

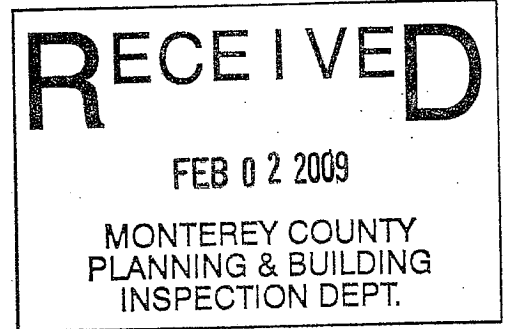


Monterey County Farm Bureau

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November 13, 2008

Carl P. Holm, AICP
County of Monterey
168 W. Alisal Street
Second Floor
Salinas, CA, 93901



Subject: Comments on Draft Environmental Impact Report to General Plan Update 5

Dear Mr. Holm:

Monterey County Farm Bureau offers the following comments and recommendations both for itself as a private nonprofit association and on behalf of its members, who are farmers and ranchers in Monterey County. Our comments and recommendations are directed at the Draft Environmental Impact Report prepared for General Plan Update 5.

In general we note some overarching concerns about the DEIR and about the mitigations it recommends.

- The mitigations recommended in the Biological Resources section of the DEIR would impose significant new burdens on rural land owners and create obstacles to the viability of agriculture. The confluence of biological surveys, habitat conservation plans and protections for non-listed species and non-designated habitats would add huge new costs, create uncertainty about future opportunities, and restrict agricultural operations. Both individually and collectively, these mitigations will lead to the diminishment of agriculture and the conversion of farm lands to non-farm uses. 1
- The DEIR relies on outdated housing numbers from the Association of Monterey Bay Area Governments. These outdated numbers, developed in the midst of a housing bubble and while housing both in terms of prices and demand were, we now know, significantly overstated. The DEIR ignores revised numbers that were available to the consultant and that present a significantly changed picture of growth needs. It follows that all of the findings of significant impacts in the DEIR are similarly overstated and therefore unsupportable. Once we recognize this flaw in the DEIR, we find many of the DEIR conclusions and mitigations, particularly in the Biological Resources section, to be without merit. 2
- The DEIR incorrectly instructs the County of Monterey that the county has obligations to extend protection to species that have not been listed under the 3

federal or state Endangered Species Act and to habitat that has not been designated under the federal Endangered Species Act. This instruction incorrectly describes the county's authority to make legislative decisions about whether to extend protections to certain species and habitats. The DEIR should acknowledge current case law on point that limits the scope of the definition. Case law defines special status species as: A "**special status species**" includes species that are either "declining at a rate that could result in listing or historically occurred in low numbers, and known threats to their persistence currently exist." (Save Round Valley Alliance v. County of Inyo (2007) 157 Cal. App. 4th 1437, 1465.)

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- The DEIR speculates about impacts beyond the General Plan's 2030 planning, theorizing that "new threats ... may arise in the more distant future beyond 2030 that are not currently anticipated." It is both unrealistic and beyond the law to require the county to mitigate for impacts based purely on speculation about unanticipated impacts. The planning horizon of the General Plan should not go beyond 2030. Planning limitations and mitigation requirements beyond 2030 are both unnecessary, and highly speculative. In addition, case law clearly states that mitigation measures cannot be deferred until some future time. Since the county cannot predict the future nor future project impacts, they cannot require future mitigation measures.

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We also offer our comments on these topics in the DEIR:

Endangered Species

The Draft Environmental Impact Report says:

"Endangered Species - A species of animal or plant whose prospects for survival and reproduction are in immediate jeopardy from one or more causes. Habitats for endangered species are protected under the Federal Endangered Species Act and the California Endangered Species Act."

Comments on this definition:

Farm Bureau believes this definition obscures the process described in the Endangered Species Act for determining whether a species should be listed as a threatened or endangered species and for designating critical habitat. This is likely to mislead county government to require protections for species and habitats that are beyond the requirements in federal law. Excessive restrictions will unduly burden agriculture.

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The abbreviated definition of "endangered species" in the DEIR is different from the definition in the Endangered Species Act, Title 16, Section 1532, which says, "the term 'endangered species' means any species which is in danger of extinction throughout all or a significant portion of its range"

The context of these two definitions is important. The definition in the Endangered Species Act is immediately followed by the detailed process of scientific evidence, review and public comment that leads to a formal listing. The definition in the DEIR implies that the Board of Supervisors may use the definition to conclude that species should be protected, without regard for whether those species have been listed.

Farm Bureau believes the DEIR supplies an incomplete explanation of protected habitat, specifically referring only to "habitats for endangered species," but not using the proper term, "critical habitat." This incomplete explanation appears likely to mislead county government to impose restrictions on private land that are beyond the requirements in federal law. Excessive restrictions will unduly burden agriculture.

The incomplete explanation of habitats protected under federal law is very different from the definition in the Endangered Species Act, Title 16, Section 1532, which says,

"(5) (A) The term 'critical habitat' for a threatened or endangered species means—

"(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features

"(I) essential to the conservation of the species and

"(II) which may require special management considerations or protection; and

"(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

"(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species."

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By avoiding the correct term "critical habitat," the DEIR also avoids reference to the Endangered Species Act's provisions that, under most circumstances, designated critical habitat may not include all potential habitat and that economic impacts are a significant part of critical habitat designation.

Without these details, the county may be misled into attaching undue weight to the DEIR's mitigation requirements for species and habitats that have not been listed or designated under law.

In the course of its work to create a General Plan Update, the county has applied the terms "species listed as threatened or endangered under the federal or state Endangered Species Act" and "designated critical habitat."

It is important to note that the ESA defines critical habitat as the specific areas containing features essential to the conservation of the species, and that may require "special management considerations or protection." Critical habitat is generally limited to the geographical area occupied by the species at the time it is listed. Additionally, critical habitat designation is required only to the "maximum extent prudent and determinable." Also, requirements for critical habitat, as defined under the ESA, do not apply to citizens engaged in activities on private land that do not involve a federal agency. These restrictions on critical habitat need to be acknowledged and the DEIR should either apply ESA definitions to the term "critical habitat" or create their own definition for the term to provide clarity and correct legal obligations.

Creation of a Habitat Conservation Plan would impose new burdens on agriculture, either through restrictions on activities or through mitigation fees. While the effects of critical habitat require a nexus with a federal agency or permit, we know that many farms and ranches may have such a nexus without realizing it. For example, many land owners cooperate with the federal Natural Resources Conservation Service on water quality projects. There is interest in developing federal regulations for food safety protection that could create a federal nexus for all vegetable producers in Monterey County. Inclusion in a Habitat Conservation Plan could result in limits on cultivation or conservation practices where they involve identified habitat or could require

added cost and delays for biological surveys. Also, the potential risks of creating a federal nexus could have a chilling effect on cooperative programs that involve federal agencies.

Monterey County Farm Bureau recommendation:

Recommended that the county continue to use the terms "species listed as threatened or endangered under the federal or state Endangered Species Act" and "designated critical habitat."

All recommended biological mitigations should be evaluated based on these legally appropriate terms.

The county should reject recommendations to extend new protection to species that are not listed under law or to restrict private land to preserve habitat that is not designated under law. If the county chooses to protect non-listed species or non-designated habitat, the county should seek independent counsel.

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Habitat Conservation Plans

The Draft Environmental Impact Report says:

"Habitat Conservation Plan (HCP) - A program prepared in accordance with the Federal Endangered Species Act that is designed to extend protection provided for endangered species to all sensitive habitat in a prescribed area."

Comments on this definition:

The DEIR presents an oversimplified definition of Habitat Conservation Plans. It may mislead county government about the county's obligations under the Endangered Species Act and about the cost and complexity of implementing a Habitat Conservation Plan.

The definition suggests the sole purpose of a Habitat Conservation Plan is to extend protection for endangered species. It omits the purpose of allowing incidental take of a listed species, which is the primary incentive for a Habitat Conservation Plan. Incidental take is a useful tool in locations where a listed species is prevalent and likely to interfere with farm operations.

The DEIR is lacking in details regarding the requirements and scope of an HCP. Section 10 of the Endangered Species Act authorizes states, local governments, and private landowners to apply for an Incidental Take Permit for otherwise lawful activities that may harm listed species or their habitats. To obtain a permit, an applicant must submit a Habitat Conservation Plan (HCP) outlining what he or she will do to "minimize and mitigate" the impact of the permitted take on the listed species. The principle underlying the Section 10 exemption from the ESA is that some individuals of a species or portions of their habitat may be expendable over the short term, as long as enough protection is provided to ensure the long term recovery of the species.

The DEIR definition may mislead the county to believe it has an obligation to impose a Habitat Conservation Plan for the protection of species. It may also mislead the county about its opportunity to allow incidental take where occurrence of a listed species interferes with agriculture.

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Monterey County Farm Bureau recommendation:

The definition of Habitat Conservation Plan should be amended to read:

"Habitat Conservation Plan (HCP) - A plan prepared in accordance with Section 10 of the Federal Endangered Species Act to allow incidental take of a listed threatened or endangered species."

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Mitigation Measure BIO-1.1

Baseline Inventory

The Draft Environmental Impact Report says:

"Mitigation Measure BIO-1.1: Baseline Inventory of Landcover, CEQA-Defined Special Status Species Habitat, Sensitive Natural Communities, Riparian Habitat, and Wetlands in Monterey County

"The County shall expand the inventory of listed species suitable and critical habitat required by Policy OS 5.1 and OS-5.2 to include an updated vegetation land cover map, identification of suitable habitat for CEQA-defined special status species (as defined in this document), sensitive natural communities, and riparian habitat in Monterey County. The inventory shall include wetlands inventory as feasible based on existing data sources and aerial interpretation. This inventory should be updated at a minimum of ten-year intervals. The inventory can exclude areas that are not under the control of Monterey County (e.g., cities, state and federal lands)."

Comments on BIO-1.1:

Monterey County Farm Bureau believes the requirement for survey and protections will significantly impact the viability of agriculture.

The DEIR does not provide justification for requiring an inventory update at ten-year intervals. The inventory would, in practice, be an incremental, ongoing process as information from permit reviews becomes available.

The requirement to inventory species and habitat is equivalent to the requirement for listed threatened and endangered species and would create an unnecessary burden for agricultural activities and land use. This is tantamount to the county making listing decisions for species that have not been formally listed under either ESA or CESA and doing so without the equivalent due process of scientific and public comment. It would essentially eliminate any distinction between listed and unlisted species. It would prevent the county from making decisions based on future situations.

The significant impacts to agricultural land use that would result from this definition underscore the problems caused by an unsupported definition of special status species. As noted above, the DEIR should use the correct definition of special status species found in the ESA and CEQA and should acknowledge current case law on point that limits the scope of the definition.

The unnecessary protection of nonlisted and undefined species will impose new burdens on agriculture, for fees, biological surveys, permits and habitat preservation. In Farm Bureau's

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opinion, this mitigation poses a significant new impact on agriculture that could diminish farming in the Salinas Valley.

Monterey County Farm Bureau recommendation:

Recommended that the county limit baseline inventory to "species listed as threatened or endangered under the federal or state Endangered Species Act" and "designated critical habitat" and to species designated for local protection, only in conjunction with a CEQA-required document such as an EIR and only within a project area.

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Mitigation Measure BIO-1.2

Kit Fox HCP

The Draft Environmental Impact Report says:

"Mitigation Measure BIO-1.2: Salinas Valley Conservation Plan to preserve habitat for the San Joaquin kit fox in the Salinas Valley

"The County shall, in concert with the USFWS, CDFG, cities in the Salinas Valley, and stakeholders develop a conservation plan for the Salinas Valley to provide for the preservation of adequate habitat to sustain the San Joaquin kit fox population. The general focus area of the plan shall be the Salinas Valley south of the community of Chualar. The Conservation Plan, at a minimum, shall be adopted by Monterey County and shall be applied to all discretionary approvals (and their associated CEQA documents) with potential to affect the San Joaquin kit fox within the conservation plan area. The County shall complete the conservation plan within 4 years of General Plan adoption. The conservation plan funding program shall be developed and shall include a mitigation fee program for which development projects will be assessed a fee based on a proportional basis of impact to the San Joaquin kit fox. The compensation plan shall be developed and implemented in coordination with the appropriate state or federal agency and may provide mechanisms to mitigate impacts of an individual project through one or more of the following means: identifying an agency-approved mitigation bank or other compensation site (on- or off-site); and/or preserving habitat; monitoring the compensation site; and funding the management of the compensation site."

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Comments on BIO-1.2:

The concern about San Joaquin kit fox impacts is unsubstantiated by factual analysis. The purpose of a Habitat Conservation Plan, as stated in the federal Endangered Species Act, is to allow incidental take of a listed threatened or endangered species. There is no evidence that San Joaquin kit fox is present in numbers that impede agricultural operations or that require incidental take permits.

The requirement that the county complete a Habitat Conservation Plan within four years is completely unrealistic and inconsistent with the development of similar plans in other areas.

As noted above, the DEIR is lacking in details regarding the requirements and scope of an HCP. Section 10 of the Endangered Species Act authorizes states, local governments, and private landowners to apply for an Incidental Take Permit for otherwise lawful activities that may harm listed species or their habitats. To obtain a permit, an applicant must submit a Habitat Conservation Plan (HCP) outlining what he or she will do to "minimize and mitigate" the impact of

the permitted take on the listed species. The principle underlying the Section 10 exemption from the ESA is that some individuals of a species or portions of their habitat may be expendable over the short term, as long as enough protection is provided to ensure the long term recovery of the species.

The unnecessary creation of a Salinas Valley Habitat Conservation Plan will impose inevitable new burdens on agriculture, for fees, biological surveys, permits and habitat preservation. The Endangered Species Act does not mandate creation of a Habitat Conservation Plan.

In Farm Bureau's opinion, this Habitat Conservation Plan requirement would pose a significant new impact on agriculture that could diminish farming in the Salinas Valley.

Monterey County Farm Bureau recommendation:

Recommend that supervisors find that the San Joaquin kit fox is already protected under federal law, that critical habitat has been designated elsewhere, and that no further protections are needed.

This mitigation should be removed from the DEIR.

Mitigation Measure BIO-1.3

Project Level Survey and Avoidance

The Draft Environmental Impact Report says:

"Mitigation Measure BIO-1.3: Project Level Biological Survey and Avoidance, Minimization, and Compensation for Impacts to CEQA-defined Special-Status Species and Sensitive Natural communities.

"The County shall require that any development project that could potentially impact a CEQA-defined special status species or sensitive natural community shall be required to conduct a biological survey of the site. If CEQA-defined special-status species or sensitive natural communities are found on the site, the project biologist shall recommend measures necessary to avoid, minimize, and/or compensate for identified impacts to CEQA-defined special-status species and sensitive natural communities. An ordinance establishing minimum standards for a biological report shall be enacted. This policy shall only apply to the following:

- "Development in Focused Growth Areas (Community Areas, Rural Centers and Housing Overlays
- "Development requiring a discretionary permit
- "Large scale wineries in the AWCP."

Comments on BIO-1.3:

The DEIR incorrectly describes nonlisted species as requiring protection – avoidance, minimization or mitigation – similar to that required for listed or threatened or endangered species. The California Natural Diversity Database is a constantly-evolving collection of field

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information that does not meet the same kind of due process that is required for listed threatened and endangered species.

The DEIR will mislead county government to believe it is required to impose protections for nonlisted species that are similar to those for listed species. This unnecessarily confuses nonlisted and listed species.

There is no accompanying definition of special status species or sensitive natural communities. The DEIR does not present substantial evidence that current law requires ESA-level protection for these nonlisted and undefined species.

The significant impacts to agricultural land use that would result from this definition underscore the problems caused by an unsupported definition of special status species. As noted above, the DEIR should use the correct definition of special status species found in the ESA and CEQA and should acknowledge current case law on point that limits the scope of the definition.

Biological surveys for specific species can be calendar based or require lengthy study that would significantly delay projects, including agriculture-related projects that require permits.

Without a clear definition of development that excludes agriculture, this policy would impact agricultural viability.

The unnecessary protection of nonlisted and undefined species will impose new burdens on agriculture, for fees, biological surveys, permits and habitat preservation. In Farm Bureau's opinion, this mitigation would pose a significant new impact on agriculture that could diminish farming in the Salinas Valley. The specific requirement for large-scale wineries in the Agriculture and Winery Corridor Plan would undermine the intended incentives in that plan and would prevent development of the Winery Corridor.

Monterey County Farm Bureau recommendation:

Reject this mitigation as economically infeasible, unsupported by substantial evidence, and inconsistent with policies in the General Plan Update.

Mitigation Measure BIO-1.4

Focused Growth Areas

The Draft Environmental Impact Report says:

"Mitigation Measure BIO-1.4: By 2030, prepare an Update to the General Plan to identify expansion of existing focused growth areas and/or to identify new focused growth areas to reduce loss of natural habitat in Monterey County

"The County shall update the County General Plan by no later than January 1, 2030 and shall consider the potential to expand focused growth areas established by the 2007 General Plan and/or the designation of new focused growth areas. The purpose of such expanded/new focused growth areas would be to reduce the loss of CEQA-defined special status species and their habitat due to continued urban growth after 2030. The new/expanded growth areas shall be designed to accommodate at least 80% of the projected residential and commercial growth in the unincorporated County from 2030 to buildout. This update will also address expansion of agricultural operations and potential impacts to CEQA-defined special-status species."

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Comments on BIO-1.3:

The DEIR does not identify a potential significant impact requiring this mitigation and therefore cannot conclude that an impact will be reduced to less than significance.

It is unreasonable for the DEIR to mandate a specific date for the next General Plan Update. There is no identified impact to be remedied here, and state law does not support this kind of rigid timetable.

As noted above, the planning horizon of the General Plan should not go beyond 2030. Planning limitations and mitigation requirements beyond 2030 are both unnecessary, and highly speculative. In addition, case law clearly states that mitigation measures cannot be deferred until some future time. Since the county cannot predict the future nor future project impacts, they cannot require future mitigation measures.

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Monterey County Farm Bureau recommendation:

Reject this mitigation as unjustified.

Mitigation Measure BIO-1.5**NCCP****The Draft Environmental Impact Report says:**

"Mitigation Measure BIO-1.5: By 2030, prepare a Comprehensive County Natural Communities Conservation Plan

"The County shall complete the preparation of a NCCP for all incorporated areas in Monterey County by no later than January 1, 2030 to address all state and federal listed species and all CEQA-defined special-status species with potential to be listed up to buildout of the County. The County shall invite the participation of the incorporated cities, the federal land agencies, Caltrans and other stakeholders. The NCCP shall also cover preservation of sensitive natural communities, riparian habitat, and wetlands, and wildlife movement corridors and include mechanisms including on and off-site mitigation ratios and fee programs for mitigating impacts."

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Comments on BIO-1.5:

The DEIR speculates about impacts beyond the 2030 planning window for this General Plan Update. It acknowledges "it is impossible to know what threats CEQA-defined special-status species will face over the next 84 years." This speculation is not supported either by law or by evidence.

Listed threatened and endangered species and designated local species are already protected by the county. County policies already consider impacts to species and habitats for permitted activities.

Natural Communities Conservation Planning is a voluntary program, but the DEIR mitigation presents it as an obligation on the county.

Natural Communities Conservation Planning intends to protect wildlife heritage while continuing to allow appropriate development and growth. The DEIR does not present substantial evidence that future development justifies or necessitates an NCCP. Where the county assumes future impacts, its assumptions derive from outdated AMBAG housing numbers and on speculation about conditions beyond the General Plan Update's 2030 planning window.

NCCPs are voluntary cooperative agreements. The Natural Community Conservation Planning (NCCP) The NCCP program is a cooperative effort to protect habitats and species. The program, which began in 1991 under the State's Natural Community Conservation Planning Act, is broader in its orientation and objectives than the California and Federal Endangered Species Acts. T

NCCPs should not be implemented due to speculation about future conditions. Specific evidence about the status of species and their habitat is needed prior to developing an NCCP.

Natural Communities Conservation Planning includes intent to acquire a fee or less than fee interest in lands, which would make it a competitor for available agricultural land and would distort the economics of agriculture.

The potential impacts of Natural Communities Conservation Planning on local agriculture would be unpredictable because the program uses a concept known as "adaptive management," using the results of new information gathered through the monitoring program of the plan and from other sources to adjust management strategies and practices. Land owners could never be certain about what restrictions would be imposed under the program.

Natural Communities Conservation Planning can cover listed species and nonlisted species. Its creation invites local governments and interest groups to add protections for nonlisted species for political purposes unrelated to the protection of wildlife. Unnecessary mitigations and protection for non-listed species would create new costs for agriculture for fees, biological surveys, permits and habitat preservation.

Farmers and ranchers would be excluded from direct participation in creation of a Natural Communities Conservation Plan but would bear the burdens of the resulting program. While an NCCP is being created, California Code says a "plan participant" means the agency that signed an agreement to develop the NCCP. After the NCCP is approved, "plan participants" adds the permittees – that is, the farmers, ranchers and other land owners affected by the NCCP who will need permits.

Natural Communities Conservation Planning is the functional equivalent of endangered species listing, but without the due process of the Endangered Species Act. The government agency developing the NCCP can include nonlisted species and otherwise-unregulated habitats. Once these species and habitats are included, they will be treated as though they had been designated under the Endangered Species Act. California Code specifies that the California Department of Fish and Game can seek injunctive relief against any plan participant, person, or entity to enforce the NCCP's provisions.

In Farm Bureau's opinion, this Natural Communities Conservation Planning requirement would pose a significant new burden on agriculture without substantial evidence or justification. It would create the equivalent of Endangered Species Act listing and critical habitat designations without the associated due process. This mitigation would cause major harm to agriculture.

Monterey County Farm Bureau recommendation:

Recommend this mitigation be rejected as unjustified, unnecessary and economically infeasible.

Mitigation Measure BIO-2.1

Stream Setback Ordinance

The Draft Environmental Impact Report says:

“Mitigation Measure BIO-2.1: Stream Setback Ordinance

“The county shall develop and adopt a county-wide Stream Setback Ordinance to establish minimum standards for the avoidance and setbacks for new development relative to streams. The ordinance shall identify standardized inventory methodologies and mapping requirements. A stream classification system shall be identified to distinguish between different stream types (based on hydrology, vegetation, and slope, etc.) and thus allow application of standard setbacks to different stream types. The ordinance shall identify specific setbacks relative to the following rivers and creeks so they can be implemented in the Area Plans: Salinas, Carmel River, Arroyo Seco, Pajaro River, Nacimiento, San Antonio, Gabilan Creek, and Toro Creek. The ordinance may identify specific setbacks for other creeks or may apply generic setbacks based on the stream classification developed for the ordinance. The purpose of the ordinance will be to preserve riparian habitat and reduce sediment and other water quality impacts of new development.

“The Stream Setback Ordinance shall apply to all discretionary development within the County and to conversion of previously uncultivated agricultural land (as defined in the General Policy Glossary) on normal soil slopes over 15% or on highly erodible soils on slopes over 10%.”

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Comments on BIO-2.1:

“Development” is not defined and might apply to agricultural activities including the building of fences for food safety protection.

The paragraph on discretionary development and slope doesn't belong in this policy.

The ordinance could apply to many or all streams, including intermittent streams, and it could impose unspecified setback distances.

Yet-unspecified setbacks would create an unnecessary restriction on agriculture and private property. For example, the Salinas River is privately owned land. Farm Bureau considers any setback that denies farmers and ranchers use of their land to be a taking of private property.

Setbacks could interfere with food safety management practices, the management and movement of livestock, flood protection and streambed maintenance.

Setbacks would reduce the acreage available for producing crops and could result in lost jobs. The restriction also could decrease property tax revenue.

The DEIR does not present convincing evidence that this mitigation is justified or remedies an identified impact. The DEIR completely fails to consider the substantial impacts to agriculture and to rural land owners.

In Farm Bureau's opinion, this stream setback requirement poses a significant new burden on agriculture without substantial evidence or justification. It would take private land, compromise food safety, interfere with farm management practices and reduce crop production. It presents a serious threat to the viability of agriculture.

Monterey County Farm Bureau recommendation:

Recommend this mitigation be rejected as unjustified, unnecessary and economically infeasible.

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Mitigation Measure BIO-2.3

Riparian Habitat and Stream Flow Considerations

The Draft Environmental Impact Report says:

"Mitigation Measure BIO-2.3: Add Considerations Regarding Riparian Habitat and Stream Flows to Criteria for Long-Term Water Supply and Well Assessment.

"Public Services Policies PS-3.3 and PS-3.4 establish the criteria for proof of a long-term water supply and for evaluation and approval of new wells. The following criteria shall be added to these policies:

- "Policy PS-3.3.i-Effects on instream flows necessary to support riparian vegetation, wetlands, fish and other aquatic life including migration potential for steelhead.
- "Policy PS-3.4.g-Effects on instream flows necessary to support riparian vegetation, wetlands, fish and other aquatic life including migration potential for steelhead."

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Comments on BIO-2.3:

The DEIR does not present substantial evidence of an impact that requires this mitigation.

In particular, the Salinas River, which is the principle valley aquifer, does not lend itself to this type of requirement. This is an underground aquifer. The instream flows are managed by the Monterey County Water Agency through releases from upstream reservoirs, for stated purposes.

Direct effects on instream flows in some cases may be quantifiable. However, effects on riparian habitat would be difficult and costly to assess. The cost of studies would make the cost of installing a well prohibitive. The added cost and uncertainty would limit access to water.

Farm Bureau believes this would be a political tool to deny installation of wells, unrelated to any demonstrated environmental impact.

Increased costs and restriction of water access will preclude property owners from making ordinary farming and ranching decisions. It would diminish the future viability of agriculture.

Monterey County Farm Bureau recommendation:

Shorten both Policies PS-3.3.i and PS-3.4.g to read, "Effects on instream flows."

Mitigation Measure BIO-3.1

Wildlife Movement Considerations

The Draft Environmental Impact Report says:

“Mitigation Measure BIO-3.1: Project-Level Wildlife Movement Considerations.

“The County shall require discretionary projects to retain movement corridors of adequate size and habitat quality to allow for continued wildlife use based on the needs of the species occupying the habitat. The County shall consider the need for wildlife movement in designing and expanding major roadways and public infrastructure projects to provide movement opportunities for terrestrial wildlife and to ensure that existing stream channels and riparian corridors continue to provide for wildlife movement and access.”

Comments on BIO-3.1:

This mitigation provides unequal treatment for private and public projects. Corridors are “required” for discretionary projects but only “considered” for public projects. The county should retain its authority to consider whether corridors are needed for any type of project.

The requirement for discretionary projects poses the possibility that wildlife corridors would be exacted from farm land owners when they seek discretionary permits, for instance for farm buildings, wineries and other farm-related development.

Farm Bureau foresees that exaction of a wildlife corridor could be a condition of a discretionary permit unrelated to the specific development covered by the permit. This could be the equivalent of a trails policy demanding access to farm land.

A requirement for wildlife corridors could conflict with and undermine food safety protections.

The policy uses subjective terms, “adequate size and habitat quality” for corridors associated with discretionary projects. This requirement would add costs to discretionary projects, including agricultural projects and related permits.

The requirement is likely to result in project developers seeking agricultural land for mitigation, creating a non-ag demand for ag land that conflicts with agricultural viability.

The mandate for discretionary projects would likely result in designated wildlife corridors within and among farm fields, which would conflict with food safety protections. Wildlife moving through county-mandated corridors could result in lost crop acreage due to required food safety buffer strips alongside these corridors and could expose the county to lawsuits seeking recovery of lost production value.

Monterey County Farm Bureau recommendation:

Revise the policy to say:

“The County shall consider the need for wildlife movement when approving discretionary projects or when designing and expanding major roadways and public infrastructure projects.”

Mitigation Measure BIO-3.2

Vegetation Removal, Bird Breeding and Nesting

The Draft Environmental Impact Report says:

"Mitigation Measure BIO-3.2: Remove Vegetation during the Nonbreeding Season and Avoid Disturbance of Nesting Migratory Birds, Including Raptors, as Appropriate (generally September 16 to January 31).

"Vegetation removed in the course of development will be removed only during the nonbreeding season (generally September 16 to January 31). Occupied nests of migratory birds, including raptors, will be avoided during this period. The county shall consult, or require the developer to consult, with a qualified biologist prior to any site preparation or construction work in order to (1) determine whether work is proposed during nesting season for migratory birds, (2) determine whether site vegetation is suitable to nesting migratory birds, (3) identify any regulatory requirements for setbacks or other avoidance measures for migratory birds which could nest on the site, and (4) establish project-specific requirements for setbacks, lock-out periods, or other methods of avoidance of nesting birds. The county shall require the development to follow the recommendations of the biologist.

Comments on BIO-3.2:

The DEIR mitigation is poorly written and confusing. The DEIR does not provide convincing evidence that there is a significant impact to justify this mitigation.

The term "avoid disturbance" could be broadly interpreted to interfere with any kind of agricultural or development activity.

The season designated for vegetation removal, September 16 to January 31, includes the rainy season when removal may be impractical.

River channel maintenance is already limited to September 1 through October 31. This new window beginning September 16 cuts the window for river channel maintenance by 25%. This added limitation could increase the likelihood of flooding, resulting in erosion, loss of crops, acreage and habitat, and food safety hazards.

While restricting vegetation removal to a narrow window, the mitigation still burdens land owners with the new cost and delay of a biological consultation. It might also limit the window in time during which biologists could conduct their studies. The potential delay, cost or restriction on ag land use would seriously impact viability of agriculture.

The window in time for Salinas River channel maintenance has been reduced to September and October. Channel maintenance is essential to maintaining the river channel and preventing floods, which would erode land, damage farm fields, compromise food safety, and threaten communities. The DEIR's arbitrary restriction to September 16 to January 31 effectively reduces the window in time for channel maintenance by 25%. This would be a significant threat to both agriculture and local communities.

In Farm Bureau's opinion, this mitigation would pose a significant new burden on agriculture without substantial evidence or justification. It would threaten the long-term viability of agriculture.

Monterey County Farm Bureau recommendation:

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Recommend this mitigation be rejected as unjustified, unnecessary and economically infeasible.

Conclusion


Monterey County Farm Bureau is the private, nonprofit association of farmers and ranchers throughout the county, serving agriculture since 1917.

We note that agriculture occupies the majority of private land in the county. Outside of government land and incorporated cities, agriculture is the principal land use and the environment that the county intends to protect.

Agriculture produced \$3.8 billion in 2007, to make Monterey County the third most productive food-producing county in the United States. We suggest that any county actions that impact agriculture should be considered significant impacts under CEQA. In our experience and opinion, the mitigations recommended in the DEIR and that we have addressed here pose a significant threat to the future viability of agriculture. Resulting impacts to Monterey County agriculture threaten as much as 10% of California's food production and an important share of the nation's food supply.

We urge the county to employ the recommendations we provide here.

Sincerely,



Jason Smith, President

The following individuals have endorsed the comments above by Monterey County Farm Bureau and intend to be included as signatories to this letter:

Tom Rianda
 Christopher A. Bunn
 Jason Smith
 Jeff Pereira
 Albert Oliveira
 Kevin Pearcey
 Matt Cauley
 George Fontes
 Colby Willoughby
 Mike and Mary Orradre
 Brad Rice
 Nicholas Brockman
 Benny Jefferson
 Russ Cauley
 Larry Santos
 Robert A. Martin
 Wayne Gularte
 Robert Eli Perkins
 Bill Tarp

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Tom Rianda


Signature Tom Rianda

Address

Tom Rianda
PO BOX 966
Gonzales CA 93926

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name CHRISTOPHER A BANN

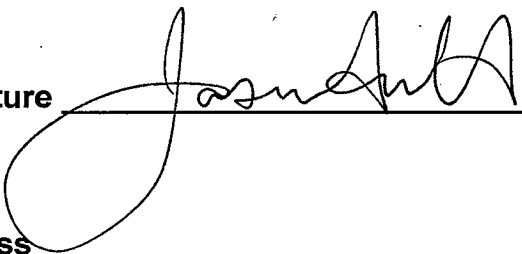
Signature 

Address

510 River Road
Salinas, California 95908

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

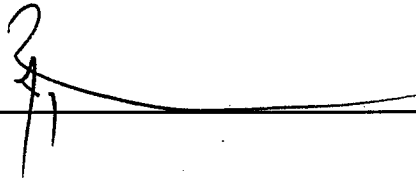
Print name Jason Smith

Signature 

Address 37500 Foothill Road
Soledad, Ca 93960

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Jeff Percing

Signature 

Address

613 N. Mildred Ave
King City, Calif 93930

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name ALBERT OLIVEIRA

Signature 

Address

P.O. BOX 28
KING CITY, Ca

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Kevin Pearcey

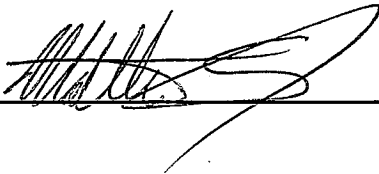
Signature *Kevin Pearcey*

Address

P.O. Box 1355 Gonzales, Ca. 93926
24102 Jacks Rd Chualar, Ca. 93925

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Matt Cooley

Signature 

Address

220 Lynnst King City, CA. 93930



P.O. Box 3008
Salinas, California 93912-3008

TELEPHONE (408) 424-6151
FAX (408) 757-7118

November 19, 2008

I am a resident of Monterey County.

I endorse the November 13, 2008 comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau.

I ask to be included as a signer of this letter.

George E. Fontes
54 Corral de Tierra Rd.
Salinas, CA 93908

A handwritten signature in black ink, appearing to read "George E. Fontes", written over a horizontal line.

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Colby Willoughby

Signature Colby Willoughby

Address

30540 COLONY Rd
Soledad, CA 93960

we are
 I am a resident *we* of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name MIKE AND MARY ORADRE

Signature Mary F. Oradre Mike Oradre

Address

67100 Sargents Road
San Luis Obispo, CA 93450

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name BRAD Rice

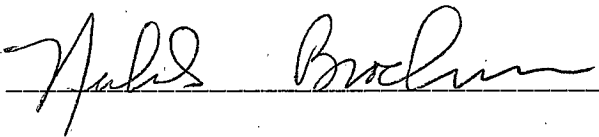
Signature 

Address

P.O. Box 686 King City, CA. 93930

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name NICHOLAS BROCKMAN

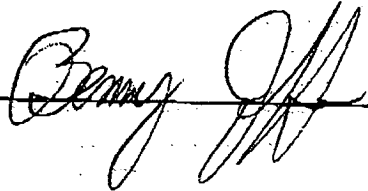
Signature 

Address

57 San Miguel #3
Selenas, CA. 93901

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Benny Jefferson

Signature 

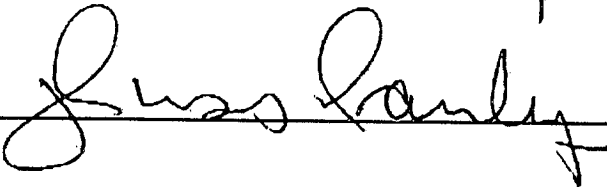
Address

PoBox 56
Castroville, CA 95012

O-14a

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name ROSS CAULEY

Signature 

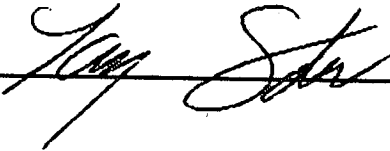
Address

PO BOX 630
King City CA. 93930

O-14a

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Larry Santos

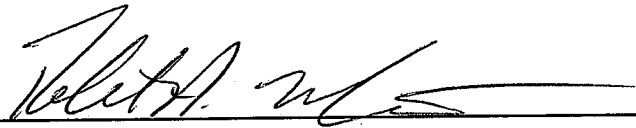
Signature 

Address

68305 Daffine LN.
Lockwood CA. 93932
P.O. Box 33 Lockwood CA. 93932

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Robert A. Martin

Signature 

Address

239 Rio Vista Drive
King City, CA 93930

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Wayne Gulara

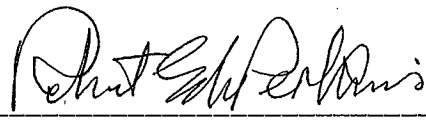
Signature Wayne Gulara

Address

PO Box 2083
Gonzales CA
93926

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Robert Eli Perkins

Signature 

Address

537 Stevenson St.
Salinas, CA 93907

I am a resident of Monterey County. I endorse the November 13, 2008, comments on the Draft Environmental Impact Report to General Plan Update 5 above by Monterey County Farm Bureau. I ask to be included as a signer of this letter:

Print name Bill Tarp

Signature Bill Tarp

Address

Bill Tarp
17 Lazy Oaks
Carmel Valley, CA. 93924