) does not exceed the rate of increase in population.

Since the current County of San Mateo General Plan has not been updated since 1994, the DEIR preparers undertook an evaluation to determine: (1) whether the project in combination with past, present, and reasonably foreseeable future projects would cause the County of San Mateo's population to exceed CAP and ABAG's population projections and (2) whether the project in combination with past, present, and reasonably foreseeable future projects would cause the rate of increase in VMT to exceed the rate of increase in population. The DEIR states that if either of the scenarios identified above occurs, the project would not be consistent with the CAP and would therefore have significant air quality impact. *Id.* at IV.C-14 and IV.C-15.

The population growth associated with the proposed project would be more than three times greater than the projected population growth in the unincorporated Half Moon Bay area between 2009 and 2013. *Id.* at IV.C-15. In addition, the VMT increase for San Mateo County from 1990 to 2010 will be 19.8 percent while the population increase in the County from 1990 to 2010 will be approximately 13.7 percent. *Id.* at IV.C-16. Because the VMT increase already exceeds the County population projections for the 1990 to 2010 timeframe and because the proposed project would contribute to this VMT, by the DEIR's own wording, the project would not be consistent with the CAP. Yet, in a marked attempt to sidestep disclosure of this impact, the DEIR asserts that because the project would not *cause* the rate of increase in VMT to exceed the rate of increase in population, the project's potential to obstruct implementation of the applicable air quality plan is less than significant. *Id.* at IV.C-17. This conclusion cannot be sustained. The DEIR's failure to recognize and mitigate this significant impact is a violation of CEQA.

*Construction-related Emissions.* The DEIR fails to evaluate the project's construction-related emissions against the BAAQMD proposed CEQA guidelines. Rather than quantify the increase in construction-related emissions, the DEIR looks to the implementation of air quality control measures to conclude that construction-related emissions would be less than significant. DEIR at IV.C-19. There are myriad problems with this approach to impact analysis. First, the measures identified in the DEIR do nothing to control emissions from diesel-powered engines used during construction. Consequently, the DEIR fails to analyze and mitigate impacts relating to exposure to diesel particulate matter (DPM) emissions.

The combustion of diesel fuel in engines produces diesel exhaust, which contains some 40 compounds that are listed by the U.S. Environmental Protection Agency as hazardous air pollutants and by CARB as toxic air contaminants. DPM emitted from diesel exhaust is a serious public health concern. It has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer and premature death. Fine diesel particles are deposited deep in the lungs

and can result in increased respiratory symptoms and disease, particularly in children and individuals with asthma. In 1998, CARB identified particulate emissions from diesel-fueled engines as a toxic air contaminant.<sup>6</sup>

Construction of the proposed project would occur over at least a three year period<sup>7</sup> and would require the use of dump trucks, push-pull scrapers, backhoes, pile drivers, cranes, concrete trucks and pumpers, cat crawlers, fork lifts and semi-trucks. DEIR at IV.C-18. Most, if not all, of this equipment uses diesel fuel. On an equivalent horsepower basis, diesel engines produce particles at a markedly greater rate than gasoline engines. Project construction would therefore expose workers, as well as residents of adjacent neighborhoods, to elevated concentration of DPM exhaust. A revised DEIR should identify and analyze the increase in DPM emissions and evaluate the public health impacts from these emissions. If impacts are significant, the revised document must identify feasible mitigation measures to reduce diesel emissions.

Second, by simply identifying construction-related control measures, the DEIR is ignoring the guidance set forth in the BAAQMD updated Air Quality Guidelines. *See* BAAQMD Draft CEQA Air Quality Guidelines, December 2009 (BAAQMD Proposed Guidelines).<sup>8</sup> Although these Guidelines are in draft form, they nonetheless provide state-of-the-art procedures for evaluating and mitigating a project's potential air quality impacts. To this end, the Guidelines take a more conservative approach than the BAAQMD's existing CEQA Guidelines in terms of construction-related emissions. Whereas the previous Guidelines emphasized the adoption of control measures rather than the quantification of construction-related emissions, the proposed Guidelines look to preliminary Screening Criteria which provide a conservative indication of whether a project would result in the generation of construction-related criteria air pollutants and/or precursors that exceed the BAAQMD's threshold of significance. *See* BAAQMD Proposed Guidelines at 3-5. The Guidelines require that several Screening Criteria be met to result in a less-than significant impact. *Id.*

Here, the Big Wave project does not meet the criteria because it does not include all of the BAAQMD's Basic Construction Mitigation Measures in the project

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<sup>6</sup> *See* <http://www.arb.ca.gov/regact/diesltac/diesltac.htm>

<sup>7</sup> As discussed elsewhere in this letter, the three-year construction schedule is likely a significant underestimate. The DEIR must analyze the potential air quality impacts of a longer, more accurate construction schedule.

<sup>8</sup> *See* [http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/Draft%20BAAQMD%20CEQA%20Guidelines\\_Dec%207%202009.ashx](http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/Draft%20BAAQMD%20CEQA%20Guidelines_Dec%207%202009.ashx).

design. *Id.* Accordingly, the BAAQMD Guidelines require that the project's construction emissions should be quantified. *Id.* at 8-1. In addition, the applicant must also include, at a minimum, each of the following construction mitigation measures:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material offsite shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publically visible sign with a telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The phone number of the BAAQMD shall also be visible to ensure compliance with applicable regulations.

See BAAQMD Guidelines at 8-4.

Because the DEIR does not include all of the BAAQMD's list of mitigation measures, the document's conclusion that construction-related air quality impacts would

be less than significant cannot be sustained. The revised DEIR must quantify the project's construction-related emissions and adopt all feasible mitigation measures.

*Operational Criteria and Toxic Air Emissions.* The DEIR understates the severity of the project's air quality impacts because it fails to include all sources of emissions. As discussed above, the DEIR underestimates vehicular trip generation for the project and thus because the operational analysis relies in large part on assumptions from the transportation analysis, the DEIR also underestimates the project's mobile sources of emissions.

The DEIR further understates the project's air quality impacts because it does not include emissions from certain project components such as the onsite membrane bioreactor (MBR), ultraviolet-disinfected tertiary wastewater treatment plant, and the 600 kW emergency natural gas engine generator. The DEIR discloses that these project components would be primary sources of operational emissions (at IV.C-20) but fails to identify the amount of emissions these project components would generate or analyze the effect these emissions would have on air quality. The DEIR implies that such an analysis does not need to be included in the DEIR because specific details regarding the internal combustion equipment associated with these components are not known and because the project would need permits from the BAAQMD.<sup>9</sup>

The DEIR's failure to define essential project components cannot be used as an excuse to avoid examining the project's impacts. CEQA requires that a document provide a sufficient degree of analysis to inform the public about the proposed project's adverse environmental impacts and to allow decision-makers to make intelligent judgments. Consistent with this requirement, the information regarding the project's impacts must be "painstakingly ferreted out." *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado*, 131 Cal.App.3d 350, 357-

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<sup>9</sup> This same defect affects the DEIR's purported analysis of toxic air contaminants (TAC) as well. The MBR, wastewater treatment plant, and the natural gas engine generator would likely be sources of TACs. However, the DEIR fails to identify the increase in TAC emissions or analyze the health implications of the TAC emissions from these project components. See DEIR at IV.C-25 footnote 10. The failure to identify the TACs from these sources is especially disconcerting inasmuch as the County and the EIR preparer specifically acknowledged the potential for these sources to emit TACs and impact public health because new residences would be sited in proximity to these sources. See First Amendment to Agreement Between the County of San Mateo and Christopher A. Joseph & Associates, attached as Exhibit I, at 4 of 17.

58 (1982) (“EPIC”) (finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment).

Moreover, the DEIR cannot look to compliance with BAAQMD regulations to avoid examining impacts in this EIR. California courts are clear in this regard; merely requiring compliance with agency regulations does not conclusively indicate that a proposed project would not have a significant and adverse impact. In *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 716 (1990), for example, the court found that the fact that the EPA and the local air pollution control district had issued the necessary air emission permits for the construction of a coal fired cogeneration plant did not nullify the CEQA requirement that the lead agency analyze the significant air quality impacts of the entire project.

Finally, the DEIR makes an attempt at identifying the project’s “total operational emissions” but because the document does not identify each source of emissions, it is impossible to verify the accuracy of the emissions projections. *See* Table IV.C-7.

The DEIR’s “analysis” of operational emissions thus falls well short of CEQA’s standards. The EIR’s air quality analysis must be revised and recirculated.

*Odor Emissions.* The project proposes the construction of an onsite sewage disposal system to accommodate the project’s wastewater demand. DEIR at IV.N-5. Although critical details pertaining to the treatment facility remain unknown, the treatment facility would include a collection system, the MBR, a water recycling system, and several onsite drain fields. The MBR plant would be located at the southern corner of the Wellness Center (*Id.* at III-54) and various leaching chambers and drainfields would be located near the Wellness Center and the Office Park. *See* Figures III-25 and III-26. In addition, although the treatment facility is not shown on any of the DEIR maps, if it is located near the water treatment facility, it would be no more than about ¼ mile from the residential community which borders the project site to the north. Some of the leach fields would be located considerably closer to this community, potentially within a few hundred feet. *See* Figures III-1 and III-25.

According to the BAAQMD, wastewater treatment plants have the potential to generate considerable odors. BAAQMD Proposed CEQA Guidelines at 7-1. Rather than make any effort to actually analyze how these odorous emissions would impact nearby sensitive receptors, the DEIR contains a sum total of two paragraphs on this issue. *See* DEIR at IV.C-27,-28. The document suggests that odors would be controlled by covering the plant with aluminum plates, hatches and gaskets and would use fans, a soil scrubber system, and cover in loam, wood or root chips. *Id.* at IV.C-28. The DEIR then

claims that “this type” of odor removal system is common and can be effective. *Id.* As with other sections of the DEIR, the document lacks any evidence to support its conclusions that odor impacts would be less than significant. The document’s failure to provide the necessary detail of the wastewater treatment system itself and the methods for controlling odors thwarts informed decision making.

The DEIR’s “mitigation” for odor impacts is similarly flawed in that it merely calls for the applicant to provide engineering and site plan details to verify the basis of design for the odor removal system. DEIR at IV.C-28. The DEIR then summarily concludes that impacts relating to odors from the wastewater treatment plant would be less than significant. “Such a bare conclusion without an explanation of its factual and analytical basis is insufficient.” *San Joaquin Raptor*, 27 Cal. App. 4th at 736 (1994); *accord Laurel Heights I*, 47 Cal. 3d at 404 (“[T]he EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.”). “This requirement enables the decision-makers and the public to make an ‘independent, reasoned judgment’ about a proposed project.” *Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Ass’n*, 42 Cal. 3d 929, 935 (1986). The DEIR’s conclusory analysis does not provide that supporting evidence for the project “strategies” relied on to mitigate the project’s odor impacts.

The DEIR’s failure to comprehensively evaluate the potential for the wastewater treatment facility to impact nearby sensitive receptors is a fatal flaw. The DEIR must be completely revised to remedy this failing. Since odor impacts are dependent on a number of variables including the nature of the odor source, frequency of odor generation, intensity of odor, wind direction, and sensitivity of receptors, the revised DEIR must provide this information to allow for a comprehensive analysis of project impacts.

*Project’s Impact on Climate Change.* As described below, the DEIR uses an unlawful standard of significance that ignores the quantity of the project’s actual greenhouse gas emissions (GHG) emissions and thus ignores the severity of its contribution to climate change. When considered under an appropriate standard of significance, the project would clearly have significant climate impacts.

1. *The project’s GHG Emissions Represent a Significant Impact by Any Reasonable Standard.*

The DEIR asserts “there are currently no thresholds or official guidance adopted by the BAAQMD or other agencies in California to assess the significance of potential greenhouse gas emissions.” DEIR at IV.C-31. While the BAAQMD has not yet adopted GHG thresholds, the agency nonetheless has draft thresholds and intends to

adopt them in January 2010. According to the draft BAAQMD thresholds, the Big Wave project would have a significant climate impact.<sup>10</sup> For land use projects such as the instant project, the BAAQMD has proposed a significance threshold of 1,100 tons per year CO<sub>2</sub>e (carbon dioxide equivalent). See BAAQMD, *Staff-Recommended California Environmental Quality Act (CEQA) Thresholds of Significance* (December 2009), at 7. The Big Wave project is estimated to generate over 4,300 metric tons per year CO<sub>2</sub>e. DEIR at IV.C-30. Based on the BAAQMD threshold, the project would plainly have a significant climate impact.

In addition, in 2008, the California Air Pollution Control Officers Association (CAPCOA) published what has become a leading report on addressing GHG emissions in CEQA documents. The CAPCOA report proposes a variety of potential thresholds of significance. Under CAPCOA's analysis, the only two thresholds that were determined to be highly effective at reducing emissions and consistent with the state policies that dictate reducing GHG emissions (AB 32 and Executive Order S-3-05) are a zero-emission threshold or a threshold of 900 tons per year CO<sub>2</sub>e. Under either threshold, the Big Wave project's emissions are plainly significant.

2. *The DEIR Underestimates project GHG Emissions by Ignoring Black Carbon.*

The DEIR underestimates project GHG emissions because it fails to account for black carbon emissions. Black carbon, which is a component of soot, is produced by incomplete combustion and is a significant contributor to global warming. Although combustion produces a mixture of black carbon and organic carbon, the proportion of black carbon produced by burning fossil fuels, such as diesel, is much greater than that produced by burning biomass. See *Global and Regional Climate Changes Due to Black Carbon*, Ramanathan and Carmichael, Scripps Institution of Oceanography, March 2008, attached as Exhibit J.

Black carbon heats the atmosphere in a variety of ways. First, it is highly efficient at absorbing solar radiation and in turn heating the surrounding atmosphere. Second, atmospheric black carbon absorbs reflected radiation from the surface. Third, it

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<sup>10</sup> On September 8, 2009, BAAQMD proposed adoption of CEQA significance thresholds for GHG emissions. See BAAQMD, *California Environmental Quality Act Thresholds of Significance*, available at <<http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/Workshop%20Draft%20-%20CEQA%20Thresholds%20Options%20Report%204-28-2009.ashx>>

evaporates low clouds. Notably, black carbon is often associated with other aerosols such as sulfates, which greatly increases its heating potential. *Id.*

Due to black carbon's short atmospheric life span and high global warming potential, reducing black carbon emissions offers an opportunity to mitigate the effects of global warming trends in the short term. *Id.* It is estimated that black carbon is the second greatest contributor to global warming behind carbon dioxide. *See Id.* In developed countries, diesel combustion is the main source of black carbon. Diesel emissions include a number of compounds such as sulfur oxides, nitrogen oxides, hydrocarbons, carbon monoxide, and particulate matter. Diesel particulate matter is approximately 75 percent elemental carbon. *See EPA, 2002 Diesel Health Assessment, available at <<http://www.scribd.com/doc/1011457/Health-Assessment-Document-for-Diesel-Engine-Exhaust-EPA-May-2002>>.* Project construction will require the use of diesel-powered, heavy-duty trucks and construction equipment, and project operations will also undoubtedly entail diesel emissions generated by trucks making deliveries to the project. Thus, it is important that black carbon emissions be addressed as part of a revised and recirculated DEIR for the project.

3. *The DEIR Does Not provide Substantial Evidence to Demonstrate that Project Features and Proposed Mitigation Will Reduce the Project's Climate Impacts to a Less-than-Significant Level.*

CEQA's central mandate is that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." *Berkeley Keep Jets Over the Bay*, 91 Cal. App. 4th at 1354 (quoting Pub. Res. Code § 21002). CEQA requires lead agencies to identify and analyze all feasible mitigation, even if this mitigation will not reduce the impact to a level of insignificance. CEQA Guidelines § 15126.4(a)(1)(A) (discussion of mitigation measure "shall identify mitigation measures for each significant environmental effect identified in the EIR"). Mitigation under CEQA can include:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

CEQA Guidelines § 15370.

The DEIR suggests that the project would not have a significant impact on GHG emissions if it would be consistent with local GHG goals or policies. To this end, the DEIR evaluates the project against a set of actions pursuant to the AB32 Scoping Plan and Office of Planning and Research (OPR) recommended GHG mitigation measures. *See* Tables IV.C-13 and IV.C-14. The DEIR concludes that the project would be consistent with these measures and would therefore have a less than significant impact on GHG emissions. *See* DEIR at IV.C-31 through IV.C-35.<sup>11</sup>

Even if the DEIR's approach in relying on AB 32 and OPR measures to conclude the project's impacts would be less than significant were valid—which it is not—the measures listed in Tables IV.C-13 and IV.C-14 are vague, insubstantial, and non-binding, and thus cannot be relied on to mitigate project impacts. First, the DEIR provides no evidentiary support that the proposed “measures” would effectively reduce GHG emissions. For example, under “Encourage walking, bicycling and the use of public transit systems,” the project would be developed in a remote location and thus the predominant mode of transportation would be via automobile. *Id.* We can find no evidence that the project would encourage alternative transportation modes in a manner that would result in reduced GHG emissions.

In another instance, the document calls for the project to incorporate onsite renewable energy production, including installation of photovoltaic cells or other solar options. *Id.* Yet, the document's bare-bones description of “renewable energy production” options does not allow decision makers and the public to evaluate the potential for their implementation or to determine whether the measures would in fact reduce GHG emissions, let alone to determine what quantity of emissions they would eliminate. A conclusion that a measure will be effective in mitigating an impact must be supported by substantial evidence. *Gray v. County of Madera*, 167 Cal. App. 4th 1099, 1115-18 (2008); *see also San Franciscans for Reasonable Growth v. City & County of*

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<sup>11</sup> As discussed above, the DEIR errs in not relying on the BAAQMD and CAPCOA thresholds of significance. Accordingly, the project would have a significant impact on GHG emissions.

*San Francisco*, 151 Cal. App. 3d 61, 79 (1984) (measures must not be so vague that it is impossible to gauge their effectiveness).

Moreover, other measures are merely hortatory or potential rather than binding commitments. Measures relied upon to mitigate impacts must be “fully enforceable” through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2). Similarly, they must actually be implemented, not merely adopted and then disregarded, and thus the mitigation must provide assurance that such implementation will in fact occur. *Anderson First*, 130 Cal. App. 4th at 1186-87; *Fed’n of Hillside & Canyon Ass’ns v. City of Los Angeles*, 83 Cal. App. 4th 1252, 1261 (2000). The “mitigation measures” do not meet this standard. For example, although the project would “provide tenant guidelines for energy efficiency and environmental protection,” (DEIR at IV.C-35), the DEIR does not indicate how these guidelines will cause emission reductions. Nor do statements such as this qualify as binding commitments to reduce the project’s GHG emissions. Moreover, the DEIR does not describe how the County would ensure that the project in fact incorporates all of the proposed “measures.”

4. *The DEIR Makes No Attempt to Quantify the Emission Reductions Associated With the “GHG Measures.”*

As noted above, the effectiveness of mitigation must be established based on substantial evidence. *Gray*, 167 Cal. App. 4th at 1115-18. Here, the DEIR fails to provide a quantitative estimate of emission reductions. Instead, it simply concludes that “the implementation of these green building principles, performance standards, and mitigation measures will extensively reduce the potential greenhouse gas emissions associated with the implementation of the project.” DEIR at IV.C-36. The DEIR must either generate an emission reduction estimate or explain, based on substantial evidence, why doing so would be infeasible. See *Berkeley Keep Jets Over the Bay*, 91 Cal. App. 4th at 1370-71; *Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal. App. 3d 421, 430 (1985). Without that estimate, the public and decision maker cannot determine the extent to which the proposed measure in fact would reduce emissions.

5. *Certain project Measures Are Vague, Unenforceable, and Insufficient.*

The DEIR looks to certain measures to achieve environmental sustainability and associated decreases in GHG emissions. For example, the DEIR calls for installing a wind power system. DEIR at IV.C-35. Yet, the DEIR does not include any details of this system other than a general reference in the project description to wind turbines and generators and that these systems would generate 50 to 100 kW of wind

power. DEIR at III-18, III-40, and III-58. While the use of a wind power system would be an important project asset, the DEIR cannot rely on this feature to reduce GHG emissions without providing detail as to the system's feasibility and operational provisions. Exactly how will this wind power system operate and what would be the associated GHG emission reduction? Without that information, the public and decision makers have no idea how effective this system would be.

The DEIR's conclusions regarding GHG emissions and the project's impacts on climate change cannot be sustained. The DEIR should be revised to provide a legally adequate analysis of project impacts and identify feasible mitigation capable of mitigating the project's significant climate change impacts.

## **H. CULTURAL RESOURCES**

Another troubling aspect of the DEIR is its treatment of cultural resources. While the document acknowledges that "[a]s currently proposed, development on the proposed project would occur within the mapped boundaries of archaeological site CA-SMA-151," (a site listed on the National Register of Historic Places and the California Register of Historic Resources and protected under a variety of statutes and regulations), the DEIR attempts to avoid the obligations that flow from that acknowledgment. DEIR at IV.E-14. For instance, the DEIR fails to adequately describe the extent of the archeological resources or the nature of the project's concededly significant impact on those resources and fails to consider mitigation measures that would avoid the disturbance of significant archaeological resources. In addition, the DEIR improperly relies upon an as yet unspecified "mitigation plan" to allegedly fully minimize the impacts of the disturbance of a portion of these resources.

*Archaeological Resources.* Significant archaeological resources are known to exist on the project site. DEIR at IV.E-4. The DEIR documents the site's importance due to the fact that the National Register's assessment of the site concluded that it has strong potential "to yield considerable information on prehistoric coastal habitation" and it is "one of the last relatively undisturbed prehistoric habitation sites in the area." *Id.* As stated in the DEIR, the potential for well preserved artifacts of the kind found at Site CA-SMA-151 are increasingly uncommon in the area. *Id.* Indeed, the DEIR repeatedly acknowledges the value of this site and its status as a "unique archaeological resource." *Id.*

Despite the document's acknowledgment of the significance of the resources on the site, and the fact that the location and significance of the resources are known, the DEIR fails to adequately analyze the nature of the project's impacts on these resources or to provide a basis for determining either the scope of the impacts or the

range and feasibility of alternatives and mitigation measures that could avoid these impacts. Perhaps most significantly, the DEIR fails to identify even the approximate location of the affected archaeological resources. Nor does the DEIR provide any information on the geographic size that the resource area occupies. As a result, it is impossible to decipher to what extent the development would destroy or disturb the resources. The DEIR's alternatives analysis indicates that the cultural resources are located on the western portion of the southern parcel. DEIR at VI-12. Given that the project contemplates developing the entire western portion of the southern parcel with the Wellness Center buildings, a water recycling plant and a paved fire trail, it is likely that construction of the buildings and supporting infrastructure (e.g., electrical, water, sewer, and gas) will extend across the archaeological site. DEIR at Figure III-16. Any revised document must disclose the extent of the impact to the resources.

*Mitigation of Impacts to Significant Resources.* CEQA Guidelines section 15126.4(b)(3) states that "Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature" and that "[p]reservation in place is the preferred manner of mitigating impacts to archaeological sites." "Preservation in place maintains the relationship between artifacts and the archaeological context." CEQA Guidelines § 15126.4(b)(3)(B). Preservation in place may be accomplished in a variety of ways and CEQA Guidelines list examples such as: planning construction to avoid the resources; incorporating the site where the resources are found within parks or open space areas, and deeding the site into a permanent conservation easement. *Id.*

Despite CEQA's clear preference for designing projects to avoid impacting historical resources, the proposed project would pave over or otherwise disturb the archaeological resources that the DEIR identifies as significant historical resources within the meaning of CEQA. The DEIR identifies as one possible mitigation measure avoidance of the archaeological site, yet does not disclose if avoidance would require redesigning the project or whether avoidance is feasible. The DEIR acknowledges that Site CA-SMA-151 is "considered to be an important Native American site, known to contain human burials," yet, rather than prioritizing and requiring avoidance of these remains, the DEIR asserts that a mitigation measure that calls for re-interring the remains with "appropriate dignity" would reduce impacts to less-than-significant levels. DEIR at IV.E-17. However, developing a water recycling plant in the location of a burial site can hardly be described as appropriately dignified.

Furthermore, the DEIR provides mitigation for the eventuality that avoidance would be impractical or infeasible and asserts that the development of a post-approval mitigation plan will mitigate the project's impacts to this portion of the site to a less than significant level. This conclusion is not supported by substantial evidence,

constitutes an inappropriate deferral of mitigation measures under Sundstrom, 202 Cal.App.3d at 307, and is erroneous as a matter of law. *See* Discussion following CEQA Guidelines § 15126.4 (“where a historic resource is to be demolished, documentation of the resources usually falls short of full mitigation.”). Case law supports that the mitigation of the effects of demolition of an historic resource (as defined by CEQA) through documentation of the resource and placement of commemorative markers is not adequate to reduce impacts to insignificance. *League of Protection of Oakland’s Architectural and Historic Resources v. City of Oakland*, 52 Cal. App. 4th 896, 909 (1997). A revised DEIR must identify true mitigation for the project’s impacts, giving priority to avoidance.

## I. LAND USE AND PLANNING

*County Zoning Regulations.* The DEIR states that both parcels are within the Airport Overlay (A-O) District, as defined in the County’s Zoning Regulations. DEIR at IV.I-9. The DEIR also states that “all uses permitted by the underlying district shall be permitted in the A-O District *except* residential or uses with more than three (3) persons occupying the site at any one time.” *Id.* (emphasis added). The project, of course, plans to place both residential uses and an employment center on the two parcels. Thus, it is entirely unclear how the DEIR comes to the conclusion that the proposed project “would be designed and constructed in conformance with all applicable . . . Zoning Regulations.” *Id.* at IV.I-35.

Even assuming the project could be developed in the A-O District, the development of the residential Wellness Center is inconsistent with the light industrial zoning. The DEIR attempts to reconcile this inconsistency by asserting that the Wellness Center is permitted (with a use permit) as a “sanitarium.” DEIR IV.I-10. However, the DEIR nowhere describes how a residential facility for DD adults could be considered a “sanitarium,” which is generally defined as a facility designed to provide treatment, rest, and recuperation for people who are ill. *See* <http://www.merriam-webster.com/dictionary/sanatorium> (A sanitarium (also spelled “sanitorium”) is “an establishment that provides therapy combined with a regimen (as of diet and exercise) for treatment or rehabilitation;” “an institution for rest and recuperation (as of convalescents);” or “an establishment for the treatment of the chronically ill.”). The Wellness Center does not appear to provide any such services for people with illnesses. Thus, contrary to the DEIR’s conclusion, the Wellness Center is inconsistent with the Use Permit exception to the County’s zoning for the parcels, and thus will have a potentially significant land use impact.

*Fitzgerald Marine Reserve Master Plan.* The DEIR neglects to mention that the project will interfere with at least two of the goals of the Fitzgerald Marine

Reserve Master Plan. The primary goal of that plan is “to preserve the natural resources of the Reserve,” which is located to the west of the project site. *See* Fitzgerald Marine Reserve Master Plan, Part I, § C at 41(Natural Resource Management Program), attached hereto as Exhibit K. Policy 10 of that document seeks to “[a]cquire land in the vicinity of Pillar Point Marsh and lands adjacent to the Reserve, as it becomes available, to add to the ecological system of the Reserve.” *Id.* at 44-45. The plan goes on to state:

The Pillar Point Marsh land is now separated from the main body of the Reserve. *The County should acquire land as it becomes available* in order to connect Pillar Point Marsh with the Reserve, to expand the ecological system of the Reserve, to provide opportunities for future educational activities, and to avoid potential land use impacts that could result from management practices on adjacent lands in different ownership. *Acquisition efforts should focus on land between the Reserve and Airport Street to the east . . . .*

*Id.* (emphasis added). Clearly, approving a large-scale development on land between the Reserve and Airport Street is in tension with this policy. Yet, the DEIR did not discuss the possibility of the County acquiring the project site, or the impact approving this development will have on the County’s ability to pursue Policy 10. The DEIR must be revised to include this analysis.

Similarly, the DEIR fails to analyze the project’s impacts on Policy 11 of the Fitzgerald Marine Reserve Master Plan. That policy states: “Introduction and possession of domestic and feral animals, including dogs, cats, ducks and any exotic, non-naturalized species are prohibited in the Reserve.” *Id.* Allowing a development that explicitly includes a dog walking and grooming facility on land adjacent to the Reserve is patently inconsistent with this policy. Moreover, for the reasons stated above, the mitigation measures proposed in the DEIR to avoid any impacts caused by pets at the Wellness Center are inadequate to reduce this risk to a less-than-significant level. The DEIR must include an analysis of the project’s consistency with this policy of the Fitzgerald Marine Reserve Master Plan, as well.

## **J. UTILITIES**

*Solid Waste Services.* The DEIR concludes that the project’s impacts relating to landfill capacity would be less than significant (DEIR at IV.N-46), yet the analysis does not support this conclusion. Solid waste from the project area is hauled to Ox Mountain Sanitary Landfill. DEIR at IV.N-39. Ox Mountain is currently in excess by approximately 6.7 million cubic yards of its total permitted capacity. *Id.* In addition,

the landfill is scheduled to close in 2018. *Id.* While the DEIR states that Ox Mountain continues to accept waste as the landfill gradually settles, the fact remains that the landfill is operating beyond its permitted capacity. According to the DEIR's own significance threshold, this constitutes a significant impact which requires mitigation. *See* DEIR at IV.N-42: 'the project would have a significant environmental impact if it would be served by a landfill (i.e., Ox Mountain Landfill) with insufficient permitted capacity to accommodate the project's solid waste disposal needs.'" In addition, the DEIR fails to resolve how solid waste service would be provided once Ox Mountain closes in 2018. The document lacks any discussion of whether other landfill capacity is being sought. Therefore, it is impossible to reconcile the facts that the applicable landfill has insufficient capacity and is scheduled to close in eight years with the DEIR's conclusion that impacts relating to solid waste would be less than significant.

The DEIR also concludes that impacts relating to the project's compliance with local statutes and regulations would be less than significant. DEIR at IV.N-46. Here too, the document lacks the evidentiary support for this conclusion. San Mateo County's Ordinance No. 04099 requires projects to salvage, reuse or recycle 100 percent of inert solids and at least 50 percent of the remaining construction and demolition debris generated by a project. *Id.* at IV.N-44. In addition, the Ordinance requires the preparation of a Waste Management Plan (WMP) to demonstrate compliance with the Ordinance. *Id.* The DEIR states that the project would recycle over 50 percent of construction waste, with an ultimate goal of 75 percent. *Id.* at IV.N-43. Unless the applicant commits to reuse or recycle 100 percent of inert materials and at least 50 percent of remaining construction debris, the project would not meet the clear requirements of the County Ordinance. Moreover, the DEIR does not include the WMP and thus fails to provide any evidentiary support that the project would be able to achieve even a 50 percent recycling rate. Instead, the document simply asserts that: "[p]rovided the project conforms to County Ordinance No. 04099, impacts to landfill and solid waste services associated with the short-term generation of solid waste during project construction would be less than significant." *Id.* at IV.N-44. This self-evident statement lacks the evidentiary basis required by CEQA.

Finally, the DEIR fails to adequately analyze and mitigate cumulative impacts relating to the provision of solid waste service. While the DEIR identifies the increase in solid waste generation for the proposed project and related projects, it concludes that Ox Mountain has sufficient capacity to accommodate the increase in solid waste from these projects. For the reasons discussed above, this conclusion cannot be sustained.

The revised DEIR should provide a comprehensive analysis of, and mitigation for, the project-specific and cumulative impacts to solid waste services.

*Wastewater Service.* The DEIR provides no evidence that critical public services such as wastewater service would be available to serve the proposed project. As discussed in the project description section of this letter, the DEIR fails to provide myriad details pertaining to the project's onsite wastewater treatment plant and sewage disposal system. Set forth below are examples of some of the deficiencies in the wastewater treatment analysis.<sup>12</sup> This list is by no means exhaustive.

1. *The DEIR Fails to Adequately Identify the Project's Environmental Setting With Regard to Wastewater Service Providers.*

Municipal wastewater treatment for the area is provided by the Sewer Authority Mid-Coastside (SAM or Authority). The DEIR acknowledges that SAM has experienced sewer capacity overflow problems during heavy rain periods. DEIR at IV.N-2. While the document states the Authority has implemented or plans to implement a number of improvements and procedures to control sanitary sewer overflows, it fails to provide the necessary detail to ensure that these improvements will be in place prior to receiving wastewater from the proposed project. For example, the DEIR notes that environmental review has been completed for the construction of wet-weather storage facilities in the area known as Burnham Strip in El Granada. *Id.* While this facility project, if implemented, is intended to alleviate wet-weather sewage flows at the Montara and Portola Pump Stations (*id.*), the DEIR provides no assurance that it will be operational in time to serve the Big Wave project. Nor does the DEIR disclose whether the Miramar Pump Station or the Granada Sanitary District capacity assessment will be in place prior to the implementation of the Big Wave project. Finally, the DEIR acknowledges that the Princeton Pump Station may not have adequate capacity for the project's wastewater flows (at IV.N-15), but fails to provide any clarifying details such as the capacity of this pump station or an indication of how much additional capacity would be needed to serve the project.

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<sup>12</sup> The failure to resolve issues relating to the Project's wastewater facilities is especially disconcerting inasmuch as the Agreement between the County and the EIR preparer specifically acknowledged the need to "narrow down various Utilities options to one option." See Exhibit L at 10 of 17 (Agreement Between County and EIR Preparer). The Agreement goes on to state if the various utilities options were not narrowed down, "the project may appear to be more programmatic (i.e., necessitating the preparation of a Program EIR), potentially resulting in more environmental review at a later time when more specifics are provided or available." *Id.*

In addition, the DEIR discloses that SAM has a permitted treatment and disposal capacity for dry-weather flow of 4.0 million gallons per day (at IV.N-15), yet it fails to disclose the more important capacity statistic relating to wet weather flow capacity. As discussed above, SAM has experienced sewer capacity overflow problems during heavy rain periods. *Id.* at IV.N-20. The DEIR must analyze how wastewater from the project would be handled during wet weather because it is during wet-weather events that sanitary sewers can fail.

Heavy rainfall is one of the main causes of sanitary sewer overflows (SSO) which is a condition whereby untreated sewage is discharged into the environment prior to reaching treatment facilities thereby escaping wastewater treatment. *See Preventing Sewage Overflows and Spills*, Hawaii Water Environmental Association, attached as Exhibit M. In turn, wastewater enters creeks, wetlands, the marsh, and groundwater and can pose a serious public health concern. If certain bacteria are present in the effluent, it can create human health issues – illnesses and death in the short term, or long-term effects on reproduction and other bodily processes. *See USEPA, Office of Wastewater Management, Sanitary Sewer Overflows* (Summer 1996), attached as Exhibit N. Because SSOs contain raw sewage they can carry bacteria, viruses, protozoa (parasitic organisms), intestinal worms and inhaled molds and fungi. *Id.* People coming in contact with these organisms can suffer adverse health effects ranging from minor ailments such as sore throats, stomach cramps and diarrhea, to life-threatening illnesses such as cholera, dysentery, infectious hepatitis and severe gastroenteritis. Children, the elderly, people with weakened immune systems and pregnant women are more at risk of illness. *Waterworld U.S., West Virginia sue town for violations of Clean Water and Safe Drinking Water Acts* (available at [http://www.waterworld.com/index/display/article-display/1066984087/s-articles/s-waterworld/s-wastewater/s-treatment/s-2009/s-08/s-u\\_s\\_-west\\_virginia.html](http://www.waterworld.com/index/display/article-display/1066984087/s-articles/s-waterworld/s-wastewater/s-treatment/s-2009/s-08/s-u_s_-west_virginia.html)).

The revised DEIR must provide accurate information about the status of existing wastewater treatment providers as the basis for a comprehensive analysis of the project's environmental impacts.

2. *The DEIR Fails to Adequately Analyze Impacts Relating to Wastewater Disposal System Capacity.*

The project includes two wastewater disposal options during the wet season; excess wastewater would either be discharged to the Granada Sanitary District (GSD or District) system or dispersed onsite via subsurface disposal fields. DEIR at IV.N-13. Because substantial problems exist with both disposal options, the DEIR fails to provide the necessary assurance that the project would have sufficient wastewater

service. Moreover, for the reasons discussed above, insufficient wastewater service, especially during the rainy season, has the potential to degrade the environment.

3. *The DEIR Fails to Provide Any Assurance that the Site Can Support the Proposed Subsurface Disposal Fields.*

As for the onsite disposal fields, the DEIR sets forth preliminary information based on the applicant's estimates for the fields' disposal capacity. DEIR at IV.N-13. The document stops short of actually analyzing the ability of the site to accommodate the drain fields or for the drain fields to handle the project's wastewater demand, claiming that the necessary percolation tests cannot be undertaken until the final design parameters and sizing of the drain field system is undertaken. *Id.* Unfortunately, the DEIR's "analysis" of this issue raises more questions than answers. First, the DEIR makes clear that the authors have insufficient information to determine whether the disposal fields would be able to comply with Title 22 Water Recycling Criteria and Regional Water Quality Control Board (RWQCB) Minimum Guidelines. DEIR at IV.N-16. Second, the DEIR acknowledges that in reviewing the preliminary utility plans, there are several points of uncertainty or clear departure from the RWQCB Guidelines. To this end, the DEIR calls for additional studies including percolation tests, a wet-weather groundwater monitoring investigation, and a groundwater mounding analysis. DEIR at IV.N-17 and 18. Third, the DEIR notes that there are aspects of the project that are not consistent with typical practice such as leaching bed cross-section detail, building setbacks, and the leach field dosing plan. *Id.* Inasmuch as the drain field system is an integral component of the sewage plant, and because the project cannot proceed in the absence of the sewage plant, the necessary design parameters of the disposal field system must be identified now. Moreover, since an inadequately sized or operated sewage plant would impact the environment, details about the system must be identified now in order to adequately disclose the project's environmental impacts. As discussed extensively above, one of the policy goals of CEQA is to identify impacts at the earliest feasible stage before project momentum decreases an agency's flexibility. *See Sundstrom* 202 Cal.App.3d at 307; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-85.

The DEIR's approach to mitigation also falls well short of CEQA's standards as it simply calls for the applicant to comply with regulatory requirements. As discussed above, merely requiring compliance with agency regulations does not conclusively indicate that a proposed project would not have a significant and adverse impact. *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 716 (1990). Clearly, as the DEIR indicates, numerous studies are required to evaluate the feasibility of the proposed wastewater treatment system. Until the system is actually designed, it is

not possible to evaluate the potential environmental consequences of the project's proposed approach to wastewater treatment and disposal.

4. *The DEIR Fails to Resolve Critical Issues Pertaining to a Sewer Connection with GSD.*

The DEIR fares no better with its evaluation of impacts relating to a potential sewer connection to GSD. GSD's Wastewater Ordinance requires that the project connect to a public sewer because the project site is within the designated Urban Zone of the District. DEIR at IV.N-9. Since the applicant does not actually propose wastewater service that includes a connection to GSD, the DEIR incorrectly concludes that this inconsistency with the Ordinance is a less than significant impact. *Id.* at IV.N-16. Unfortunately, the DEIR fails to actually examine the environmental consequences associated with this impact.

First, the DEIR considers a connection to GSD only as an "alternative" to onsite disposal suggesting that a connection with GSD would be the disposal option only if the project's drain field system is inadequate to handle excess wastewater. DEIR at IV.N-14. As discussed above, the DEIR provides no assurance that the project site or the design of the drain field would be able to accommodate the project's wastewater. Consequently, the project's wastewater needs alone may dictate a connection to GSD. Second, according to the DEIR, in order for the project to proceed, the GSD must determine that it has adequate capacity to serve the project's wastewater demand. DEIR at IV.N-9. The DEIR provides no evidence that GSD has capacity to serve the project. Third, the DEIR suggests that it is not the purpose of an EIR to resolve questions pertaining to regulatory authority (*Id.* at IV.N-10) and that there is a "difference of opinion" regarding the extent to which the GSD has jurisdiction over permitting of private wastewater systems in district boundaries. *Id.* at IV.N-9. The DEIR cannot, however, sidestep resolution of this critical procedural requirement since the requirement likely exists to ensure that wastewater disposal does not harm public health or the environment. Even if GSD grants an exception to its Ordinance requirements, the DEIR has failed to provide any evidentiary basis that the project's wastewater service would not result in environmental impacts. Fourth, inasmuch as the DEIR proposes a potential connection to GSD as an alternative, the feasibility of GSD's providing wastewater service must be analyzed in this environmental document. Fifth, the DEIR concedes that although "no efforts have been made to resolve this regulatory conflict," the project would be required to comply with all applicable requirements and concludes the impact is less than significant. *Id.* at IV.N-16. For the reasons explained above, the DEIR cannot simply rely on regulatory compliance to conclude that an impact would be less than significant.

The DEIR also fails to analyze the physical constraints associated with connection to GSD. Specifically, the DEIR acknowledges that no hydraulic analysis has been completed to confirm that existing sewer lines have sufficient capacity to accommodate the project's wastewater flows. DEIR at IV.N-15. Moreover, the Princeton Pump Station may also have inadequate capacity to handle the project's wastewater volume. *Id.* In addition, the DEIR states that the potential lack of adequate capacity for the project's wastewater flows in the GSD sewage collection system may require improvements that have not been accounted for in the project plans. *Id.* Given the fact that this project cannot proceed without wastewater treatment, the DEIR should have thoroughly evaluated the physical constraints in the sewer system. Rather than evaluate the ability of the sewer system to serve the proposed project and analyze the environmental impacts that would result from the construction of new sewer lines, the EIR defers the entire issue until after project approval.

Nor does the DEIR provide adequate mitigation for this impact. The measure calls for a redesign of the project or expanding the sewer system to accommodate the project's wastewater demand. DEIR at IV.N-15. Yet, because the mitigation measure lacks any detail, it also lacks the evidentiary basis as to how it would reduce impacts to a less than significant level. For example, as for the project redesign, the DEIR fails to actually explain how the project would be redesigned to minimize the impacts. Moreover, if the sewer system must be expanded to accommodate the project, the DEIR must identify the details associated with the expansion. In addition, to the extent that either of these measures would result in additional environmental impacts, the DEIR is obligated to provide an analysis of these impacts. CEQA Guidelines §15126.4(a)(1)(D).

5. *The DEIR Fails to Adequately Analyze Impacts Relating to Wastewater Recycling Requirements.*

The wastewater treatment system for the project would include an onsite membrane bioreactor, ultraviolet disinfected tertiary wastewater treatment and sludge treatment/handling facilities. DEIR IV.N-11. Unfortunately, here too, the DEIR fails to provide sufficient information about these systems or how they would work. The information that is provided raises more questions than it answers when it asserts, for example, that the applicant's preliminary plans do not indicate there is an adequate emergency storage tank nor do the preliminary plans for the drain field indicate that it has sufficient size to accommodate the project's wastewater needs. DEIR at IV.N-16. In addition, the applicant's estimates for the volume of recycled water that would be used for toilet flushing are incorrect which also implicates the size of the drain field. *Id.* at IV.N-18 and 19. As regards this last issue, the DEIR calls for the applicant to revise the project plans and water budget analysis to correct these inconsistencies. As discussed

above, it is the purpose of this EIR to address and resolve these critical project details and to analyze the environmental impacts of the project's wastewater system. By calling for project redesign as a mitigation measure – and by not including any indication of the nature of the project redesign – the public and decision makers are kept in the dark about the project and its environmental impacts.

6. *The DEIR Fails to Adequately Analyze Other Impacts Relating to the Proposed Sewer System.*

The applicant proposes the alignment of a sewer line through an open creek channel or along Airport Street. As the DEIR acknowledges, either option would affect the feasibility of having a gravity flow to the GSD manhole. DEIR at IV.N-19,-20. The DEIR concludes that this impact is potentially significant but fails to provide an analysis of the environmental impacts associated with either option. This issue cannot be deferred until after project approval as the EIR currently contemplates.

In addition, the DEIR calls for a potential composting facility to be constructed on the project site yet the document provides no information about this facility. DEIR at IV.N-43. Composting facilities can have extensive environmental impacts depending on the nature of the operation and the proximity of sensitive receptors. These impacts include potentially offensive odors, elevated noise levels and an increase in criteria and toxic air pollutants including ammonia. The DEIR fails to analyze the potential environmental impacts resulting from construction and operation of a composting facility on the project site.

The DEIR also fails to adequately analyze the cumulative increase in wastewater demand resulting from the project and other development in the area. The DEIR acknowledges that the project would contribute to a potentially significant cumulative increase in demand but stops short of actually analyzing this impact. An appropriate analysis would identify the increase in cumulative demand from other projects within the GDS or SAM service areas and identify the capacity of these service providers. If the capacity of the service providers falls short of the cumulative demand, the DEIR must identify feasible mitigation capable of avoiding or minimizing this impact.

In conclusion, the project's ability to accommodate its wastewater demand is not a trivial detail that can be determined after project approval. The DEIR must be revised to address this serious issue. Of course, this analysis cannot proceed until such time as the applicant resolves the regulatory issues with GSD and the wastewater treatment plant is actually designed.

*Wasteful, Inefficient and Unnecessary Consumption of Energy.* CEQA devotes considerable attention to energy conservation. Appendix F of the CEQA Guidelines explains that significant energy implications of a project should be considered in an EIR and provides a list of energy impact possibilities and potential conservation measures. *See* CEQA Guidelines Appendix F.

We applaud the project applicant for the proposal to supply a majority of energy for heating, cooling and electrical demand for the project with renewable energy, through a combination of offsite and onsite power generation. DEIR at IV.N-56. To this end, the DEIR states that the potential onsite power systems include solar heat, photovoltaic panels, wind generation, back up cogeneration with a natural gas generator for peak shaving and geothermal cooling. *Id.* Yet, as with other components of the project, the DEIR is so vague as to the details of the project's renewable energy components, that it is not possible to determine how these systems would operate and how much of the project's energy needs would be supplied by alternative energy sources. For example, the project would include up to 100 kW of wind power (at III-40 and III-58), yet the DEIR does not include even a preliminary level of information regarding, for example, the specific technology that would be employed.

In addition, it is not possible to verify the accuracy of the DEIR's accounting of the project's energy consumption. The document identifies the expected natural gas and electricity consumption from the Wellness Center and the Office Park (*see* Tables IV.N-5 and IV.N-6), but there is no indication that the calculations take into account energy use from energy-consuming equipment and processes which will be used during construction of the project and from the project's other business operations such as catering/food service (selling chickens, eggs, yogurt and ice cream for use in local restaurants and stores); a weekly farmers' market; an organic yogurt local sales outlet; a nursery (which would supply about 15,000 to 30,000 native plants per year for restoration projects along the coast); two offsite farms; and a dog walking and grooming service. *Id.* at III-18; Table III-2 (page III-19), III-38 through III-40, and III-43. Nor do the DEIR's calculations appear to include the energy consumed from the vehicular trips that would be generated by operation and construction of the project. *See* CEQA Guidelines Appendix F.

Moreover, the DEIR does not analyze the effect that the project would have on local and regional energy supplies and on requirements for additional capacity or on the effects on peak and base period demands for energy. *See* CEQA Guidelines Appendix F. Instead, the DEIR simply asserts that the project "would not require new (offsite) natural gas or electrical supply facilities and distribution infrastructure or capacity enhancing alterations to existing facilities." DEIR at IV.N-59. The ability of California generally, and energy providers such as PG&E specifically, to provide natural

gas and electricity to meet the state's enormous and growing demand is a critical issue which requires analysis in this EIR. The revised DEIR must comprehensively and specifically evaluate the effect that the proposed project would have on the ability of energy providers to supply electricity and natural gas.

Finally, the DEIR fails to adequately analyze and mitigate the project's cumulative increase in energy demand. While the document does attempt to quantify the cumulative increase in demand from the project and related projects in the region, it stops short of comparing this cumulative demand to the ability of service providers such as PG&E to meet this demand. Moreover, the DEIR assumes that the project would not contribute to a cumulatively considerable effect on energy because all projects would be required to implement locally mandated energy conservation programs. DEIR at IV.N-63. The DEIR lacks any evidentiary support for the assumption that each project would actually implement locally mandated conservation programs at the level necessary to offset the increase in energy demand. The DEIR must be revised to provide far more concerted attention to this critical issue.

#### **K. GROWTH-INDUCING IMPACTS**

CEQA requires an EIR to include a "detailed statement" setting forth the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337. The statement must "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." CEQA Guidelines § 15126.2(d). It must also discuss how projects "may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively." *Id.* The DEIR at issue here does not meet these requirements.

One key route to induced growth is the removal of constraints that formerly limited growth. *Id.* Development of the Big Wave project is constrained by the lack of wastewater services. The project would remove that constraint by constructing and operating an onsite sewage treatment facility. The DEIR concludes that the project would not foster population growth by removing an obstacle to growth. DEIR at V-2. Yet, at the same time, the DEIR discloses that the project's treatment plant would be sized to handle double the required capacity for redundancy and to allow potential future expansion of service. *See* DEIR at IV.N-12. Thus, by the DEIR's own admission, the project's wastewater treatment plant would facilitate growth beyond that which would occur with the proposed project. The revised DEIR must describe the kind of growth the new treatment plant would enable, the quantity of new development, the specific impacts

it would engender and propose mitigation measures to minimize those impacts. *See City of Antioch*, 187 Cal. App. 3d 1338.

### **III. THE DEIR'S ALTERNATIVES ANALYSIS IS INADEQUATE.**

The principal function of alternatives analysis under CEQA is to evaluate alternatives that would avoid some or all of the environmental impacts associated with the proposed project. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126.6(a); *Citizens for Quality Growth v. City of Mt. Shasta*, 198 Cal. App. 3d 437, at 443-45 (1988). As stated by the CEQA Guidelines,

Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment, the discussion of *alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project*, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

CEQA Guidelines § 15126.6(b) (emphasis added; citation omitted); *id.* § 15126.6(f) (“The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project.”). “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA’s fundamental goal that the public be fully informed as to the consequences of action by their public officials.” *Laurel I*, 47 Cal. 3d at 404.

The primary flaw in the DEIR’s alternatives analysis is its failure to identify and consider a reasonable range of alternatives that reduce project impacts, as CEQA requires. *See* CEQA Guidelines § 15126.6(c); *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 566 (1980). The discussion of alternatives must focus on alternatives that attain most of the basic objectives of the project and avoid or substantially lessen the adverse environmental effects of a project, “even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” CEQA Guidelines § 15126.6(b).

Here, the DEIR identifies and analyzes four alternatives to the proposed project: the “No project” alternative, two slightly reduced-scale alternatives, and one reconfigured alternative (same square footage as project, but different design resulting in slightly smaller footprint). The three substantive alternatives propose only the most minor variations on the project, and thus fail to provide a reasonable range of alternatives. Moreover, these alternatives do not avoid or lessen some of the most significant project

impacts discussed elsewhere in this letter, including the impacts resulting from the geology and soils at the project site, loss of foraging habitat for special-status bird species, loss of habitat connectivity, increased impervious surfaces, hydrologic changes to the project site, and insufficient vehicular access to the site. To comply with CEQA, at a minimum the following alternatives must be analyzed in a revised and recirculated DEIR.

*Previous Proposal Reduced Alternative.* The DEIR states that “according to the applicant,” “a reduced development alternative with less than 186,000 square feet for the Office Park and fewer than 57 units for the Wellness Center” would not be economically viable and therefore is infeasible. DEIR at VI-11. There is no evidence in the record to support this conclusion. Quite to the contrary, we are informed that a previous project application by the same applicant at the same site proposed a development with 156,000 square feet of office space and 36 residential units at the Wellness Center. This application was filed in 2006. Presumably, the applicant would not request a permit to develop a financially unviable project. Since no more recent information indicates that such a project would now be infeasible, the DEIR must analyze a reduced alternative at least as small as the former project proposal.

A project with a significantly reduced footprint is especially crucial here where the DEIR has identified serious problems with the quality and nature of the soil at the project site. *See* DEIR at IV.F-18–24. To mitigate the potentially significant impacts associated with the clayey, expansive soil, the DEIR has suggested—albeit without sufficient detail and as a result of deferred analysis—such measures as “improving the soil with deep soil compaction techniques,” using “deep foundations,” and constructing “structural slab[s].” *Id.* at IV.F-21. As discussed elsewhere in this letter, these measures themselves are likely to have significant environmental impacts. Thus, reducing the footprint would reduce the need for and impacts from these mitigation measures.

*Offsite and Northern-Parcel Only Alternatives.* The DEIR dismisses out of hand any alternative that calls for the development of the Wellness Center offsite or that calls for the development of both the Wellness Center and the Office Park (presumably at reduced scale) on the northern parcel only. DEIR at VI-5. The main reason for this rejection is that Big Wave, LLC, is donating the southern parcel to the Big Wave non-profit. *Id.* According to the DEIR, locating the Wellness Center anywhere other than on the southern parcel would require the Big Wave non-profit to purchase additional land. The DEIR asserts that this added expense would make the project infeasible because “it would not be economically viable.” DEIR at VI-5.

Again, the DEIR provides no support for this conclusion, such as estimated costs for purchasing a portion of the northern parcel or purchasing any of the identified

offsite alternative locations. Moreover, the only specific economic impact identified in the DEIR is that, under any offsite alternative, the Wellness Center units would be unaffordable to lower income residents. *Id.* This assertion, too, is unsupported by any evidence in the record. Even if it were true, however, the units could still be available for DD adults, thus achieving the vast majority of project objectives. *See* DEIR at VI-2–4. Indeed, the only reference to *low-income* DD adults within the list of project objectives is under the second bullet point: “to give low-income DD residents the ability to provide services to the Office Park.” DEIR at VI-2. Thus, the provision of residential units affordable to low-income DD adults is not even one of the enumerated project objectives.

The conclusion that any offsite alternative would be economically infeasible is also unsupported by the information in the DEIR regarding the relationship between Big Wave, LLC, and the Big Wave non-profit. Nothing in the DEIR suggests that the donation of the southern parcel is contingent on the Wellness Center being constructed there. Presumably, the Big Wave non-profit could sell the donated southern parcel and use the proceeds to purchase land at an alternative location. Similarly, there is no information indicating Big Wave, LLC, would be unwilling to donate a portion of the northern parcel instead of the southern parcel.

Additionally, CEQA requires a reasonable range of alternatives, even if these alternatives are more costly than the proposed project. CEQA Guidelines § 15126.6(b). Thus, assuming an offsite alternative would be more costly than the proposed project, that fact alone does not justify rejecting such an alternative.

Both an offsite alternative and a northern-parcel only alternative offer myriad environmental benefits. Locating a reduced-scale version of the entire project on the northern parcel would leave the entire southern parcel undeveloped. This would avoid impacts to foraging habitat for special-status bird species, impacts to wetlands, and the cultural resources (including human remains) on the site. *See* DEIR at VI-12 (Alternative B would avoid cultural resources on western portion of Wellness Center site). The southern parcel could also be farmed or restored to wetlands. This alternative would leave a significant migration and wildlife corridor open to the Pillar Point Marsh, and could preserve a view across the undeveloped parcel. By placing the Wellness Center on the same parcel as the Office Park, this alternative would facilitate the relationship and symbiotic nature of the two project elements: unlike the proposed project, individuals would not have to traverse a narrow sidewalk along Airport Street to walk between the two facilities. Finally, the residences could be located adjacent to the manufactured home community, north of the project site, thus buffering that residential community from the commercial uses at the office park.

Locating the entire Wellness Center offsite would also bring several environmental benefits. Like the northern-parcel only alternative, it would leave the southern parcel undeveloped.<sup>13</sup> In addition, it would be consistent with the County's existing land use plans. The identified alternative locations are, according to the DEIR, "[p]otential affordable housing sites." DEIR at VI-5. As discussed in the separate letter from Committee for Green Foothills, the Wellness Center is not consistent with the current designation for the project site, as it is a residential use. Although this alternative would not locate the Wellness Center within walking distance of the Office Park, this fact does not automatically disqualify the alternative: a reasonable range of alternatives must be evaluated "even if these alternatives would impede to some degree the attainment of the project objectives." CEQA Guidelines § 15126.6(b). Moreover, the identified offsite locations are all located within two miles of the project site. As part of an offsite alternative, the applicant could propose a shuttle or other transportation linking the two sites.

In sum, the range of alternatives analyzed in the DEIR is wholly inadequate under CEQA. A revised and recirculated DEIR must analyze an alternative that is the same size or smaller than the previously proposed project, an offsite alternative, and a northern-parcel only alternative.

#### IV. CONCLUSION

For the reasons set forth above, we respectfully request that the County prepare a revised DEIR that fully complies with CEQA and recirculate the new DEIR to the public for comment. Additionally, we request that no further consideration be given to the Project as proposed until an EIR is prepared that fully complies with CEQA.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

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Laurel Impett, AICP

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<sup>13</sup> The DEIR asserts that the identified offsite locations "have various environmental constraints." DEIR at VI-5. However, these constraints are only briefly described. Moreover, no specific environmental or other constraints are identified for the Farallon Vista Site and the North El Granada Site. *Id.*

Camille Leung  
December 22, 2009  
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cc: Lennie Roberts, Committee for Green Foothills  
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