

ATTACHMENT A PROJECT DISCUSSION

The Oaks subdivision tentative map, approved on May 8, 2001, subdivided property into nine residential lots and a remainder parcel. On June 8, 2006, the County accepted the final map for the Oaks Subdivision (recorded on June 30, 2006, at Volume 23, Cities and Towns, page 32, in the Office of the Recorder of the County of Monterey), thereby creating the lots and enabling them to be sold, leased, or financed.

When the tentative map was approved, a well on the subject property was to be the source of potable water for the nine lots, to be conveyed to Cal Am's Ambler Park water system to own and operate. Between the tentative and final map approvals, the federal "Maximum Contaminant Level" (MCL) – the drinking water standard – for arsenic was reduced from 50 parts per billion (ppb) to 10 ppb. The federal standards become effective on February 22, 2002, and the water systems were required to comply with the new standard by January 23, 2006.

The Oaks well tested at 35ppb arsenic in 2000 (prior to approval); this level of arsenic met the federal standard at the time the County approved the tentative map, but it does not meet the new standard. Arsenic in the drinking water above the MCL raises the risk of cancer, among other health effects.

Following the Board's acceptance of the final map in 2006, the subdivider sold three lots into individual ownership, and three homes have been built. As of December 2012, a successor-in-interest to the original subdivider owned the remaining six lots, which are vacant. Pursuant to Condition 34 of tentative map, the subdivider conveyed the Oaks' well and water infrastructure to the California American Water Company (Cal-Am), who now owns the well and water infrastructure. The Oaks lots are in Cal Am's Monterey District Ambler Park service area, and the California Public Utilities Commission authorized Cal Am to extend its service area to include the Oaks lots (Advice Letter 617 filed by Cal Am, approved by the CPUC on February 17, 2005).

Compliance with the new arsenic drinking water standard and protection of the public health requires treatment of the raw water from the Oaks' well. In 2006, staff arranged for Cal Am through its Monterey District Ambler Park system to serve the Oaks lots on the basis that Cal Am would draw water from the Oaks' well, treat the water for high arsenic at the Ambler Park water treatment plant, and then supply the treated water to the Oaks' lots. In 2006, Cal Am committed to monitoring the Oaks' well production and the Oaks lots' consumption for this purpose. It has since been clarified that, while the same molecules of water would not be sent for treatment and returned, the same result can be accomplished by exchanging the same amount of water by pumping from the Oaks well into the Ambler system the same amount of water that the Ambler system is providing to the nine Oaks lots, resulting in *no net transfer of water*.

The proposed Memorandum of Understanding memorializes Cal Am's prior commitment and creates a binding contractual obligation on the part of Cal Am to pump an amount of water from the Oaks' well into the Ambler system equal to the amount Ambler provides to the Oaks' lots, so as to result in no net transfer of water. The MOU fleshes out the details of implementation, monitoring, reporting, and enforcement.

The MOU protects public health by ensuring treatment of water by a water system with the technical, managerial, and financial resources to ensure on-going treatment of water to meet state

and federal drinking water standards. It respects the property rights of the owners of the lots created by the Oaks final map by ensuring they have a potable water supply and is consistent with the Map Act because it does not impose additional burden on property owners, does not affect their right, title or interest in their property and does not disturb their water supply.

Cal Am had previously requested that the Monterey County Water Resources Agency (MCWRA) be a party to the MOU. Cal Am has since agreed to the MOU between the County and Cal Am, with acknowledgement by MCWRA.

CEQA

Staff recommends adoption of a Negative Declaration because there is no substantial evidence that the MOU will have a significant effect on the environment. The MOU formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks' well will be implemented, monitored, reported, and enforced. It does not intensify water use, approve new development, induce new growth, or set a precedent.

The MOU makes clear, by its terms, that it pertains only to the nine lots of the Oaks subdivision "due to the unique and particular circumstances and public health considerations requiring treatment of water to an already approved subdivision." (MOU, para. 7.) It is not intended to establish policy or serve as precedent for any future action of the Board.

The MOU is completely independent from a pending subdivision application, known as the Harper Canyon subdivision application (PLN000696). The Harper Canyon application proposes to rely on the Oaks' well and another well for water supply; however, that subdivision application is not predicated on the MOU or similar concept as the MOU, as had once been proposed. At the recent Planning Commission hearing on the Harper Canyon application, staff recommended a condition of approval, to which applicant agreed, requiring the subdivider to build a water treatment plant to treat the water if the subdivision application is approved by the Board. The Planning Commission denied the Harper Canyon application, and the applicant has appealed the Harper Canyon application to the Board of Supervisors, who is scheduled to hear the appeal on May 13.

None of the comments received on the Initial Study provide evidence that the MOU will have a significant effect on the environment. In response to comments, staff has made a few clarifications to the Initial Study, but these clarifications do not alter the significance conclusions of the Initial Study (IS/MND Errata, Exhibit D). Responses to specific comment letters are below.

STAFF RESPONSES TO INITIAL STUDY COMMENTS

Letter from Mike Weaver dated October 10, 2013

Comment/Issue No.1

Mr. Weaver discusses previous Zoning Administrator approvals for residential development within the Oaks subdivision (Lot Nos. 1, 4 and 7). Mr. Weaver alleges that construction activities occurred on improper lots, that is, that construction occurred not on the lots for which Zoning Administrator approved Design Approvals (Lot Nos. 5, 8 and 9).

Staff response 1:

This particular comment does have any effect or bearing on the purpose of the MOU. However, staff researched this allegation and determined that the facts of the matter do not substantiate this allegation. The evidence demonstrates that construction was done on correct parcels. Violations related to residential construction on incorrect parcels do not exist. The facts are as follows:

Lot No. 1 – APN: 161-013-001-000

- A Design Approval (DA070351) allowing residential development was approved by the Zoning Administrator on November 8, 2007.
- A building permit (BP072177) for the construction of a residential unit, associated with DA070351, was issued on June 27, 2008. The residential unit was never constructed; this building permit has since expired.

Lot No. 4 – APN: 161-013-004-000

- A Design Approval (DA070352) allowing residential development was approved by the Zoning Administrator on November 8, 2007.
- A building permit (BP072181) for the construction of a residential unit, associated with DA070352, was issued on June 27, 2008. The residential unit was never constructed; this building permit has since expired.

Lot No. 7 – APN: 161-013-007-000

- A Design Approval (DA070353) allowing residential development was approved by the Zoning Administrator on November 8, 2007.
- A building permit (BP072184) for the construction of a residential unit, associated with DA070353, was issued on June 27, 2008. The residential unit was never constructed; this building permit has since expired.

Lot No. 5 – APN: 161-013-005-000

- A Design Approval (DA060252) allowing residential development was approved the Zoning Administrator on June 28, 2007.
- A Building Permit (BP063167) for the construction of a residential unit, associated with DA060252, was issued on August 31, 2007. The residential unit was constructed. This is 1 of the 3 residences constructed within the development.

Lot No. 8 – APN: 161-013-008-000

- A Design Approval (DA060254) allowing residential development was approved the Zoning Administrator on June 28, 2007.
- A Building Permit (BP063168) for the construction of a residential unit, associated with DA060254, was issued on August 31, 2007. The residential unit was constructed. This is 1 of the 3 residences constructed within the development.

Lot No. 9 – APN: 161-013-009-000

- A Design Approval (DA060526) allowing residential development was approved the Zoning Administrator on June 28, 2007.
- A Building Permit (BP063169) for the construction of a residential unit, associated with DA060526, was issued on August 31, 2007. The residential unit was constructed. This is 1 of the 3 residences constructed within the development.

Based on this information, the allegations of unpermitted construction and/or allegations that construction activities occurred on the wrong parcels are unfounded and unwarranted.

Comment/Issue No. 2

Mr. Weaver discusses a “current shortage of Ambler Park Water Utility Storage tank capacity”, and references PLN (Planning File Number) 080527 (Meadows), which is a project to expand Ambler Park water storage abilities and capacities. Mr. Weaver also inquires as to why this project is not discussed or analyzed in the MOU. Additionally, Mr. Weaver questions why the storage tanks originally proposed in the Oaks Subdivision application (PC94067) were never constructed.

Staff Response 2:

The referenced application (Meadows/Planning File Number PLN080527) is not related to purpose or intent of the MOU. PLN080527 proposes to expand the ability of Cal-Am to store water to meet daily demands and to provide adequate and required fire suppression supplies and water pressure to its customers. That application is being processed by the County separately. This MOU is independent of that application, and there is no evidence that the arrangements for equal exchange of water which is the subject matter of the MOU has any bearing on Cal Am’s separate water storage tank application.

The MOU proposes a solution to supply potable water to a subdivision, a subdivision which at the time was approved with adequate water supply, quantity and quality. Between the tentative and final map approvals, the federal “Maximum Contaminant Level” (MCL) – the drinking water standard – for arsenic was reduced from 50 part per billion (ppb) to 10ppb. The Oaks well tested at 35ppb arsenic in 2000 (prior to approval); this level of arsenic met the federal standard at the time the County approved the tentative map, but it does not meet the new standard. Since Cal-Am had been conveyed the Oaks Well, and had the obligation to supply potable water to the subdivision, water was supplied to the existing houses via installed pipes from the existing Ambler Park Water Treatment facility.

The MOU will ensure that Cal-Am offsets the water service to the Oaks subdivision with raw water from the Oaks well. The California Department of Public Health (CDPH) must approve the addition of the Oaks well to the Ambler Park system. Cal Am has informed the County that it has submitted an application for this purpose to CDPH, and in the MOU, Cal Am agrees to diligently pursue the permits necessary to incorporate the Oaks’ well into its water system. Once the well is brought on line, Cal Am must transfer into the Ambler system an amount of water equivalent to the water previously supplied to the Oaks subdivision.

Water storage on the Oaks site is not required. Per condition 34 of the Oaks subdivision, the subdivider agreed to convey to Cal Am “the Oaks well and water distribution infrastructure and fire water supply” in exchange for Cal Am operating the system as a stand alone or satellite system providing domestic and fire flow water supply to the Oaks property (Document 6 of Exh. D of December 4, 2012 staff report.) Water supplied to the Oaks subdivision will come via the Ambler Water Treatment system (to be replenished by the Oaks well), which provides adequate water supply and pressure relative to fire suppression for the subdivision. Therefore per the Monterey County Environmental Health Bureau, the construction of individual storage tanks on the Oaks property is not required.

Letter from The Open Monterey Project dated October 10, 2013

Comment/Issue No. 1:

The Law Office of Michael Stamp TOMP representing The Open Monterey Project states that the environmental document does not adequately address whether Cal-Am has water rights that would allow the additional pumping of water from the overdrafted Toro Basin in order to supply water to the Oaks subdivision, regardless of any “payback” or replenishment of supplied water,

and argues “it is undisputed that Cal Am would pump additional water from the Toro Basin to supply Ferrini Oaks”; the lack of water rights would make the project (MOU) illegal.

Staff Response 1:

Water rights are not at issue. The Oaks’ subdivision and use of the Oaks’ well was approved when the tentative map for the Oaks’ subdivision was approved. Per condition 34 of the Oaks’ subdivision, the subdivider conveyed the well and water distribution infrastructure to Cal Am, who acquired the right to own and operate the system (Document 6 of Exhibit D of the December 4, 2012 staff report.) The MOU does not reopen the approval of the Oaks subdivision for which the tentative map was approved and final map accepted years ago. The MOU does not result in intensification of water use; it does not authorize greater pumping from the Ambler wells because that water will be replenished by the Oaks’ well, and the MOU does not authorize greater pumping from the Oaks well than was approved as part of the subdivision approval. The MOU merely formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks’ well will be implemented, monitored, reported, and enforced.

Comment/Issue No. 2

TOMP states that the environmental document is inadequate, since there is no discussion of past discretionary actions, nor assessment of environmental impacts associated the previous placement of underground plumbing and piping which was installed to allow Cal-Am to service the Oaks subdivision. TOMP disputes the statement made in the environmental document that the MOU (project) will not have environmental impacts because the plumbing and piping already exists.

Staff Response 2:

At the time the environmental document was being prepared, the aforementioned plumbing and piping had already been installed underground; therefore the baseline for consideration of environmental impacts includes the underground piping. The MOU does not propose the installation or change of existing underground plumbing or piping; it involves the neutral exchange of water utilizing existing plumbing and piping. Therefore, the “whole of the action” does not include the installation of the plumbing and piping; there are not potential or foreseeable direct or indirect environmental impacts which could result from the project relative to the plumbing and piping. While the concerns expressed by commenter about lack of public notification do not alter the baseline for purposes of CEQA, staff has since presented the issue of service of potable water to the Oaks at a public hearing before the Board of Supervisors in December 2012, and this MOU is being considered at a noticed public hearing of the Board of Supervisors.

Comment/Issue No. 3:

TOMP notes that the environmental document mentions that exportation of water from Zone 2C is prohibited and that responses from County agencies (including Water Resources Agency) stated that there are no records that address the issue of exportation of water from Zone 2C; for this reason TOMP claims the environmental document is inadequate due to unsupported evidence.

Staff Response 3:

The Oaks’ well lies within Monterey County Water Resources Agency (MCWRA)’s benefit assessment “Zone 2C,” while the Ambler Treatment Plant is not within Zone 2C. Zone 2C is a benefit assessment zone adopted by MCWRA pursuant to the Monterey County Water Resources Agency Act. The Act prohibits the exportation of water from the Salinas River groundwater

basin (California Water Code Appendix, Chapter 52 (“Agency Act”). Staff has clarified the Initial Study to refer to the prohibition on exportation of water from the Salinas River groundwater basin rather than prohibition on exportation of water from Zone 2C (IS/MND Errata, Exhibit D). This MOU will not result in exportation of water from the Salinas River groundwater basin, as the purpose of the MOU is ensure treatment of water to drinking water standards, not to permit net transfer of water, and the MOU requires an equal amount of water be returned to the Oaks’ subdivision as is pumped from the Oaks’ well into the Ambler Park water system for treatment. .

Comment/Issue No. 4:

TOMP states the environmental document contains no analysis of the MOU relative to 2010 General Plan Policies PS-3.1 and PS-3.2, which commenter paraphrases as requiring all discretionary approvals to prove a long-term sustainable water source and analysis. Additionally TOMP states that the project was not weighed against 2010 General Plan Policy PS-1.3, which states “no discretionary application for new development shall be approved unless the County finds that APFS [Adequate Public Facilities and Services] for that use exist or will be provided concurrent with the development.” TOMP claims that there is no proof that the Oaks’ paid for the plumbing and piping. TOMP also alleges that the MOU would intensify water demand in the B-8 zone.

Staff Response 4:

PS 3.1 applies to “new development for which a discretionary permit is required.” The MOU is not “new development for which a discretionary permit is required.” It does not authorize any new development and does not require a discretionary permit. The MOU does not reopen the approval of the Oaks subdivision for which the tentative map was approved and final map accepted years ago, before the adoption of the 2010 General Plan. The MOU does not result in intensification of water use. The MOU formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks’ well will be implemented, monitored, reported, and enforced. Therefore the 2010 General Plan Policies PS-3.1, PS-3.2, and PS-1.3 do not apply to the MOU.

The MOU is consistent with County zoning. The Ambler Park system’s wells are within County’s B-8 zoning overlay district. The purpose of the B-8 zone is to “restrict development and/or intensification of land use in areas where, due to water supply ... or similar measurable public-facility type constraints, additional development and/or intensification of land use if [sic] found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole.” The MOU ensures consistency with B-8 zoning by requiring that the amount of water Ambler serves to the Oaks lots be replenished by the same amount of water from the Oaks’ well that lies outside the B-8 zone.

Comment/Issue No. 5:

TOMP states that neither the County nor Monterey County Water Resources Agency (MCWRA) was able to respond to a Public Records Act Request (PRAR) relative to the amount of water that has been supplied to the Oaks subdivision (3 houses constructed). TOMP states that the amount of water provided from Cal-Am should be disclosed as part of the environmental document, supported by evidence from metered production. TOMP claims that unless there is a requirement for the Oaks subdivision to “repay the entire amount back to the B-8 zone, the B-8 zone and Toro Basin will be permanently imbalanced” and the project will have potentially significant and unmitigated impacts. TOMP also states that the environmental document fails to quantify the amount of water that will foreseeably be exchanged in the project, at full Oaks’ build

out (9 residences); and without this information the potential impacts of the exchange are unknown.

Staff Response 5:

The MOU does not result in intensification of water use and does not change the amount of water demand; the MOU does not reopen the approval of the Oaks subdivision. The MOU formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks' well will be implemented, monitored, reported, and enforced. For informational purposes, however, the County requested information from Cal Am as to the amount of water served to the Oaks' lots since recordation of the final map. Cal Am meters the water use. Per County's request, Cal Am supplied data of its complete service to the Oaks' lots from 2008, the first year of service, through October 2013, aggregated so as to preserve confidentiality of individual users. Data supplied by Cal Am show the range of 156,750 gallons in 2008 (first year of service) to a high of 785,420 gallons in 2011. There are 325,851 gallons in an acre foot; therefore usage ranges from .48 acre feet/yr in 2008 to a high of 2.41 acre feet/yr in 2011. The data chart is attached as **Attachment G** of this report. Based on the fact that this data is aggregated for four meters-- three residential dwellings and one common entrance, one can infer that the average usage of each residence between .48 - .80 acre feet/year. Using this ratio, maximum water usage at total build out (9 units) of the Oaks's subdivision would be 7.2 acre feet/year.

Comment/Issue No. 6:

TOMP claims that the County illegally denied access to records relative to the construction of residences or developments within the Oaks' subdivision. Additionally, TOMP alleges that construction activities and residences were constructed on the wrong parcels, and claims that if residences were constructed in violation of County Code, then consideration of new discretionary permits, such as the MOU, cannot be considered until said violations were resolved.

Staff Response 6:

The County has made its records relative to the Design Approvals available for public inspection.

Additionally, violations related to residential construction on incorrect parcels do not exist. See Staff Response 1 to the Michael Weaver letter October 10, 2013 for the facts relative to residential construction within the Oaks' subdivision.

Comment/Issue No. 7:

TOMP states that the environmental document does not include any maps of the subdivision, location of the Oaks' well, houses constructed within subdivision, treatment facility, or boundaries of the B-8 zoning designation or Zone 2C. TOMP claims that without this information the public is unable to adequately comment on the environmental document.

Staff Response 7:

The boundaries of the B-8 zoning designation and Zone 2C are not at issue, as it is undisputed that the Ambler water system's water supply is located in the B-8 zone and the Oaks' well is in Zone 2c. Information relative to the purpose of the MOU is contained within the prepared environmental document (See Weaver Staff Response 2). The MOU does not reopen the

approval of the Oaks subdivision, intensify water in the B-8 zone, or result in net exportation of water from Zone 2c. The MOU formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks' well will be implemented, monitored, reported, and enforced.

Comment/Issue No. 8:

TOMP states that the environmental document does not include a discussion of who is responsible for the expense of the arsenic treatment, relative to the water being supplied to the Oaks subdivision and that this discussion is required to ensure compliance with the County General Plan.

Staff Response 8:

Per condition 34 of the Oaks subdivision, Cal Am owns and operates the Oaks water infrastructure. Cal Am owns and operates the Ambler water treatment plant and is responsible for compliance with all laws in the disposal of arsenic. The California Public Utilities Commission has oversight over Cal Am's rates.

Comment/Issue No. 9:

TOMP claims that there is no guarantee that Cal-Am would actually treat any water from the Oaks subdivision (Zone 2C water), or that the exchanged water would be used or input into the Ambler Park system; nor that the water exchanged under the MOU would not be disposed of prior to treatment in the Ambler system. TOMP claims that the reliability of Cal-Am to remain in compliance with requirements is questionable; and the environmental document does not analyze potential impacts of this potential non-compliance. TOMP states that there is a lack of evidence to date that Cal-Am compliance with state standards on the disposal of arsenic sludge already produced by the Ambler Park system, and "the addition of Oaks water would increase the amount of arsenic that the Ambler Park treatment facility would be required to remove and dispose." TOMP further claims that the environmental document does not account of this potential increase in arsenic treatment or the potential disposal of additional arsenic resulting from the Oaks' water.

Staff Response 9:

The MOU will require Cal-Am to account for all water supplied to the Oaks division, and will require an equal exchange on a quarterly basis. The MOU creates a binding contractual obligation which can be enforced through legal means in the event of failure to comply. In regard to the issue of arsenic removal, Cal-Am is required to comply with all laws for hazardous waste disposal.

The Oaks subdivision created 9 lots (3 lots have existing residential construction) and a remainder lot. The Ambler Park system currently provides service to approximately 300+ connections; therefore the Oaks comprises a service increase no more than approximately 3% in connections or arsenic production in the whole system. According to conversations with Cal-Am, this is a nominal increase in potential arsenic production and will not require additional servicing of the treatment beyond what is already provided.

Comment/Issue No. 10:

TOMP claims that the environmental fails to address system loss and other unaccounted for water in exchange between the Oaks well and the Ambler treatment system and the users of Cal Am Ambler water.

Staff Response 10:

The MOU requires an equal exchange of aggregate water usage on a quarterly basis, from the Oaks well to back into the Ambler System, including calculated transportation water loss. The MOU requires tracking the amount of water in each direction to ensure that an equal amount of water sent to the residences within the Oaks will be returned to the Ambler Park system. Cal-Am is responsible for maintenance of underground piping to and from their respective facilities.

Letter from Bob Rieger dated October 8, 2013

Comment/Issue No. 1

Mr. Rieger comments that the original agreement [subdivision approval] required water storage tanks for fire protection; he further states that if the Oaks well is to operated as a stand-alone system, with an equal exchange of water, then the required tanks should still be constructed and should be a condition of the MOU.

Staff Response 1:

Water supplied to the Oaks subdivision will come via the Ambler Water Treatment system (to be replenished by the Oaks well), which provides adequate water supply and pressure relative to fire suppression. Therefore per the Monterey County Environmental Health Bureau, the construction of individual storage tanks on the Oaks property is not required. See also response 2 to Weaver.

Comment/Issue No. 2

Mr. Rieger states that the MOU needs to account for arsenic removal resulting from water received and sent to the Oaks subdivision, and information on the disposal of the arsenic should be included in each quarterly report.

Staff Response 2:

See Response No. 9 to Law Office of Michael Stamp dated October 10, 2013.

Comment/Issue No. 3

Mr. Rieger states that the transfer of water is still a violation of the B8 zoning overlay which is still in effect for the San Benancio area.

Staff Response 3:

The Oaks subdivision is not located within the B-8 zoning designation, while the Ambler Water Treatment facility is located within the B-8 zoning designation. When the Oaks' tentative map was approved, water use was to be supplied directly by the Oaks' well. The well water did not exceed the federal drinking water standards in effect at the time of approval, and therefore treatment of water was not an issue. To enable treatment of water while ensuring that water treatment and service by Ambler to Oaks does not result in intensification of water use in the B-8 zone, it is necessary for Cal-Am to offset the water it supplies to the Oaks subdivision by an equal transfer of water from the Oaks' well into the Ambler system. The MOU requires this exchange on a quarterly basis. See also response 4 to TOMP.

Letter from Law Offices of Richard H. Rosenthal dated October 7, 2013

The Law Office of Richard H. Rosenthal, for purposes of these comments, represents Save Our Peninsula (SOPC) and the Highway 68 Coalition. All comments from this letter will be referred to as coming from "SOPC".

Comment/Issue No. 1:

SOPC argues that a high degree of CEQA review of the MOU is required and submits copies of SOPC's comments to the Board's December 4, 2012 hearing and "transcript" of same, "transcript" of the Richardson appeal heard by the Board, and other documents. SOPC states that the Project Description of the environmental document does not adequately include and discuss all applicable components/actions required by the MOU, including but not limited to:

- a) transfer of B-8 zoned water out of the Toro Water Basin to the Oaks' subdivision located in the Monterey County Water Resources Agency's (MCWRA) Zone 2C Benefit Assessment;
- b) transfer of Zone 2C water to the Ambler Treatment Plant within the B-8 zone;
- c) Cal-Am's previous installation of a water line from the Ambler Treatment plant to the Oaks subdivision;
- d) Cal-Am's previous installation of a return water line from the Oaks subdivision to the Ambler plant;
- e) Equalization of B-8 water and Zone 2C water on a quarterly basis;
- f) Submittal of quarterly water audit reports, and review of reports; and
- g) Ambler's ability to treat and dispose of additional arsenic tainted water.

Staff Response No.1:

SOPC has not demonstrated or articulated how the several hundred pages submitted as part of its comment letter are evidence of impacts of the MOU under consideration. The "transcripts" are not official transcripts and have not been verified. The 10 concerns listed on the first two pages of the SOPC comment letter, from overdraft of the El Toro basin to service of water to Washington Union School District to development pressure in the B-8 zone, are not substantial evidence of impacts of this MOU, which does not increase water demand or intensify water use. The MOU does not result in intensification of water use and does not change the amount of water demand; the MOU does not reopen the approval of the Oaks subdivision. The MOU formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks' well will be implemented, monitored, reported, and enforced. An initial study was prepared and circulated to the public. Because there is no substantial evidence of a fair argument that the MOU will have a significant environmental impact, a Negative Declaration is appropriate, and "a higher degree of CEQA review" is not required.

In regard to adequacy of the project description, the Initial Study and the draft MOU disclosed and explained the facts and background associated with the MOU. The December 4, 2012 staff report to the Board of Supervisors and this staff report also describe the background and the components of the equal exchange of water and address all of the above issues. See also the following responses to address each issue/comment above:

- a) See Response No. 3 to Law Office of Michael Stamp dated October 10, 2013.
- b) See Response No. 3 to Law Office of Michael Stamp dated October 10, 2013.
- c) See Response No. 2 to Law Office of Michael Stamp dated October 10, 2013.
- d) See Response No. 2 to Law Office of Michael Stamp dated October 10, 2013.
- e) See Response No. 9 to Law Office of Michael Stamp dated October 10, 2013.
- f) See Response No. 9 to Law Office of Michael Stamp dated October 10, 2013.
- g) See Response No. 9 to Law Office of Michael Stamp dated October 10, 2013.

Comment/Issue No. 2:

SOPC states that the environmental document, Environmental Setting, does not adequately discuss or address water rights. SOPC discusses how and why the "B-8 zoning" was overlaid/applied to the Toro Area Groundwater basin; stating that the water table in "90% of

wells in Toro has dropped, and the average rate of drop is 1.8 acre feet per year (AFY).” SOPC questions the ability of Cal-Am to legally supply potable water to the Oaks subdivision, from an “overdrafted basin”. SOPC further states that the environmental document should address:

- a) The process and capacity of Ambler’s arsenic treatment plant and disposal;
- b) Discussion on the exportation water out of the Zone 2C and what are the boundaries of Zone 2C;
- c) Provision of water from Ambler to the Washington Unified School District;
- d) Metering data for the provision of water to the 3 residences previously constructed within the Oaks’ subdivision;
- e) The ability of Cal-Am and Ambler to provide water to other projects, such as the Broccoli and Encina Hills subdivisions; and
- f) Expansion of Cal-Am storage tanks and facilities (PLN080527 – Meadows Community).

Staff Response No. 2:

See the following responses to address each issue/comment above:

- a) See Response No. 9 to Law Office of Michael Stamp dated October 10, 2013.
- b) See Response No. 3 to Law Office of Michael Stamp dated October 10, 2013.
- c) The provision of water by Cal Am’s to the Washington Unified School District is not related to either the Oaks Subdivision and/or the proposed MOU. Cal Am’s service to the school is completely independent of this MOU, predates this MOU, and either approval or disapproval of the MOU would not affect service to the school..
- d) See Response No. 5 to Law Office of Michael Stamp dated October 10, 2013.
- e) The MOU does not allow the provision of water service to any other project or subdivision within the area. The Broccoli and Encina Hills (Harper Canyon) project are not a part of the MOU. We assume that the reference to “Broccoli” is to a Lot Line adjustment approved many years ago, predating the B-8 zoning overlay in this area. The Broccoli lots had a Can and Will Serve Letter from Cal Am. Water service to these lots will not be facilitated or affected by the MOU. The MOU specifically states that the agreement “shall not be used to service any other property.” The MOU is also independent from the pending subdivision application, known as the Harper Canyon subdivision application (PLN000696) (we believe this is the subdivision which commenter calls “Encina Hills”). The Harper Canyon application proposes to rely on the Oaks’ well and another well for water supply; however, that subdivision application is not predicated on the MOU or similar concept as the MOU, as had at one time been proposed. At the Planning Commission hearings on the Harper Canyon application in late 2013 and early 2014, staff recommended a condition of approval, to which applicant agreed, requiring the subdivider to build a water treatment plant to treat the water if the subdivision application is approved by the Board; with the water treatment plant, the source of the water and treatment plant would both be outside the B-8 zone and within Zone 2c, thus not requiring arrangements for equal exchange of water. The Planning Commission denied the Harper Canyon application on February 12, 2014, and the applicant has appealed the Harper Canyon application to the Board of Supervisors, who is scheduled to hear the appeal on May 13. Therefore there are no potential impacts, direct or indirect, which would result from the adoption of the MOU relative to other projects within the area now or the future.
- f) See Response No. 2 to Mike Weaver letter dated October 10, 2013.

Comment/Issue No. 3:

SOPC states that the environmental document does not contain the appropriate baseline conditions or analysis; that the IS should include information on the how much water Cal-Am was/is entitled to pump when the Toro aquifer was determined to be “overdrafted...the B-8 was implemented” compared to what is currently being pumped for the provision of water to the Oaks subdivision. SOPC further states that analysis of available Zone 2C water available for provision to the Oaks should be undertaken.

Staff Response No. 3:

Water rights are not at issue, nor does the MOU intensify water use in Zone 2c. The Oaks’ subdivision and use of the Oaks’ well was approved when the tentative map for the Oaks’ subdivision was approved. Per condition 34 of the Oaks’ subdivision, the subdivider conveyed the well and water distribution infrastructure to Cal Am, who acquired the right to own and operate the system (Document 6 of Exhibit D of the December 4, 2012 staff report). The MOU does not reopen the approval of the Oaks subdivision for which the tentative map was approved and final map accepted years ago. The MOU does not result in intensification of water use. The MOU does not authorize greater pumping from the Ambler wells in the B-8 zone because that water will be replenished by the Oaks’ well, and the MOU does not authorize greater pumping from the Oaks well in Zone 2c than was approved as part of the subdivision approval. The MOU merely formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks’ well will be implemented, monitored, reported, and enforced.

Comment/Issue No. 4:

SOPC states that environmental document fails to address other potential projects (Brocoli and Encina Hills subdivision) within the surrounding areas, which Cal-Am could provide water service to; and the IS needs to address impacts, both direct and indirect from these projects.

Staff Response No. 4:

See Response No. 2(e) above.

Comment/Issue No. 5:

SOPC alleges that residences within the Oaks subdivision previously constructed may have been constructed on lots different than those which were approved for construction. Based on this allegation, SOPC questions the ability of the County to monitor the MOU if approved.

Staff Response 5:

Staff researched the allegation of construction taking place on incorrect parcels. The facts of the matter do not substantiate this allegation, and evidence exists to demonstrate that construction was done on correct parcels. See Staff Response No. 1 to the Mike Weaver letter dated October 10, 2013, for a full analysis and permit details regarding this allegation. No further staff response is required.

Comment/Issue No. 6:

SOPC stated that when the Oaks subdivision was originally approved, it was conditioned to have a stand alone well infrastructure for the provision of potable water; and applicable conditions (Conditions 34 and 35) have not been implemented. SOPC states that the MOU serves to modify the conditions of approval, and is therefore a discretionary action. Additionally, SOPC states that the MOU, being the first of its kind, is precedential, and has County-wide implications.

Staff Response No. 6:

SOPC brought a motion to enforce a settlement agreement in SOPC v. County (Monterey Superior Court Case No. M110694) in part based on the allegation of noncompliance with conditions 34 and 35 of the Oaks subdivision. Although County determined that all applicable project conditions were met when the final subdivision map was accepted by the Board in 2006, including conditions 34 and 35, County also held a public hearing on December 4, 2012 to consider provision of potable water to the Oaks subdivision, which hearing satisfied the requirement in the settlement agreement for the Board to remedy the alleged non-compliance following a noticed public hearing. Although the County does not concede noncompliance with the conditions, the December 2012 hearing and this MOU remedy any noncompliance.

The MOU is based on the particular and unique facts and circumstances of the Oaks subdivision and is not intended to set policy or precedent. The MOU does not allow the provision of water service to any other project or subdivision within the area. The Brocoli and Encina Hills project are not a part of the MOU and have no bearing on the purpose of the MOU. The MOU specifically states that the agreement “shall not be used to service any other property”; therefore there are no potential impacts, direct or indirect, which would result from the adoption of the MOU relative to other projects within the area now or the future.