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October 27, 2008

The Honorable Fernando Armenta, Chair,  
and Members of the Board of Supervisors  
County of Monterey  
168 W. Alisal Street, 1st Floor  
Salinas, CA 93901

Subject: Draft Environmental Impact Report for GPU-5  
Reference Documents Not Available

Dear Chair Armenta and Members of the Board of Supervisors:

We have received Assistant Planning Director Holm's letter dated October 23, 2008 in response to our earlier letter on the GPU-5 EIR. The response states policy for the County: the County has decided to deny access to public information and limit public participation in the most important County land use decision in more than 20 years.

This County policy is contrary to CEQA. It carries serious consequences.

Mr. Holm insists on dismissing the dozens of County errors that have denied access to EIR reference materials and which have impermissibly curtailed public comments on the EIR. The errors include reliance upon documents that do not exist, websites that do not work, inaccurate citations, the omission of half of the pages of certain documents, clerical errors, and instances where the public is advised to search on its own and guess what the County meant to refer to. Some of the reference materials that should have been provided by the County are materially different from those actually provided by the County planning department. Despite all this, Mr. Holm's position for the County is that the County will only comply with CEQA "as a general matter," and is not required to actually comply with the law.

The Open Monterey Project believes that Mr. Holm's letter states a significant change in policy for the Board of Supervisors. If the Board's new policy is that the County need not follow the law, need not produce accurate documents, and does not want the public to participate, we respectfully ask that you say so in a public session. If Mr. Holm and the planning staff are making policy for the Board, the Board should let the public know about it.

We address here some of the issues raised by Mr. Holm. Sadly, many of his factual assertions are inaccurate. One example is his claim that the Draft EIR and its appendices have been publicly available "without complaint since September 13."

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- Mr. Holm ignores the undeniable facts about the public's numerous unsuccessful attempts after September 13 to view the EIR reference documents at the County planning department. He ignores the County's repeated confusion in response to each attempt. The County eventually made a partial group of the reference documents available to the public at the County planning department for the first time on October 6. I reviewed these records (to the extent that they existed) at the County planning department on October 7, and again, with a law clerk, on October 16. My October 17 letter pointed out the deficiencies with those records as of that date. The complete records were not available on October 16 (as confirmed by Mr. Holm's own letter), or on September 13. Why does that matter? Because CEQA requires strict compliance with the 45-day review period, which cannot begin to run until the actual documents are actually available. CEQA does not say that the County may only comply "as a general matter."
- Mr. Holm also ignores the many letters the County has received in October from individuals and community groups complaining about the lack of access to reference materials. According to public records, in addition to the October 17 letter from The Open Monterey Project, such letters of complaint have been received from the Sierra Club, the Carmel Valley Association, the Prunedale Neighbors Group and the Prunedale Preservation Alliance, Friends and Neighbors of Elkhorn Slough, Jane Haines, and others.

Mr. Holm's overall response appears to be that the public should go on a scavenger hunt, using the little scraps of inaccurate, inconsistent and inadequate pieces of information provided by the Section 11 list. Using the method he advocates, the public would never know whether reference materials they have found at the end of their hunt are in fact the same materials relied upon by the EIR preparer. It is as if the County told its residents to go to the library and guess which book the EIR consultant was relying upon. This is not compliance with CEQA.

One example of how Mr. Holm's approach is inconsistent with CEQA and ignores the real world is the October 21, 2008 letter from retired land use lawyer Jane Haines. Ms. Haines is a sophisticated member of the public with expertise in research and in farmland issues. Ms. Haines has pointed out that she spent several hours trying to find the correct citation to EIR reference #35. In contrast with this real-life experience, Mr. Holm dismissively stated that the problem with the County's citation is that the reference "contained a minor typo." (Holm October 23, 2008 letter, p. 2.) His further response told the public to go to the state department of conservation's home page and "follow the self-explanatory links." (*Ibid.*) That suggestion is contradicted by

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Ms. Haines' real-life experience of several hours spent trying to find the correct data. When a website address contains significant errors, as it did here, it is not reasonable to require the public to guess at the correct address.

In many respects, the County's response makes little sense. An EIR is intended to be an informational document, and the list of reference documents should be an informational document. A reference document should be just that. It is not helpful for the County instead to provide an entry-level screen (with blanks) that leads to a searchable database. It is equally not helpful for the County to state that "one must read the DEIR . . . to guide your search." (Holm letter, p. 1.) The reason the public turns to the reference materials is because in many cases the public finds the EIR discussion confusing, or the public believes the EIR analysis relies on questionable data, or the public cannot determine what analysis was done or the data on which the analysis was made to arrive at the DEIR statements. In each such circumstance, the EIR provides little or no "guide" to a "search." (For example, Ms. Haines pointed out that the information she eventually found after hours of research was not in the Draft EIR. Where information is not in the EIR, the EIR does not provide a "guide" to find the information.)

Mr. Holm also goes too far when he tells the public to insert their own search criteria in a searchable database in order to replicate a search purportedly done by the EIR preparer. That shows a fundamental misunderstanding of what "public review" means. It is not an interactive game, where the public gets to hunt and poke around a website or a database with the goal of replicating the EIR preparer's unknown results, without ever knowing whether they actually succeeded.

Mr. Holm's suggestion that the County used frozen .pdf documents "to ensure that the reference would remain available in the event the material on the web subsequently changed" is nonsensical. If that was the County's intent, then why did the County not place the search results online in a frozen .pdf document? That approach would have made much more sense, and would have taken the public's guesswork out of it. The public should not have to hope that by luck – or by accident – it arrives at the same search and discovers the same report that the EIR preparers relied on.

Where the EIR provides a list of references, it is reasonable for the public to rely on the list. Here, the County chose to include the list of references and incorporate it as section 11 of the Draft EIR, an informational document. The public has been relying on the list as published in the Draft EIR and on the County-provided materials: the paper versions of the reference materials at the Planning Department; and the materials available as links on the County website.

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Nowhere does Mr. Holm state that the incorrect list of reference materials will be changed, fixed, updated, corrected, or deleted, based on our October 17, 2007 comments. Nowhere does he state when the County will make available the corrected list on the County website or when the corrected list will be mailed to the list of persons who purchased the Draft EIR for \$200 – a list the County insisted that people sign in order that the County might provide additional or corrected information to them. Mr. Holm's apparent refusal to update the list on the County website or to send the corrected list to those who purchased it should not be acceptable to the Board of Supervisors.

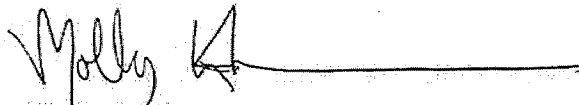
Today, October 27, we reviewed the DEIR Section 11 list on the County website. The list has not changed. It contains the same inaccurate links and incorrect records. On Saturday October 24 and again today, as the County instructed, we called Bill Hopkins for help. We got his voice mail message stating he would be out of the office until Monday, November 3.

Mr. Holm did not tell us when the corrected documents will be available at the County planning department and on the website. We want to see them. Please tell us as soon as they are available.

Mr. Holm did not respond to our request that the County extend the comment period for at least 45 days from the date that the reference materials are finally available. We would appreciate a response. If the County decision is not to extend the comment period for the full 45 days, we ask that you advise us and the public of that decision by October 31. The Open Monterey Project is prepared to protect the rights of the public and to enforce CEQA.

And if the Board does not accept the Planning Department's recent evasive and haphazard approach as the County's policy for complying with CEQA, please make sure to let us and the public know that.

Very truly yours,

  
Molly Erickson

cc: Mike Novo, Planning Director  
Carl Holm, Assistant Director of Planning  
Charles McKee, County Counsel