

Bringing you HOPE -
Helping Our Peninsula's Environment

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Monterey County

January 3, 2007

General Plan and its EIR Must be Improved to Meet Legal Minimums

Supervisors:

HOPE respectfully objects to the General Plan and its purported CEQA review (FEIR) and suggests how the documents can (and must) be improved to meet the bare legal minimums.

The proposed General Plan and FEIR are both inadequate under their respective state law requirements; in fact neither even comes close. Superficially they may appear real, as they both have a lot of pages, flashy graphics and maps, but as soon as a modest effort is made to inspect them they are seen to fail.

"Fail" is accurate. Courts are obligated to "pass" an EIR and a General Plan even they are just barely worthy of a "D-", but Monterey County doesn't even reach that high. It **refuses, not merely fails to but refuses, to use the best available science, refuses to quantify impacts** and by doing so it hides the actual physical impacts of the projects it intends to adopt. When it is forced to acknowledge those impacts the County **refuses to quantify the mitigations** so that it doesn't clean up the mess it the projects cause.

But failing to meet laws governing development is a fiercely defended tradition with the County of Monterey. No matter how many of their projects and CEQA reviews the courts reject, the County of Monterey adamantly refuses to genuinely comply with the laws.

Most telling is that **the County of Monterey has not denied a subdivision or other major development project since 1985¹.**

The County has never denied a subdivision in spite of the crisis conditions here on our greater Monterey Peninsula and throughout the County --

- **Our Carmel River and the Salinas River and its biggest animals are dying; and Peninsula residents are in the 8th year of enduring an official water supply emergency,**
- **Our Peninsula and North County is infested with Gridlocked Highways,**
- **County development approvals have seriously endangered some 82 local animal species plus 19 trees and plants who have lived here for millennia before we arrived,**

¹ 1985 is as far back as our records go. While the County did deny the "Gamboa" project at the mouth of Carmel Valley several times, as soon as Tony Lombardo was hired, it was instantly approved.

- **There is something seriously wrong with the magnificent dark green cloak that protects and beautifies our Peninsula, warms us in the winter and cools us in the summer - our Monterey Pine Forest,**

Yet Monterey County officials keep approving more water guzzling golf courses, more habitat destroying subdivisions, roads and mansions as though absolutely nothing is wrong !

They have no concept of - "Enough"

As recently as the early 1970s Monterey Peninsula residents enjoyed a quiet, gentle life -- when we could drink clear tap water without thinking about it, walk safely across any street, walk in untouched forests, and watch a sunset turn into constellations - all in solitude.

We must now brave daily gridlock and road rage, the screaming noise of constant construction machines and chainsaws destroying trees, rationing of repugnant water, endure smoke and flames from burning Fort Ord and perpetually increasing loss of our beautiful and imperiled Monterey pine forests, Cypress and oak forests and other wild habitat and views - all lost to greed for more subdivisions, mansions and golf courses.

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Evasive Responses

The failure of this General Plan and EIR are seen fairly easily when examining the County's evasive "responses" to other agencies. These federal and state agencies with immensely more expertise than the County, diplomatically suggest serious changes that will bring the General Plan up to a "D-" - but the County rejects virtually every suggestion with such poor excuses that most science teachers would reject.

If Allowing Growth, Its Physical Impacts Must Be Acknowledged

Legally a General Plan can mandate gigantic growth in housing, subdivisions, golf courses, mining and mansions even if the public is dead set against it. There is nothing in General Plan law explicitly preventing or limiting growth.

However, the more growth a General Plan allows, the harsher the environmental impacts get. The more growth allowed - the worse our traffic congestion gets, the more frequently we face water rationing, the more deaths of imperiled species occur.

If Allowing Growth, It Must Be Mitigated

And when the impacts are harsher, the law, CEQA, requires stronger Mitigations. But not in this EIR. Here the County wants everything. They have prepared a virtually "unlimited growth" General Plan and refused to acknowledge or mitigate the impacts of that unbridled growth.

In order to provide for growth and have an internally consistent General Plan that General Plan must provide or show that the ability to provide infrastructure for that growth is available. This General Plan and EIR Mitigations has not come even close to doing so. The County is out of water and there is nowhere near enough money to mitigate the traffic impacts of **existing congestion - let alone that additional traffic allowed by the new GP.**

EIR Physical Impacts Hidden with Definition Changes

Development projects cause measurable **physical harms** to our environment - no matter how the County tries to change the definitions by using ambiguous un-measured opinions.

EIR Impacts Must be Quantified when possible - Not Subjective Unaccountable Opinions

CEQA requires conclusions be based on facts - not assumptions or opinions. Our California Supreme Court wrote "[We can not] countenance a result that would require blind trust by the public." *Laurel Heights v UC*, 47 Cal.3d 376

CEQA Section 21080(e)

"Argument, speculation, **unsubstantiated opinion** or narrative, evidence which is clearly inaccurate or erroneous ... **is not substantial evidence**. Substantial evidence shall include facts, reasonable assumptions based on facts, and expert opinion supported by facts."

"[The EIR analysis] must be supported by references to specific scientific and empirical evidence." *Mountain Lion Coalition v. Calif Fish & Game* 1989, 263 Cal Rptr 104

"A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process." *Kings County Farm Bureau v. Hanford* 1990

"A conclusionary statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" *People v. Kern County* 1974, 115 Cal Rptr 67 quoting *Silva v Lynn* 73 482 F.2nd 1282, 1285

"The EIR must contain FACTS and analysis, not just the opinions of a public agency." - *Santiago Water District v Orange County* 1981, 173 Cal. Rptr 602

- In spite of this, and without any quantifiable facts, the EIR rejects potential impacts, and feasible mitigations.²

Water Inadequacy And GP Internal Inconsistency

Why is our Monterey Peninsula Enduring an Official Water Emergency? ³

- Monterey County Has A Desert Climate
- Carmel River has Severe Physical Water Limits
- Formerly Year-Round Carmel River Now Dries Up - Even In Wet Years
- Carmel River Seriously Overpumped Since at Least 1977

² Facts based impacts and feasible mitigations were provided in HOPE's comment letter of April 2, 2004. Please make that document a part of this administrative record, this hearing and considered.

³ Details are provided in attached article "**State of Monterey Peninsula Water Supply August 2006**"

- **8,000 New Water Connections (including several golf courses) Since the 1977 Overpumping Realization and Moratorium**
- Water Now Pumped From Carmel River Mouth - Not From Upstream Dam
- Seaside Basin Overpumped Too
- Salinas River Overpumped Too
- Peninsula Water Not Connected to Salinas or to rest of California
- San Clemente Dam is Filled with Silt & Gravel

Physical Impacts vs. Legal Impacts

- Carmel River is a Fully Appropriated Stream in Summertime
- All Monterey Peninsula Water Is Illegal - In Two Different Ways --
 1. State Rules Two-Thirds Of Our Water Is Illegally pumped.
 2. Overpumping Kills Officially Listed Species and Threatens them with Extinction - Violating Endangered Species Act.
- *Because of the above situation and circumstances and because there is no approved plan to alleviate any of this dire water supply situation, the General Plan simply cannot allow more growth and be internally consistent.*
- *Please revise the General Plan so it is internally consistent.*

Traffic inadequacy and internal inconsistency

The EIR refused to use the proper criteria for measuring traffic impacts.

Cal-Trans letter of Oct 6, 2006 warned "In cases where a state facility is already operating at an unacceptable LOS, **any additional trips added should be considered a significant cumulative traffic impact** and mitigated accordingly."⁴

"Any additional trips added"

That means if the General Plan will allow a **single new vehicle trip - it must be recognized.**

And every new vehicle trip must be mitigated. And it must be mitigated so that afterwards - the Congestion is not worse by even a single new vehicle trip.

⁴ LOS stands for "Level of Service" where the scale ranges from 'A' to 'F.'

'A' means free-flowing, 'F' means gridlock - measured as a minimum trip delay of 60 seconds.

Another expert opinion example is Monterey County Public Works: "If the Intersection is already operating at LOS F, **any increase (one vehicle)** in the critical movements volume to capacity ratio is considered significant." "For Intersections already operating at unacceptable levels D or E, a significant impact would occur if a project adds 0.01 or more to the critical movements volume to capacity ratio."

The County can legally worsen the County Level of Traffic Service (LOS) Standard from free-flow to Gridlock, but if it does they must mitigate the PHYSICAL impacts. One cannot escape physical impacts by redefining them away to favor development.

- Please revise the EIR to use the Cal-Trans and County Public Works Significance thresholds.

Gridlock Now

A map prepared by the County Century 21 General Plan Update Team using TAMC data showed the Peninsula Roads Gridlocked as of December 2000 ⁵

The maps show we have gridlock or near gridlock on **Highway One past Carmel to Marina, Highway 68 from Highway One to Pacific Grove, and Highway 68 to Salinas.** Other full roads are the Lighthouse Curve leading to the Tunnel, Del Monte Avenue in Monterey, and parts of Carmel Valley Road.

This data is from 2000 and has generally gotten worse. Further, it **does not include increased traffic from events such as Golf Tournaments or Festivals.**

At the joint Meeting of the County Supervisors and Planning Commission in October 2003 we were all told by the General Plan Update Team --

"No matter what roads we build or widen - congestion is going to get worse."

It is hard to imagine how congestion can get worse from our existing gridlock, but Los Angeles gives us some insight. There they have 10 lane freeways gridlocked for 8 to 12 hours per day.

- *Because of the above situation and circumstances and because there is no approved plan to alleviate any of this traffic congestion situation, the General Plan simply cannot allow more growth and be internally consistent.*
- *Please revise the General Plan so it is internally consistent.*

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Noise (Safety) Element Needs Impulse Regulation as it causes Significant Impacts

The General Plan still does not recognize momentary noises and the EIR refused to use the proper criteria for measuring short-term or impulse noises⁶.

- **Car Alarms,**
- **Dog barking,**
- **Gunshots at shooting ranges,**
- **Boom Box Cars,**
- **Leaf Blowers, and**
- **Non-emergency Car Honking**

⁵ Please make that map a part of this administrative record, this hearing and considered.

⁶ Single Event Noise Exposure Levels (SENEL)

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These transient, or recurring momentary noises generate the vast majority of complaints. Not merely complaints about noise, complaints to police departments about anything.

Yet the General Plan COMPLETELY avoids mentioning, recognizing, regulating or prohibiting them.

Car Alarms, Dog barking, Gunshots at shooting ranges, Boom Box Cars, Leaf Blowers, and Non-emergency Car Honking and others are all **very intrusive transient noises that must be avoided or mitigated.**

It would be hard to imagine what more we could do to bring this to your attention.⁷

- **We have given you probably the world's most up-to date research on the real harm of noise - the World Health Organization's Review of Noise.**
- **We have made available to you, for free, one of the world's top acoustics experts, and one of our esteemed science advisors - Dr. Herman Medwin, Ph.D, who sadly recently passed away.**

All of this has been ignored.

We must remind you --

In Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland, 91 Cal.App.4th 1344 (2001), the First District Court of Appeal invalidated the Port of Oakland's certification of an EIR for the Airport Development Plan.

"The court found that the EIR had failed to adequately address the noise impacts from nighttime air cargo operations. Specifically, the court made clear that **the EIR's reliance on the CNEL metric as the sole criterion to evaluate the significance of the project's noise impacts inappropriately excluded consideration of the potential sleep disturbance impacts on area residents resulting from nighttime flights.** In reaching this conclusion, the court acknowledged the expert opinion that supported the need for this noise analysis, public concern about nighttime noise impacts, and the CEQA standards of significance, which recognize a site-sensitive threshold for evaluating noise impacts."

Perhaps you may legally ignore maximum noise problems in the General Plan, but the CEQA document for the General Plan may not. Having expert advice showing the significant difference between the two should impel a professional to include the better method in the General Plan.

- **We once again respectfully request you recognize transient noise (SENEL) in the EIR, analyze its impacts and limit or prohibit it in the General Plan.**

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⁷ Please review our series of correspondence on this subject and other general plan issues specifically including HOPE's April 18, 2003 letter, make them a part of this administrative record, this hearing and considered.

No Protection For Imperiled Monterey Pine Forest

In spite of the known imperiled state of our Monterey pine forest⁸, the General Plan 1) refuses to recognize its imperiled state, 2) refuses to provide it any protection - even though Supervisor Potter in refusing to bring forth an ordinance protecting it in 2003, promised to have it included in this General Plan.

Findings

Our native Monterey pine forest ecosystem is important locally and internationally for its intrinsic, aesthetic, ecological and economic values. It is officially recognized as endangered by the United Nations and the California Native Plant Society due to its substantial decline from cumulative and continuing development, fragmentation, lot clearing, and pathogen attacks including the pine pitch canker fungus. These significant circumstances require immediate meaningful protection.

Aesthetic Values

Native Monterey pine forests define the look of the Monterey Peninsula landscape. They are majestic to behold both from a distance and within the tree where one can experience the beauty, bird songs and serenity of fragrant untouched forests.

Economic Values

The beauty of the native Monterey pine forests has drawn millions of tourists and residents to our Monterey Peninsula. Its biodiversity contains a broad genetic foundation for a vast international timber industry, which has generated tens of billions of dollars.

Intrinsic Values

The biota has inherent value in addition to its economic, aesthetic and ecological benefits. The very existence of the unique Monterey pine forest community has intrinsic value and is worth preserving. The native vegetation type, associated habitat and soils have adapted to local conditions that have evolved over millennia.

Ecological Values

The native Monterey pine forest is ecologically more than the sum of its parts. The Monterey pine forest is a dynamic system where all of its indigenous constituents, from soil to canopy, animals and plants, living and otherwise, are in appropriate proportions and locations supporting interconnected and interdependent life forms which include a broad diversity of tree, plant, soil and animal species, communities, ages, and genetics.

Monterey Pine Forest Ecological Values include - All Living Trees - Seedlings, Old Trees and Dead Trees.

As a Monterey pine grows larger or matures, its landmark and habitat values increase which reinforce that there is no biologically or ecologically recognized concept of "over-mature." Native Monterey pine forests have provided habitat for Grizzly Bears and Condors, and continue to provide

⁸ The Monterey pine tree and its forest were recognized as Endangered by the United Nations in 1986. The California Native Plant Society, legislatively recognized for its expertise, deemed the Monterey pine as **only one step away from extinct** in 1994 as they designated it "Endangered or Rare in California and elsewhere."

habitat for Woodpeckers, Squirrels, Great Horned Owls, Eagles, Peregrine Falcons, Possums, Deer, Bobcats, Mountain Lions, and Black Bears.

The forest moderates temperature extremes and prevents drying by shading the ground and understory from the hot drying sun, protecting it from the prevailing winds and moistening it with fog drip.

Areas of healthy regeneration with high densities of seedlings also have great value, as the seedlings promise future landmark trees and adequate genetic diversity to fend off future pest attacks.

Dead Standing Trees

Some 80 bird species make their homes exclusively in dead or dying trees because dead wood is softer for establishing cavities for nests. For example, native Hairy Woodpeckers will not nest in living Monterey pine trees - only dead ones. Especially important to woodpeckers are dead standing trees, particularly large snags, or living trees with especially large dead, or dying branches. If trees are cut before they die, or if dead standing trees "snags" and dead wood are cleared from the forest, the woodpeckers abandon the habitat. Thus, the greater risk of destruction of dying trees, the greater the endangerment to the native woodpecker and others with similar habitat needs.

Understory

More than 30 officially listed and legally protected plants live in the Monterey Pine Forest Ecosystem understory including the Gowen Cypress, the delicate orchid Yadon's Piperia, Hickman's Onion, the extremely rare Hickmans' Potentilla, Monterey Clover and Pacific Grove Clover. Additionally, small ground dwelling animals such as the Gray Fox, Ringtail, Opossum and Striped Skunk need the understory cover to hide from predators.

Fallen Trees

Fallen trees are part of the forest understory, providing important habitat for ground dwelling animals, spiders, worms, millipedes and helpful microorganisms including bacteria and fungi.

Living Soils

Native Monterey Peninsula Monterey pine forest ecosystem soils can be one million years old and contain over 1,000 distinct microorganism species in every cubic inch. The unique forest floor is perfectly suited to Monterey Pine seedling regeneration as well as that for the other endangered plants, which depend upon the whole forest for protection and nourishment. Orchids and some trees are extremely dependent upon tiny mycorrhiza fungi. Living soils and their structure are easily destroyed by heavy equipment compaction and can be suffocated by roads blocking rain runoff from infiltrating ground to nourishing their microorganisms.

Endangered, Rare & Declining

Monterey pine forests have retreated and only grow naturally in five limited locations worldwide, totaling about 3,000 hectares, much of which is degraded by fragmentation, logging, and pests. The Monterey Peninsula area hosts the largest and healthiest of these remaining native areas.

Mitigation measures offered in response to previous loss of Monterey pine forest have proven inadequate. The immediate loss of tons of magnificently integrated living biomass cannot be replaced by planting a handful of seedlings outside the fog belt of the forest's native range. It cannot replace the

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forest's million year old soils replete with a perfectly balanced native structure of understory plants and microorganisms.

Declining

Whereas alarming amounts and portions of the historic native Monterey pine forest habitat have been lost to development of roads and buildings, lot clearing, fragmentation and attacks from pathogens including bark beetles and the pine pitch canker fungus.

Whereas the Monterey pine tree and its forest were recognized as Endangered by the United Nations in 1986,

Whereas the California Native Plant Society, legislatively recognized for its expertise, deemed the Monterey pine as only one step away from extinct in 1994 as "Endangered or Rare in California and elsewhere."

Whereas the native Monterey pine tree and its forest are continually threatened by further loss of its native habitat area from development, lot clearing, fragmentation, and cumulative tree trimming which singly and collectively increase the risk of harm from pests including bark beetles and the pine pitch canker fungus and have little substantive legal protection.

Tree Trimming Harmful

While trimming pine trees may seem innocuous, it releases turpenes. The scent of turpenes can attract swarms of bark beetles, which can carry the pine pitch canker, and in sufficient numbers can kill Monterey pines, especially those weakened by pine pitch canker.

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Incomplete List Of Species

The EIR did not use a complete list of species officially protected by federal and state Endangered Species and "Fully-Protected" species laws.⁹

The list of species explicitly protected by state or Federal laws including Endangered, Threatened and **Fully Protected Species** acts, documented as occurring in Monterey County since 1965 includes --

Bald Eagle
California Condor (*Gymnogyps californianus*)
Yellow-Billed Cuckoo
American Peregrine Falcon (*Falco peregrinus anatum*)
Western Goshawk (*Astur atricapillus striatulus*)
Swainson's Hawk (*Buteo swainsoni*)
Northern Harrier (*Circus cyaneus*)
Cooper's Hawk (*Accipter cooperi*)
Ferruginous Hawk (*Buteo regalis*)
Merlin (*Falco columbarius*)
Osprey (*Pandion haliaetus*)

Northern Spotted Owl (*Strix occidentalis caurina*)
California Spotted Owl (*Strix occidentalis*)
Great Gray Owl (*Strix nebulosa*)
Elf Owl (*Micrathene whitneyi*)
Great Horned Owl (*Bubo virginianus*)
Western Snowy Plover (*Charadrius alexandrinus nivosus*)
Least Bell's Vireo (*Vireo bellii pusillus*)
California Least Tern (*Sterna antillarum browni*)

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California Clapper Rail (Rallus Longirostris
Obsolet???)
California Black Rail (Laterallus jamaicensis
coturniculus)
Bank Swallow (Riparia riparia)
(Southwestern) Willow Flycatcher
White Tailed Kite (Elanus leucurus)
California Brown Pelican (Pelecanus
occidentalis californicus)
Marbled Murrelet (Brachyramphus
marmoratus)
Short tailed-Albatross (Diomedea albatrus)
Smith's Blue Butterfly (Euphilotes enoptes
smithi)
San Joaquin Kit Fox (Vulpes macrotis mutica)
Gray Fox (Urocyon cinereoargenteus)
Ringtail (Bassariscus astutus)
San Joaquin Antelope Squirrel
(Ammospermophilus nelsoni)
Monterey Ornate Shrew (Sorex ornatus
salaris)
California Red-Legged Frog (Rana aurora
draytonii)
California Tiger Salamander
Southwestern Pond Turtle (Clemmys
marmorata)
Santa Cruz Long-Toed Salamander
Arroyo Southwestern Toad
Western Spadefoot Toad (Scaphiopus
hammondi)
Blunt-Nosed Leopard Lizard
California Horned Lizard
Imperiled Peninsula Animals
Coho Salmon (Oncorhynchus kisuch)
Tidewater Goby (Eucyclogobius newberryi)
Vernal Pool Fairy Shrimp (Branchinecta
lynchi)
Conservancy Fairy Shrimp
Longhorn Fairy Shrimp
Mysid Shrimp (Neomysis kadiakensis)
West Coast Steelhead (Oncorhynchus mykiss)
Southern Sea Otter (Enhydra lutrus nereis)
Stellar Sea Lion (Eumetopias jubata)

California Sea Lion (Zalophus californicus)
Harbor Seal
Elephant Seal (Mirounga angustirostris)
Blue Whale (Balaenoptera musculus)
Humpback Whale
Gray Whale (Eschrichtius robustus)
Sei Whale
Sperm Whale
Finback Whale
Right Whale
Sea Turtles (All five species)
Gowen Cypress Tree
Hickman's Potentilla or Cinquefoil (Potentilla
Hickmanii)
Yadon's Rein Orchid (Piperia yadonii)
Monterey Clover (Trifolium trichocalyx)
Pacific Grove Clover (Trifolium polyodon)
Coastal Dunes Milk Vetch (Astragalus tener
var Titi)
Seaside Bird's Beak (Cordylanthus rigidus var.
littoralis)
Tidestrom's Lupine (Lupinus tidestromii var.
tidestromii)
Santa Cruz Wallflower (Erysimum
teretifolium)
Monterey Bay (or Sand) Gilia (Astragalus tener
var. titi)
Contra Costa Goldfields
Monterey Spineflower (Chorizanthe Pungens
var Pungens)
Robust Spineflower
Yadon's Wallflower (Erysimum Menziesii ssp
Yadonii)
Beach Layia (Layia Carnosa)
Santa Lucia Mint (Pogogyne Clareana)
Robust Spineflower
Menzie's Wallflower
Purple Amole
Santa Cruz Tarplant
Hickman's Onion (Allium hickmanii)

Alternative Ignored

- The EIR failed to evaluate an alternative with a **Carrying Capacity**.

Growth is not inevitable.

When considering the astounding number and depth of constraints on natural resources and how growth always costs more than it pays Monterey County should be examining how to stop growth - not how to accommodate it.

Since our first comments on this General Plan Update on Oct 28, 1998 we have repeatedly and respectfully requested - "We want to participate in the honest evaluation of two alternatives -

"1. A General Plan constrained by water, traffic and other existing infrastructure limits.

"2. A General Plan constrained by sustainable use of resources sometimes called "Carrying Capacity" or "Steady State." ¹⁰

Why --

"Solid 'no growth' sentiment among Monterey Peninsula voters."

-Monterey Herald Editorial, November 7, 1996

Caring for our environment is universal -

Most American voters (76-percent) consider themselves to be 'environmentalists' or 'pro-environment.' Most American voters (80-percent) say the environment is important to the health of them and their families. - 1997 Survey made for the anti-environmental corporate funded (Phillip Morris) group - Citizens for Sound Economy.

"No-Growth Movement Can Declare Victory."

-Carmel Pine Cone Editorial, April 13, 2001

The Monterey County Herald, Thursday November 7, 1996
Herald Editorial

"What the voters told officials"

"Its always a bit of a dance to speculate on what local election results 'mean.' And the broad range of seats and issues before voters this year make that even more of a challenge."

"But a few patterns do seem to hold up across several races. One is a solid 'no growth' sentiment among Monterey Peninsula voters. Voters rejected Measure M, thus rejecting the Rancho San Carlos project that the Board of Supervisors had approved. Arguments about impacts on traffic

¹⁰ For details of our concerns please refer to our letter of Oct 28 1998 make that document a part of this administrative record, this hearing and considered.

and water apparently carried the day. No growth also fueled the initiative drive to change countywide procedures for approving development projects in unincorporated areas. ..."

"Meanwhile Dave Potter defeated Jeff Davi in the race for 5th District supervisor, in part because he was perceived as less 'pro-growth' than his opponent." ¹¹

Monterey County Herald top headline Wednesday, November 8, 1995 --

"Voters soundly reject Carmel River dam"

"The vote margin was 57 percent to 43."

Monterey County Herald top headline Nov 7, 2001 --

"Incumbents lose in key races"

"Environmentalist Judi Lehman knocked union leader Ron Chesshire off the board of the Monterey Peninsula Water Management District in Tuesday's election, seemingly ending the political split that has sometimes deadlocked the contentious panel for the past two years. Lehman solidly defeated Chesshire by a count of 1,228 to 954"

Monterey County Herald top headline Wednesday, November 3, 1999 --

"Dam foes win water seats"

"Election of Erickson, Lindstrom shifts water board majority"

"Two anti-dam candidates were elected to the board of the Monterey Peninsula Water Management District on Tuesday... Its the first time in the District's 21-year history that the board will be opposed to building a new dam."

Even developers recognize we always vote against growth.

Remember how we resoundingly voted down the Carmel Valley Dam? 57% to 43%?

Q. What did Cal-Am do immediately afterwards?

A. They came out with their "No-growth" Dam.

Q. Why did Pebble Beach Company and Clint Eastwood put Measure A on the ballot?

A. Because Pebble Beach Company and Clint Eastwood feared we would put their project on the ballot. Their Measure A was almost purely intended to prevent a public vote against their project.

¹¹ Davi also lost the 1992 Supervisor race to Sam Karas. Davi was for the Hatton Canyon Freeway, Karas opposed it.

Sadly, we do not vote nearly as well for public officials as we do against growth. But even so, Sam Karas and Dave Potter were both primarily elected as Peninsula Supervisors because they opposed the Hatton Canyon Freeway while their losing opponents supported it.

- **Please prepare and analyze General Plan Alternatives --**
 1. **constrained by water, traffic and other existing infrastructure limits, and separately one**
 2. **constrained by sustainable use of resources sometimes called "Carrying Capacity" or "Steady State."**

Please rewrite the General Plan and FEIR and recirculate them.

David Dilworth, Executive Director,
Helping Our Peninsula's Environment (HOPE)

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REAL IMPACTS EVADED

If instead of evading them, the significant environmental impacts of the proposed actions allowed by the proposed General Plan were reasonably analyzed using the best available science the inappropriately glowing conclusions of the environmental review are simply not credible because of the much greater genuine impacts. HOPE requests you to rewrite the EIR using the following principles and methods.

AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE.

"If you can't replace something, then you'd better preserve it." David Brower, Let the Mountains Talk, Let the Rivers Run, 1995

IRREVERSIBLE HARM REQUIRES PRECAUTIONARY PRINCIPLE

The Passenger Pigeon is gone forever from our planet. Americans not only recklessly killed millions of them, not for consumption - just for sport; we caused their extinction.

Developers, and to a large degree government agencies, consider environmental impacts as only a problem to find loopholes around. They typically trivialize environmental impacts no matter how much evidence exists with "There is no incontrovertible proof yet."

Yet when economic interests are threatened "We shouldn't wait for a full-blown disaster before we act." Bill Pauli, California Farm Bureau President, January 2000 demanding an aggressive campaign to stop the glassy winged sharpshooter insect bearing Pierce's disease. Some people understand the Precautionary Principle only when they want to.

They know much of physics, and most environmental science, is less than a 100% certainty, so they knowingly demand an impossible standard of proof so they can keep making money as long as possible while the environmental damage they are causing grows.

Their position is equivalent to having smoke pouring out of a house and they stop you from calling the fire department until you can prove it is on fire - that you can see flames is not good enough.

American culture provides overwhelming examples of how irresponsible it is to wait until all harmful effects of a project are even 60% certain. Environmental damage may be irreversible or impossible to mitigate.

Causing a human's death is irreversible and 100% impossible to mitigate.

Causing a wild animal or plant to go extinct is irreversible and 100% impossible to mitigate. Humans have caused numerous species to go extinct and are forcing thousands more to the brink of extinction.

As a society we have decided we will not wait for 100% certainty when it comes to prohibiting or limiting the use of poisons including radiation and pesticides.

California's Environmental Quality Act (CEQA) specifically recognizes this need for precautionary policy in defining a "Significant effect on the environment" as a "POTENTIALLY" substantial, adverse change in the environment - not as merely a "CERTAIN" environmental harm. (Sec. 21068)

PREDETERMINED CONCLUSIONS

Unfortunately this environmental impact analysis reflects the principle "most government planning is the systematic collection of evidence to justify predetermined conclusions." (Jim Britell, "The Myth of Planning")

The environmental documentation is seriously incomplete and ignores many clear environmental damages. This prevents a full and fair evaluation of the environmental consequences of this project by the public and decisionmakers.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."
California Government Code Section 54950 - the Ralph M. Brown Act.

After years of reviewing hundreds of Environmental Impact Assessments I can state I have yet to see a single EIR, EIA or EIS that meets the MINIMUM legally required. Frankly we're disgusted and angry with the typical avoidance of compliance with CEQA law and intent.

We're not alone. The public, **the California Bar Association** and many environmental professionals decry the abysmal lack of environmental protection and the typical Agency use of CEQA loopholes to avoid disclosing potentially harmful environmental impacts.

As experts in many scientific fields related to environmental impacts and the law governing them, we are all too familiar with the typical agency standard for Environmental Review Documents which include huge doses of faulty or embarrassingly out-of-date science, environmental and biological illiteracy, twisted logic and intentionally risky legal conclusions to hide environmental damage. We find much CEQA avoidance originates in intentionally ambiguous environmental review.

Because of the typical slipshod and ambiguous scientific and technical misconduct of Environmental Review preparation and to revive the rigor intended and expected from CEQA we have compiled -

- 1) a broad and specific factual basis of genuine environmental impacts; and
- 2) a list of standard questions to reveal the factual basis (or lack of a factual basis) of the document's conclusions.

Evidence Summaries are Inadequate.

"An expert who relies on a summary of data or facts, by definition relies upon the underlying data and the facts which form the basis for the summary." *Marsee v United States Tobacco*, 866 F.2d 319, 323 (10 Cir 1989)

This following larger than usual list of questions is needed because

- 1) Environmental Review is formal discourse, and
- 2) Agencies often do not deal in good faith and almost always raise a "Failure to Exhaust Administrative Remedies" defense when sued.

We find such a legal defense by an agency inherently bogus and poetically ironic since -

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1) Courts hold agencies up as experts on environmental impacts (in spite of overwhelming evidence to the contrary) and 2) that the intent of CEQA is to prevent agencies from avoiding disclosure of environmental impacts.

It stands to reason that if an Agency is held up as expert AND the Agency failed to tell us about an impact - there is no other conclusion available except that they were either incompetent or intentionally hiding impacts. In either case the courts have held that agencies shall be legally liable for a failure to look for or disclose potential environmental harm.

We cannot ignore the potential for an agency to raise a "Failure to Exhaust Administrative Remedies" so in order to Exhaust our Administrative Remedies we are obligated to ask these questions about the fundamental basis of the conclusions asserted.

AGENCY EXPERTS - AREN'T

Governing Magazine Editorial "The fact of the matter is that **many local governments do lack the expertise they need to administer land-use laws competently and fairly.**" Jonathon Walters, May 2000

"[Consulting Geologist Lew] Rosenberg also believes geologic information is not properly used by [Monterey] County Planning Department, which relies on its own staff to review reports rather than on registered geologists. 'The popular belief is that this would be too expensive,' Rosenberg said. 'However, if only one house or road were saved from damage, then using a geologist would more than pay for itself.'" -Herald Oct 15 1999 Front Page "Mapping out the Big One"

We intend to make it abundantly clear that it is irresponsible to consider Lead Agency staff or the EIR Authors as experts in any field of environmental impact or that they have really considered all environmental impacts until they can prove otherwise by answering each of our questions substantively, thoroughly, and meaningfully.

Responsible environmental review consultants and agency staff have welcomed our questions. Reckless environmental review consultants and agency staff have ignored our questions and facts increasing the risks of the Lead Agency losing litigation.

Our expertise is demonstrated by the inclusion of the best available science and specific facts all backed up by explicit citations relevant to the environmental impacts we raise. EIRs rarely provide such rigor.

CEQA OVERVIEW

A 1991 Association of (San Francisco) Bay Area Governments study found a **"poor relationship between the environmental review and the ultimate project decision."**

The **California State Bar Association** convened a CEQA Review Committee in 1994-1995. They concluded that the lack of standards for thresholds of significance was a problem stating:

"Many CEQA documents do not state [the thresholds used to make impact significance determinations]. If thresholds are not explicitly stated, it is difficult for the public to comment meaningfully on decisions to prepare a negative declaration instead of an EIR, or to comment on a particular significance determination."

The State Bar also found "the need for clarification regarding specificity, enforceability, feasibility, effectiveness and monitoring."

The U.S. EPA studied 1200 Environmental Assessments and Findings of No Significant Impact (FONSIs) and estimated that **70% of them contained either inadequate mitigation measures or no mitigation measures.**

FACT BASED ANALYSIS OF BENEFITS, IMPACTS, MITIGATIONS & ALTERNATIVES

The following specific questions are intended to assist the public and decisionmakers by helping reveal the objective basis (or lack of) for the conclusions reached by your environmental document.

Superficial Science is Inadequate

The environmental document needs factual evidence to show how the benefits, or purposes, can be achieved, how the impacts were measured, how the mitigation benefit and Alternatives were evaluated. The document assumes that it is self evident that the benefits will be achieved, the Alternatives won't provide them, that impacts are insignificant and Mitigations are magical cures for everything. As is often said "The road ... is paved with good intentions."

However, the law requires conclusions be based on facts - not assumptions or opinions. Our California Supreme Court wrote "[We can not] countenance a result that would require blind trust by the public." Laurel Heights v UC, 47 Cal.3d 376

CEQA Section 21080(e)

"Argument, SPECULATION, UNSUBSTANTIATED OPINION or narrative, evidence which is clearly inaccurate or erroneous ... is not substantial evidence. Substantial evidence shall include FACTS, reasonable assumptions BASED ON FACTS, and expert opinion SUPPORTED BY FACTS."

"[The EIR analysis] must be supported by references to specific scientific and empirical evidence." Mountain Lion Coalition v. Calif Fish & Game 1989, 263 Cal Rptr 104

"A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process." Kings County Farm Bureau v. Hanford 1990

"A conclusionary statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" People v. Kern County 1974, 115 Cal Rptr 67 quoting Silva v Lynn 73 482 F.2nd 1282, 1285

"The EIR must contain FACTS and analysis, not just the opinions of a public agency." -Santiago Water District v Orange County 1981, 173 Cal. Rptr 602

*** A detailed response is required when a comment raises a specific issue.** Cleary v County of Stanislaus (1981) 118 CA3d 348

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The following describes how you can help make a legally defensible and informationally adequate EIR.

For each Impact the DEIR identified and those we and agencies have raised we request you to reveal all facts and reasoning used to arrive at conclusions of impact significance. As is often observed "**Don't assume anything** - because splitting apart the word 'Assume' makes an 'Ass,' U and Me."

The **CRITERIA NAMES LIST AND DEFINITIONS** is critical to objective decisions, so there are no hidden or ambiguously defined criteria or "add factoring." Each Impact requires at least one criteria to determine its significance. Some impacts may have many criteria. We need to know very specifically EVERY criteria which is used to arrive at EIR conclusions.

CRITERIA VALUES are critical since criteria names and descriptions alone are meaningless unless they have non-subjective definitions and explicit numeric values associated with them. For example "A moderate amount of runoff is expected" is wholly ambiguous and meaningless as criteria. However, "Impervious surface area will increase from 20 percent to 35 percent over the 3 acres and increase runoff by 5,000 gallons for every inch of rain" is an example of meaningfully quantified criteria.

The **MEASUREMENT METHODS** used are critical to know so a reviewer can understand how the foundational facts were measured, analyzed and used. When a single criteria is used it is critical to know exactly how it was measured and what instrument was used.

Some examples of specifics - Was a mass spectrometer or an infrared spectrometer used? Which model Spectrometer was used (e.g. an HP 5987-A gas chromatographer/mass spectrometer); Which method was used (EPA 8270, ASTM E729-90 or an APHA test)? Did you use Allozyme or Microsatellite DNA analysis?

MEASUREMENT UNITS are critical to know so we know precisely what you mean by the measurements you describe and so the units don't change in the middle of the analysis. Which specific unit of measure are you using for each criteria (e.g. species per cubic centimeter, furlongs per fortnight, genes per cell etc.).

EXPLAIN FORMULAS USED

When two or more numeric criteria are used it is vital to understand how they are used together (i.e. are they added, multiplied or is some higher order function used such as a cosine).

UNCERTAINTY

There is nothing inherently wrong with uncertainty. Almost all public policy is made having some unknown information. What is inexcusable is not acknowledging uncertainty and failing to reveal it, estimate it or explain its meaning.

"A measurement result is complete only when accompanied by a quantitative statement of its uncertainty. The uncertainty is required in order to decide if the result is adequate for its intended purpose and to ascertain if it is consistent with other similar results." -National Institute of Standards and Technology (NIST)

US-EPA agrees with us and advocates that government agencies "Acknowledge Uncertainty" in their manual "Air Pollution and the Public: A Risk Communication Guide for State and Local Agencies", June 1991

ENVIRONMENTAL UNCERTAINTY INCREASING

"The natural world is a more uncertain place than most ecologists once believed it to be."
Environmental Science; Morgan, Moran & Weirsma; W.C. Brown Pub. 1993

Please explain how you have addressed, considered and quantified EACH of these uncertainties for EACH criteria and EACH impact. we are not asking you to speculate, but to truthfully state the unknowns, their magnitude and reasonably foreseeable problems resulting from those unknowns. We expect you to follow with feasible solutions for contingency and failure.

* The **QUANTIFIABLE BASELINE** is critical to know so a reviewer can understand what starting point was used before project environmental impacts were added in.

Each Impact criteria must be measured from an existing Baseline using unambiguous units of measure and a replicable method. If an Impact criteria is not measured quantitatively (e.g. visual aesthetics) it is not a scientific or a legal fact - it is merely an opinion which is extremely distinct from a fact.

If a factual basis is avoided there must be a strong justification for avoiding quantitative measurements. We insist that quantitative evaluations be made or, if deemed impossible, that we be provided with a thorough and reasonable explanation of -

1. Why the baseline can not be quantified, and
2. the basis for each non-quantified conclusion.

THE AVERAGE - ISN'T

Mark Twain once observed "I never cross a river when all I know is its average depth is six inches."

If the phenomena examined is stable at two extremes (like daytime and nighttime temperatures), the average tells us nothing. As a former math and engineering teacher and a computer software scientist, let me try to explain two problems with data summarized without a complete description. The most common useful data description is which measure of central tendency "average" is used and how much the data varies from that.

When the term "average" is used we need to know precisely which kind of average is meant. There are at least eight (8) kinds of average or measures of central tendency: Midrange, Arithmetic Mean, Geometric Mean, Harmonic Mean, Logarithmic Mean, Weighted Mean, Median, and Mode. All seven usually give different, and sometimes wildly different, answers. If the type of average used is not disclosed the "average" claimed can be absolutely meaningless. If an inappropriate average is selected it may give highly misleading or even false conclusions. For example "Since half the people in the US are men and half are women the average adult has one ovary and one testicle.", John Allen Paulos, Once upon a Number, 1998, Perseus Books.

If you explicitly spell out which kind of average is used and provide the data we don't mind the use of an average. However even an average is not complete without knowing the -

RANGE (Statistical) OR VARIANCE

The RANGE or VARIANCE for EACH statistic (Baseline, Impact, etc.) is also critical to know so a reviewer can understand how much the criteria varies. RANGE is independent and distinct from MARGIN OF ERROR. Range shows how much the phenomena can vary; Margin of Error shows how consistent the measurements are and how reliable the phenomenon is within that range.

When a average is used and extreme variations are hidden it is not possible to know what actual range of conditions could occur. So we need to know the extremes which can be expected from the activity.

A **MARGIN of ERROR** or a confidence level is needed for each claimed measurement, value, calculation and conclusion.

Every measurement has some error. We need to know the size of the errors. Imagine a child admits to you he only took three cookies. Asking the margin of error he responds "plus or minus Ten." This is alarmingly similar to information typically presented in Environmental studies.

When a margin of error is small, the measurement has high value. If the margin of error is large, the measurement has a lower worth. Americans are perhaps most familiar with margin of error often published with public opinion polls. (e.g. "Eighty percent of Americans support more environmental protection with a margin of error of plus or minus 4 percent.")

If you don't know the margin of error - we insist you estimate its approximate magnitude. Is it +/- 5 percent, 50 percent or 500 percent?

When combining two measurements - a new (probably additive, but potentially multiplicative) and inherently larger MARGIN of ERROR is created - and we want that amount stated separately.

Sometimes margins of error are not measured, but are opinions accurately called "estimates." Please state whether each MARGIN of ERROR is measured, calculated or an opinion.

Better yet than a margin of error is a probability distribution function (PDF). Unlike error bars which merely give a range in which a solution should fall, PDFs attach a likelihood to each possible value.

TRENDS OF HISTORICAL DATA is critical to know so a reviewer can understand how the phenomena has varied over a time scale of ecosystem generations. (e.g. the previous 300 years to 30,000 years) to show whether there is a trend or a cycle. Variance only deals with recent short term fluctuations. Historical data can indicate whether there is an uptrend or a downtrend.

The **MAXIMUM IMPACT CHANGE** is critical to know so a reviewer can understand the most impact which this project could foreseeably cause. This is also extremely important in case the activity causes an impact larger than estimated by the Environmental Review. For many reasons environmental consultants often underestimate an environmental impact's magnitude. Knowing this number allows the public to have a quantifiable point at which the public objectively sue the consultant, the agency and the applicant for failing to adequately disclose the environmental impacts.

* The **SIGNIFICANCE THRESHOLD LEVEL** is critical to know so a reviewer can understand how Significance is measured and hold it up against the impact values. Ambiguous or unquantified significance thresholds are meaningless.

When an EIR claims an impact is less than significant, that value judgment is meaningless when there is no quantified significance threshold - so we can see if it is indeed less and by how much. See above where the California State Bar Association comments on this specific topic.

STRAW THAT BROKE THE CAMEL'S BACK

Significance thresholds are rarely a linear function. In some cases, when resources are extraordinarily abundant, it may take a large degree of environmental damage to reach a significance threshold.

However, when a situation is already at, or even beyond, a tolerance limit (e.g. a species population is endangered, a water supply emergency is officially declared, traffic is in gridlock, commercial parking is flooding into residential neighborhoods)

- even the tiniest increase in environmental impact is significant. "The Straw that Broke the Camel's Back" is an excellent analogy to describe when the slightest increase can cause a significant impact.

One good example is California's Department of Transportation standard for a significant impact when an existing road or intersection is at gridlock (Level of Service "F") is the addition of a single vehicle trip. "It is the Department's position that the addition of even one peak hour trip in a LOS "F" environment represents a significant impact." (Cal-Trans letter dated Nov 18, 1997 to the Monterey County Planning Dept on the proposed September Ranch project.)

BOTH PHYSICAL AND LEGAL IMPACTS NEEDED

It is vital to distinguish between a number on paper (such as a legal threshold) and a real physical impact on the ground. It is the difference between the legal speed limit and how fast people really drive. We need to know both to insure no genuine impacts are overlooked. For example a project may have a legal entitlement to water, even when there is no physical water available. Or as one woman, from her hospital bed, decried the continued use of a nerve gas pesticide near her home "It gives us little comfort to know we're being poisoned legally!"

PHYSICAL THRESHOLDS

Legal thresholds for air pollution are often very different from known adverse health impacts. This is because air pollution impacts are usually set for Healthy, Male, Adults who are only about 20 percent of Americans. Thirty percent (30%) of ALL Americans have existing breathing problems. There can be genuine significant impacts on the 80 percent of the public who are not Healthy, Male, Adults.

LEGAL THRESHOLDS

Examples of state & federal laws which are potentially relevant to this activity include the California and Federal Endangered Species Acts, the US Clean Water Act, the US Clean Air Act, California's Proposition 65). Some laws have different legal limits for the same criteria. We want you to provide all of them.

NON-LINEAR RELATIONSHIPS are critical to understand so a reviewer can analyze those instances when even the tiniest tiny additional effect can "break the camel's back" and cause a potentially significant environmental impact. (See Significance Threshold Levels above)

CUMULATIVE, INCREMENTAL AND COMPOUNDING IMPACTS are critical to know so a reviewer can understand the approximate grand total of all of this specific impact from this and other projects, past, present and future.

ASSUMPTION SENSITIVITY can make huge differences in conclusions. Whenever assumptions are used for analysis it is critical that you analyze, quantify and qualify how sensitive those assumptions are. For some assumptions the slightest variance can make a gigantic difference in the results. For example - when a poison is supposed to be a tiny percentage of a pesticide (e.g. 1 percent), but the real percentage varies from 0.5% to 1.5%, if that 50% increase in toxic content from what is expected is not disclosed and analyzed in the assumptions the conclusions could substantially misleading.

RESOURCE LIMITS are critical to know so a reviewer can understand when the sustainable use of a resource is exceeded.

NATURAL RESOURCES ARE LIMITED & IMPORTANT

While it may seem obvious that human health and ecosystem health are important and that there are limits to natural resources it is appropriate to remember that they are actually explicitly found in laws.

California Environmental Quality Act - PUBLIC RESOURCES CODE 21000 et seq. "**The Legislature finds and declares as follows: (d) THE CAPACITY OF THE ENVIRONMENT IS LIMITED**, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached."

CALIFORNIA GOVERNMENT CODE SECTION 66478.2.

"The Legislature finds and declares that **THE PUBLIC NATURAL RESOURCES OF THIS STATE ARE LIMITED IN QUANTITY** that the population of this state has grown at a rapid rate and will continue to do so, thus increasing the need for utilization of public natural resources."

1993 US Council on Environmental Quality Report Chapter 2: Water Quantity and Quality; Arizona and California. "In water-deficit areas such as Arizona and California, large volumes of groundwater continue to be withdrawn to meet agricultural and municipal needs. **BECAUSE OF LIMITED SUPPLIES**, such withdrawals cannot be sustained indefinitely. Groundwater mining in the California San Joaquin Valley has resulted in sediment compaction and land subsidence."

Important Interests:

Health and Safety Code Section 116270 "The Legislature finds and declares all of the following: (a) **Every citizen of California has the right to pure and safe drinking water.** "

California Fish & Game Code 1600

"The protection and conservation of the fish and wildlife resources of this state are hereby declared to be of utmost public interest." (Think endangered Coho salmon)

California Fish & Game Code 2014. (a) "It is the policy of this state to **conserve its natural resources and to prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or amphibia.**" (Do the survey now.)

California Fish & Game Code 2052

"The Legislature further finds and declares that it is the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat ..."

California Fish & Game Code 2781.

The people of California find and declare that wildlife and fisheries conservation is in the public interest and that it is necessary to keep certain lands in open space and natural condition to protect significant environmental values of wildlife and native plant habitat, riparian and wetland areas, native oak woodlands, and other open-space lands, and to provide opportunities for the people of California to appreciate and visit natural environments and enjoy California's unique and varied fish and wildlife resources.

California Public Resources Code 4512. Findings and declarations.

(a) The Legislature hereby finds and declares that the forest resources and timberlands of the state are among the most valuable of the natural resources of the state and that there is great concern throughout the state relating to their utilization, restoration, and protection.

EXPERT QUALIFICATIONS are critical to know so a reviewer can understand whether an expert is genuinely trained to offer opinions on the specific impact at issue - or merely familiar with the general field. It is helpful to cite any peer reviewed and validly published papers on the specific impact by the expert. Agency planning staff are rarely specifically or even generally trained to make decisions on environmental issues. Yet Courts give them wholly undue deference when they make conclusions.

GRAPHS

Please use graphs and time lines wherever possible.

MUST IDENTIFY FEASIBLE MITIGATION

By law, an environmental impact report must identify and examine significant environmental effects of a proposed project, feasible mitigation measures, unavoidable significant effects, significant irreversible environmental changes, and alternatives to the proposed action. West's Ann.Cal.Pub.Res.Code 21061, 21100.

"The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require an intensive environmental review of projects that may adversely affect a Federally listed species. However, project proponents are not required to avoid impacts to non-listed species, and proposed mitigation measures are frequently not adequately implemented." -US-Fish & Wildlife Service in Federal Register 1996

MUST IMPLEMENT FEASIBLE MITIGATION

CEQA requires agencies to implement feasible mitigation measures or alternatives identified in the EIR. (sec. 21002, 21081; Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215, 1233.)

MEANINGFUL MITIGATION NEEDS MEASURABLE PERFORMANCE CRITERIA

Mitigation is meaningless unless it has measurable performance criteria. Mitigation performance criteria must take the form - certain measurable events will occur by a specific date - or specific penalties must occur.

MITIGATION ADEQUACY BY TYPE

There are two types of mitigation adequacy and inadequacy - legal and physical.

ILLEGALLY INADEQUATE MITIGATIONS

According to the CEQA Deskbook 1996 (Bass, Herson, Bogdan pg 100 "Cited as an authoritative Source by the California Courts.") -

All Mitigations are legally inadequate which involve: "Conducting Surveys", "Submitting for Review", "Consulting with ...", "Coordinating with...", Informing, Encouraging or discouraging, Facilitating, "Strive to..."

POTENTIALLY INADEQUATE MITIGATIONS

All Mitigations are potentially legally **INadequate** which involve "Provide Funding for...", "Hire Staff", "Monitor or Report", Complying with existing regulations. Id.

ADEQUATE MITIGATIONS

The only Mitigations which are potentially legally adequate are those which sufficiently Avoid, Minimize, Reduce, Rectify over Time, and Compensate. Id.

* **AVOIDANCE MITIGATION** is important to wholly avoid an impact.

We do not accept any mitigation other than avoidance. We find the concept of mitigation as repugnant as a rapist sending flowers to their victim.

Inability to determine mitigation effectiveness means the Mitigations are not fully enforceable due to vagueness. CEQA requires Mitigations to be "fully enforceable" 21081.6(2)(b).

If you use the term "mitigated" or "mitigated to a less than significant level" you need to explicitly define those terms or they are meaningless due to overly broad ambiguity.

ENDANGERED SPECIES IMPACT CRITERIA

To examine whether an activity impacts a listed species, first one must determine if the species potentially visits or uses the site. If so then you must examine if the species would be affected by the activity.

US Fish & Wildlife Service use three criteria for site assessment protocol determination for a species listed under the Endangered Species Act:

1. Is any of the project well within the range of the species?
2. Is any of the project within five miles of a recent observation?
3. Is any habitat consistent with the species known habitat?

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4. Please provide a map of the Action Area as defined by the Federal ESA. (For these three questions please use Venn diagrams as used in the FWS & NMFS March 1998 ESA Consultation Handbook pg pgs 4-16,4-17.)

5. Please provide a map of the areas directly affected by the project.

6. Please provide a map of the areas indirectly affected by the project.

LOSSES OF HABITAT OR POPULATIONS

For **each listed species**, in addition to the harm to individuals, we want you to describe all known and suspected major and minor threats to the species (examples include: habitat loss, habitat destruction, habitat fragmentation, habitat modification or habitat restriction caused by residential, commercial, recreational, agricultural development activities; commercial hunting and poaching; overfishing; predator and pest control; predators losing their primary food source and increasing their predation of the listed species; extremes of high or low water, introduction of nonnative (exotic) species, increased sedimentation from grazing, pesticide runoff, sewage runoff, groundwater overdrafting, increased aquatic growth causing water anoxia, elevated water temperatures which could lead to stress, poor condition and poor survival in aquatic species, changes in food supply, prevention of immigration, use of chlorinated hydrocarbons, toxins in general, potential oil spills, off-road vehicles, shooting, existence of power lines, presence of domestic pets, loss of tall snags for roosting).

HOST PLANT DISTURBANCE CAN BE ESA TAKE "The disturbance of this species host plant may be considered to be take of the species and a violation of Section 9 of the [US-Endangered Species Act]." US-FWS letter to Monterey County Dec 10 1997 discussing Smith's Blue Butterfly and its buckwheat host plant.

HABITAT ENHANCEMENT CAN BE ESA TAKE "...habitat enhancement activities for Smith's Blue butterfly, while intended to benefit the species, and also result in [ESA] take." US-FWS letter to Monterey County Dec 10 1997 discussing Smith's Blue Butterfly.

*** LOSS OF A SINGLE INDIVIDUAL OF A LISTED SPECIES IS SIGNIFICANT** The loss of a single individual of a listed species must have a Finding of Significant Impact under CEQA Section 15065. *Mira Monte Homeowners v. San Buenaventura Cty. ETC.* 165 Cal.App.3d 357 Cite as 212 Cal.Rptr. 127 (Cal.App.2 Dist. 1985)

* The loss of as little as a quarter of an acre of habitat a single individual of a listed species must have a Finding of Significant Impact under CEQA Section 15065. *Mira Monte Homeowners v. San Buenaventura Cty. ETC.* 165 Cal.App.3d 357 Cite as 212 Cal.Rptr. 127 (Cal.App.2 Dist. 1985)

CITATIONS

1) When citing a reference document, along with a quote from the reference please cite the exact document (and where it can be found), page, paragraph and specific sentences so there is no ambiguity.

If you think you've already answered a question, similarly, please cite the exact page, paragraph and SPECIFIC SENTENCES so there is no ambiguity.

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For every report cited please state whether the author reported that s/he had NO potential financial stake in the outcome of the paper.

NOTICE

It is our opinion that it is not possible to make an adequate or informed decision lacking the basic facts requested. Concluding something without basic facts is similar to trying to add one number and an unknown number. It doesn't matter how certain you are of the known number, if the unknown number can vary by a magnitude or more (say between one and one thousand), any result or conclusion from adding the two is at least wildly inaccurate and more likely meaningless.

If you disagree and fail to answer any question directly or fail to provide any of the quantitative analysis, please clearly explain the method you used and the threshold of information you need and used to make each benefit, significance and mitigation decision and why you avoided using a quantitative measure.

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