

Exhibit I

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Ecological Rights Foundation

P.O. Box 1000
Santa Cruz, CA 95061
erf@ecorights.org

March 26, 2015

Members of the Monterey County Board of Supervisors
168 W. Alisal St. 2nd Floor
Salinas, CA 93901

RE: Appeal of Planning Commission's Extension of Coastal Development Permits for
PLN140677, PLN140713, and PLN140714.

Dear Supervisors,

The following appeal is submitted by the Ecological Rights Foundation (ERF), a California non-profit organization devoted to furthering the rights of all people to a clean, healthful, and biologically diverse environment. ERF has statewide membership, including members who regularly use and enjoy Elkhorn Slough and Monterey Bay for recreation and education.

ERF appeals the resolutions adopted by the Monterey County Planning Commission (Commission) to extend Coastal Development Permits for PLN140677, PLN140713, and PLN140714, as decided during the March 11, 2015 Commission hearing, for the following reasons:

- 1) Reliance on the 2005 Mitigated Negative Declaration violates the California Environmental Quality Act in that 1) new and existing information about pollutant discharges from these facilities to environmentally sensitive habitats in and around Elkhorn Slough, and changed circumstances in wildlife use of the Elkhorn Slough, command the need for a complete environmental impacts analysis before the CDP extensions may be granted;
- 2) The record before the Commission was insufficient to support its findings and in fact shows the Facility's non-compliance with prior conditions;

Monterey County Board of Supervisors
PLN140677, PLN140713, and PLN140714

- 3) The auto dismantling and recycling operations, and consequent discharges of polluted storm water to Elkhorn Slough are incompatible with the Coastal Act's and the County's Local Coastal Program's policies and objectives.

ERF disagrees with the findings of the Commission and believes the applications for Coastal Development Permit renewals should be denied on these bases and for the following reasons.

I. Introduction

Pick-n-Pull Premier facility, located and operating at 516A Dolan Rd. Moss Landing, and the Pick-n-Pull Moss Landing facilities, located and operating at 516B and 516C Dolan Rd., Moss Landing, (collectively the "Facility" or "Facilities") are self-service, auto dismantling operations where customers pay for used car parts, which they remove themselves from a selection of salvage cars. Site operations include: draining fluids from new arrival cars, including gas, oil, and radiator fluid; mounting cars on stands in the Customer Yard for customer access; removing radiators and cores from picked-over cars; crushing vehicle bodies prior to transport to a metals recycling facility; and loading core parts and tires onto separate trucks for off-site recycling. A small number of used cars, batteries, and tires are also sold at the Site. (Pick-n-Pull Nov, 2014 Storm Water Pollution Prevention Plan "SWPPP").

In 1995 the Monterey Planning Commission issued a Coastal Development Permit ("CDP") for the Facilities to conduct automobile dismantling, reselling and recycling. The CDP relied on a 1995 Initial Study conducted by Linda Weiland. The Initial Study included mitigation measures, mostly related to storm water runoff, drainage, erosion control, fire and aesthetic issues. The 1995 CDP was also based on a 1994 archaeological survey conducted by Archaeological Consultants, and on a 1994 Biological Assessment conducted by Jud Vandervere. The CDP expired in 2000. A 2004 staff report recommended denial of extending the permit due to insufficient compliance. In 2005 the CDP was extended in Resolutions 05050, 05048, and 05049. The resolutions again relied on the 1994 Biological Assessment, the 2004 Biological Update prepared by Jud Vandervere, a 2004 field review of the drainage system prepared by Ken Tunstall, and a number of staff site-visits in 2004 and 2005.

The February 2015 staff report recommends approving the extensions of the previous CDP for these properties based on the 2005 Mitigated Negative Declaration ("MND"), which incorporates the initial 1995 study, a 1994 Biological Assessment of the property, and a 2004 Biological

Update. Staff bases its recommendation on a finding that "Operations at the project site are conducted according to Best Management Practices as established according to the 1995-approved Permits:

- Auto dismantling must occur on **impervious surfaces** with secondary containment features.
- Un-usable auto remnants are transported off-site for disposal.
- A comprehensive storm water management plan has been implemented which directs runoff to controlled areas on each parcel **where pollutants are separated from the drainage water**, collected and disposed of off-site.
- Drainage and erosion control improvements including detention basins and earthen berms are installed and must be maintained.
- Regular inspections are conducted by the Environmental Health Bureau and State Water Resources Control Board to ensure **on-going compliance with the Best Management Practices.**"

The 2005 Mitigated Negative Declaration relied on the following conclusions:

"Water Impact 8(a), (e) - Less than significant with mitigation. Although the projects include industrial activities with the potential to adversely impact water quality or create additional runoff, the existing storm water system and compliance with state and local discharge and water quality standards largely address these issues. Mitigation requiring **adequate maintenance, compliance with storm water permits**, and an updated storm water plan incorporating Yard #2 and Yard #6 on Parcel D **reduce impacts to a less than significant level.**"

"Mitigation Measure #6 (Storm water Facilities): In order to minimize impacts to water quality, the owners/applicants (Parcel A, B, C and D) **shall maintain adequate storm water drainage facilities to address on-site and off-site impacts** to the satisfaction of the Director of the Water Resources Agency and Director of Planning and Building Inspection **and shall comply with the requirements of their storm water permit from the Regional Water Quality Control Board (RWQCB).**"

As detailed below, new information of substantial importance shows: 1) the project will have significant effects not discussed in the previous negative declaration; 2) significant effects previously examined will be substantially more severe than shown in the previous MND; and 3)

substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major changes to the previous environmental analysis due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Additionally, the Facility has been in significant non-compliance with the conditions of its existing CDP and its operations are incompatible with the policies and objectives of Monterey County's Local Coastal Program, its policy objectives and its regulations, including the North County Land Use Plan. The existing record before the Commission is insufficient to support the current staff report recommendation for extension of the CDPs. Particularly, the limited environmental analysis to date has been based on the incorrect assumption that no pollutants from the Facility will be released to Elkhorn Slough, thus the record is fatally devoid of any analysis of potential adverse impacts to Elkhorn Slough and its dependent species, including benthic organisms, fish, shellfish, marine mammals, and birds.

II. Environmental Setting

Elkhorn Slough and Monterey Bay are not only among Monterey County's most important assets, both ecologically and economically, they are also among California's, and even the Nation's most treasured public trust assets. The State of California has designated Elkhorn Slough as an ecological reserve; the federal government has included the slough's tidal waters within the Monterey Bay National Marine Sanctuary, and has established a National Estuarine Research Reserve on its eastern shore.

The Elkhorn Slough Watershed is an incredibly rich biological area. It contains a high number of interdependent aquatic and upland habitats and a diversity of species that may be the highest in California for a watershed of its size. The slough contains California's largest remaining tidal salt marsh outside of San Francisco Bay. Because such estuaries are in rapid decline, Elkhorn Slough has a disproportionate number of rare, threatened and endangered species. It is home to harbor seals, southern sea otters, red-legged frogs, and is a resting spot for more than 200 migrating bird species.

The California Department of Fish and Wildlife has also designated parts of Elkhorn Slough as a State Ecological Reserve and as a Wildlife Management Area, as well as designating three marine protected areas: the Elkhorn Slough State Marine Reserve and Conservation Area and the

Moro Cojo State Marine Reserve. The National Audubon Society includes the slough in its Globally Important Bird Areas and the Western Hemisphere Shorebird Reserve Network designated it a Site of Regional Importance.

The Elkhorn Slough National Estuarine Research Reserve (ESNERR) was established as field laboratory for scientific research and estuarine education. The Reserve hosts educational, research and conservation activities. It also has a visitor center inviting tourists to explore the slough as well as a docent program taking young students on nature hikes to learn about the beauty and importance of this natural resource. Throughout the reserve are five miles of trails that meander through beautiful oak woodlands, tidal creeks, and freshwater marshes. The reserve provides recreational opportunities for viewing wildlife, kayaking, and limited fishing.

Elkhorn Slough is an extremely important place for scientific, scenic, and economic reasons. A survey for the Minhoto/Hester Restoration Project at Elkhorn Slough less than half a mile due west of the facilities was conducted in 2014. (Elkhorn Slough Tidal Marsh Restoration Project, July 1, 2010. http://www.elkhornslough.org/tidalwetland/tidal_marsh_restoration.htm).

The survey identified six biotic habitats in the vicinity of the Dolan Road facilities. These habitats include subtidal, intertidal mudflat, intertidal salt marsh, diked salt marsh, diked brackish marsh/willow thicket, and cultivated field/ruderal grassland.

Using the California Native Diversity Database (CNDDDB) the survey further identified a number of federally endangered and threatened species, and California species of special concern, in close proximity to the Facilities. Within two miles of the Facilities, the CNDDDB query identified ten known sightings of California red legged frog (*Rana draytonii*); the occurrence of California Clapper Rail (*Rallus longirostris obsoletus*); the occurrence of Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*); the occurrence of the California tiger salamander (*Ambystoma californiense*); the occurrence of the Salinas harvest mouse (*Reithrodontomys megalotis distichlis*); the occurrence of burrowing owl (*Athene cunicularia*); the occurrence of white tailed kite (*Elanus leucurus*); the occurrence of the California brackishwater snail (*Mimic tryonia*); the occurrence of the monarch butterfly (*Danaus plexippus*); and the occurrence of the tidewater goby (*Eucyclogobius newberryi*).

Unfortunately, Elkhorn Slough and its residents are threatened by erosion and industrial pollution. The slough's sediments act as a sink for bioaccumulative deposits of heavy metals, and strong winds and tidal currents continually re-suspend and redeposit these metals. Toxic chemicals are concentrated in the Slough's food web as toxic metals and other contaminants

absorbed by plankton are consumed by shellfish, fish and birds farther up the food chain, and eventually by humans. One unfortunate potential consequence of contamination of the aquatic food chain is disproportionate harm to minority or low income communities, who typically eat a greater than average amount of fish, such as the leopard sharks that frequent the slough.

Storm water contaminated with metals and other pollutants also harms the special aesthetic and recreational significance that the Elkhorn Slough has for people in the surrounding communities. Aquatic sports are very popular in the Monterey Bay Area, and the Elkhorn Slough is heavily used by kayakers, canoers, swimmers, shellfish harvesters, bird watchers, hikers, and recreational and subsistence anglers. The public's high usage of the Slough for water contact sports exposes many people to toxic metals and other contaminants present in the Facility's storm water runoff. Non-contact recreational and aesthetic opportunities, such as wildlife observation, also are damaged by storm water contaminants discharged to the Slough.

There are a number of important and sensitive species that use the slough in near proximity to the Facility's storm water discharges. Southern sea otters heavily use the wetlands in the general area of the discharge, especially in the nearby Yampah Marsh portion of ESNERR. This use is new or has dramatically increased since 1995 when the Initial Study and the Biological Assessment were conducted. At that time there were mostly non-resident males in the harbor area, whereas currently there are numerous resident otters in the Slough, and the Yampah area has the highest density of mothers with pups anywhere in the range of this recovering species. Otter pups are particularly susceptible to the harmful effects of bioaccumulative toxic substances. For instance mothers offload accumulated contaminants in breast milk when they first give birth and this first pup is thus very vulnerable to high levels of contaminants. Harbor seals also haul out in this general area and are potentially impacted in the same manner as sea otters. Various fish species, such as English Sole, top smelt, anchovies, sculpin, and leopard sharks use the Slough as a nursery, and fish can be vulnerable to contaminants. These are important forage fish for birds and other animals, so contaminant impacts could reverberate up the food web.

The Elkhorn Slough National Estuary Research Reserve is currently undertaking a tidal marsh restoration project to restore formerly diked and drained wetlands. The Minhoto site is located adjacent to the slough, directly due west of the Pick-n-Pull facility. The restoration effort is costly, and important to help prevent further loss of tidal marsh. (Tidal Marsh Restoration using Sediment Addition An Overview and Frequently Asked Questions. 2012).

[http://www.elkhornslough.org/tidalwetland/downloads/Tidal Marsh Restoration Project Overview and FAQ.pdf](http://www.elkhornslough.org/tidalwetland/downloads/Tidal_Marsh_Restoration_Project_Overview_and_FAQ.pdf)). Contamination from any nearby sources could undermine this restoration by detrimentally impacting local wildlife.

The Moonglow Dairy ponds, at the southern edge of Elkhorn Slough, and the adjacent eucalyptus grove, support numerous migratory birds, including yellow-headed blackbirds, tricolored blackbirds, and sometimes nesting Lawrence's goldfinches, species of special concern in California. In addition, the area also supports nesting olive-sided flycatchers and Monterey pygmy nuthatch, both California species of special concern, and such special status raptors as Cooper's hawk and sharp-shinned hawk. (Elkhorn Slough at the Crossroads. Natural Resources and Conservation Strategies for the Elkhorn Slough Watershed. March 6, 2002.

http://library.elkhornslough.org/esf/crossroads/EScrossroads_text.pdf) The Dairy is located directly west of the Facility and activities from the Facility directly impact this important avian resource.

III. The Planning Commission's Findings are Not Supported by the Evidence

1. New and Existing Information

a. Storm Water Discharges

i. Ecological Rights Foundation's Observations and Storm Water Sampling

Our organization recently discovered large volumes of pollutants in storm water discharging from the Facility. The storm water, which flowed from the Facility's northern storm water discharge pipe through wetlands directly to Elkhorn Slough, exhibited a bright hydrocarbon sheen and had a strong hydrocarbon odor. Laboratory analyses confirmed the presence of multiple pollutants at levels exceeding the applicable EPA Benchmark pollutant concentrations, and California Toxics Rule levels, for numerous pollutants, including: chemical oxygen demand, biochemical oxygen demand, total suspended solids, copper, iron, lead, aluminum, zinc, and specific conductance.

On December 3, 2014, ERF volunteers observed storm water discharging from the Facility's north storm water discharge pipe in a wetland area approximately 30 feet from the edge of

Elkhorn Slough. The water discharging from the pipe was gray-colored, turbid, and had a chemical odor. Samples were collected in appropriate lab-provided bottles and returned that same day for laboratory analyses. The results showed elevated levels of the following analytes: specific conductance (450 us/cm, 2.3 times the EPA Benchmark value); total suspended solids (390 mg/L, 3.9 times EPA Benchmark); total aluminum (42,000 ug/L, 56 times EPA Benchmark); total copper 480 ug/L, 7.5 times EPA Benchmark); total iron (39,000 ug/L, 39 times EPA Benchmark); total lead (380 ug/L, 4.7 times EPA Benchmark); total zinc (1,200 ug/L, 10.3 times EPA Benchmark).

On December 11, 2014, ERF volunteers again observed storm water discharging from the Facility's north storm water discharge pipe in the same location. The water was discharging at a high volume and had the same noticeable characteristics. In addition to the intense chemical odor, the water had a bright surface hydrocarbon sheen. The volunteers observed the discharged water flowing through the wetlands into the slough. Samples were collected in appropriate lab-provided bottles and returned that same day for laboratory analysis. The results showed elevated levels of the following analytes: chemical oxygen demand (630 mg/L, 5.3 times the EPA Benchmark value); biogeochemical oxygen demand (219 mg/L, 7 times the EPA Benchmark value); total suspended solids (1400 mg/L, 14 times the EPA Benchmark value); total copper (680 ug/L, 10.7 times the EPA Benchmark value); total iron (58000 ug/L, 58 times the EPA Benchmark value); and total lead (430 ug/L, 5.3 times the EPA Benchmark value).

On December 15, 2014, ERF volunteers again observed storm water discharging from the Facility's north storm water discharge pipe in the same location. Samples were collected in appropriate lab-provided bottles and returned that same day for laboratory analysis. The results showed elevated levels of the following analytes: chemical oxygen demand (360 mg/L, 3 times the EPA Benchmark value); specific conductance (210 us/cm, 1.05 times the EPA Benchmark value); total suspended solids (460 mg/L, 4.6 times the EPA Benchmark value); total copper (430 ug/L, 6.76 times the EPA Benchmark value); and total lead (310 ug/L, 3.79 times the EPA Benchmark value).

ii. Loan Exchange Group's Observations and Sampling

On January 5, 2010, attorney Mark W. Hafen, representing adjacent landowner Loan Exchange Group, LLC, sent a letter to Richard LeWarne, Assistant director of the Hazardous Materials Management Services Division of the Monterey County Environmental Health

Department concerning discharges of toxic materials from the Facility. In his letter, Mr. Hafen alleges that contamination of soils was observed and communicated to the Health Department on or about March 2008 and November 2009. He further alleges that the Facility failed to properly clean storm water interceptor buffers, and that his client obtained scientific evidence that the storm runoff from the Facility is toxic. Mr. Hafen claimed that samples collected on his client's behalf establish that levels of gasoline and diesel semi-solid material are "far beyond acceptable standards". Finally, the letter alleges that they obtained and analyzed water samples from the 180,000 gallon fire suppression holding tank that showed on several occasions high levels of arsenic. The letter alleges that this water is used for dust suppression and is allowed to run off parcel D and into Elkhorn Slough.

According to Mr. Hafen, he and Roger McCurdy, General Manager of Loan Exchange Group, LLC, visited the area on Parcel D which is situated between the northern fence of Parcel B and the southwest end of Elkhorn Slough. They took photographs of the sludge run off and personally observed that the sludge run off is contacting the shoreline of the Elkhorn Slough.

The 2008 storm water analyses conducted for Loan Exchange Group found the following levels: pH (9.4, 0.4 higher than the acceptable EPA Benchmark range), oil and grease (79 mg/L, 5.3 times the EPA Benchmark value), electric conductance (280 Us/cm, 1.4 times the EPA Benchmark value), total suspended solids (5400 mg/L, 54 times the EPA Benchmark value), total lead (1600 ug/L, 19.6 times the EPA Benchmark value), total iron (150000 ug/L, 150 times the EPA Benchmark value), total aluminum (870 ug/L, 1.2 times the EPA Benchmark value)

The 2009 soil-core analysis, collected at the "Pick-n-Pull water reclamation discharge outlet" conducted for Loan Exchange Group, found the following pollutant levels: Total Petroleum Hydrocarbons - Gasoline (21 mg/kg), and Total Petroleum Hydrocarbon - Diesel (26,000 mg/kg).

iii. Pick-n-Pull's Storm Water Self-Monitoring Reports

A review of storm water monitoring reports submitted to the Central Coast Regional Water Quality Control Board by the project applicant, provided further evidence that the Facility consistently discharges storm water pollutants in concentrations exceeding EPA benchmarks.

The Facility's storm water self-monitoring reports, submitted to the Central Coast Regional Water Quality Control Board, from 2001 to present, show numerous exceedances of EPA Benchmark, and CTR levels for a number of pollutants, including: oil & grease, total suspended solids, copper, lead and zinc. These results have been communicated to the Monterey County Planning Department. A chart, with EPA Benchmark level exceedances highlighted in red, is located in the Department's file.

iv. Pick-n-Pull has Discharged Polluted Storm Water into Elkhorn Slough on Numerous Occasions Since the 2005 MDN

As the evidence provided above shows, there is new information available since 2005 to show that polluted storm water is consistently being discharged into Elkhorn Slough above EPA benchmark and CTR levels.

b. New and Existing Information Regarding Changed Circumstances in Wildlife Use of the Slough

The 2005 MND used the 1995 Initial Study as a baseline for its analysis of any changes that have occurred. The 2015 Staff Report finds that the 2005 MND is adequate, suggesting that there have not been changes in the area that would justify additional environmental assessment. However, this conclusion is not warranted.

New evidence shows that southern sea otters heavily use the wetlands in the general area of the discharge, especially in the nearby Yampah Marsh portion of ESNERR. This use is new or has dramatically increased since 2005 when the Initial Study and the Biological Update were conducted. At that time there were mostly non-resident males in the harbor area, whereas currently there are numerous resident otters in the Slough, and the Yampah area has the highest density of mothers with pups anywhere in the range of this recovering species. Otter pups are particularly susceptible to the harmful effects of bioaccumulative toxic substances. For instance mothers often offload contaminants in breast milk when they first give birth and this first pup is thus very vulnerable to high levels of contaminants. Harbor seals also haul out in this general area and are potentially impacted in the same manner as sea otters.

As this new evidence shows, there have been significantly substantial changes since the 2005 initial study and MND.

2. Insufficient Record

The 2015 staff report finds as adequate the 2005 MND, and the biological survey, initially conducted in 1994, and updated in 2004. The biological opinions were premised on the assumption that pollutants from the Facility would not reach the slough at potentially harmful levels. Substantial new evidence demonstrates that assumption is incorrect. Furthermore, the biological conditions have sufficiently changed in Elkhorn Slough in the past ten years, including the increased use of the Yampah area by southern sea otters, such that reliance on the original survey or 2004 update (which only addresses plant species) is insufficient to support an extension.

The MND which the Planning Commission accepts as adequate is ten years old. We believe too much time has passed for the Commission to rely on the 2005 MND absent a new environmental assessment of the site and its impact on the surrounding environment.

The 2015 staff report relies on a review of the Facility's storm water conducted by Ken Tunstall. The MND (page 21-22) purports to show that the storm water facilities were in working order when inspected by Ken Tunstall. However, the new substantial evidence discussed above demonstrates that this is not so.

Our efforts to locate the 1995 Initial Study and the 1994 Biological Assessment by requesting these records from the Commission were unsuccessful. We believe that the Commission adopted the 2015 Staff Report recommending extension of the CDP without the opportunity to examine the 1995 Initial Study or the 1994 Biological Assessment. Further, the 2004 Biological Update is a four-page document stating that conditions have not changed and contains a list of plant species located on 70.08 acres surveyed. The Update does not address any animal species and it appears that the 1994 study didn't either. The Update recalls that on 2, Sept. 1994, Mr. Vandervere "identified 93 plant species on the site." There is no mention of any animals that might be impacted by the project such as roosting raptors or other tree roosting birds. Nor does the Update mention any amphibians, such as the California red-legged frog or the California tiger salamander - both federally listed species that are known to occur near the Facilities.

We believe that the absence of the 1995 Initial Study and the 1994 Biological Assessment, as well as the passage of ten years since the 2005 MND, create a serious deficiency in the record

available to the Commission to adopt the staff report recommendation to extend the CDP for these projects.

IV. The Decision Was Contrary to Law

1. The Pick-n-Pull Facility's Pollutant Discharges Violate Its Clean Water Act and Coastal Development Permits

At the Facility, vehicles, parts and scrap metal materials are mostly stored outdoors and uncovered, often in unpaved, permeable areas. Storm water comes into contact with these scrap vehicles and parts, scrap materials and the other pollutants. The evidence shows the Facility lacks sufficient and/or sufficiently well-maintained berms or other structural controls to prevent storm water pollutants from leaving the site. The sampling results demonstrate that Pick-n-Pull does not, or can not, sufficiently treat contaminated storm water prior to discharge from the Facility so that harmful pollutants do not reach the slough. Additionally, the large number of trucks and rolling stock entering and leaving the Facility, often carrying vehicles for crushing or dismantling, track dirt, metals, and other pollutants off-site and onto Via Tanques road, where rainfall may wash these pollutants into Elkhorn Slough.

The Clean Water Act prohibits the discharge of pollutants to waters of the United States, such as Elkhorn Slough and adjacent wetlands, unless the discharger is in compliance with the terms of a National Pollution Discharge Elimination System ("NPDES") permit. CWA § 301(a), 33 U.S.C. § 1311(a); see also CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of storm water associated with industrial activities). The Facility discharges storm water associated with industrial activity to the Elkhorn Slough and Monterey Bay, and that storm water is contaminated with pollutants. The Facility discharges storm water pursuant to the NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ ("General Permit"), which authorizes these discharges conditioned on the Facility complying with the terms of that Permit. The Facility's storm water discharges have violated various permit terms, thereby violating CWA effluent limitations.

Pick-n-Pull's annual reports, filed with the Central Coast Regional Water Quality Control Board, demonstrate that discharges of storm water from the Facility are consistently contaminated with higher levels of pollutants than permissible under the General Permit, and that Pick-n-Pull has therefore failed to develop and/or implement an adequate Storm Water Pollution Prevention Plan

("SWPPP"), Monitoring and Reporting Program ("MRP"), or best management practices ("BMPs") as required by the General Permit.

The Effluent Limitations of the General Permit, ¶ E.3, prohibit the Facility from discharging pollutants above the level commensurate with application of "best available technology economically achievable" ("BAT") and "best conventional pollutant control technology" ("BCT"). EPA and the State Board have published Benchmark Values set at the maximum level of pollutant loading generally expected if an industrial facility is employing BAT and BCT.

The Water Quality Control Plan for the Central Coast Basin ("Basin Plan") establishes the following Water Quality Standards for Elkhorn Slough and Monterey Bay:

1. Controllable water quality factors shall not cause a detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life due to bioaccumulation. Basin Plan at 3-2.
2. Dissolved oxygen levels shall be a minimum of 5.0 mg/L [5,000 ug/L]. Id. at 3-
3. Suspended sediment shall not be discharged at rates that cause nuisance or interfere with attainment of beneficial uses. Id. at 3-3.
4. Settleable materials shall not be present in concentrations that result in deposition of material of material that causes nuisance or adversely affect beneficial uses.
5. Waters shall be free of changes in turbidity that adversely affect beneficial uses or that represent more than 10% increase above natural levels of turbidity. Id. at 3-4.
6. Oil or grease or other materials shall not be present in concentrations that cause nuisance or that otherwise affect beneficial uses. Id. at 3-3. Oil and grease shall not be present in any water with municipal supply as a designated beneficial use. Id. at 3-11.

Self monitoring reports, and the sampling conducted by ERF and Loan Exchange Group, indicate the Facility's storm water contains levels of pollutants exceeding the EPA Benchmark levels and thus caused levels of pollutants to exceed one or more of the applicable Water Quality Standards in the Elkhorn Slough and/or Monterey Bay. The repeated discharges of storm water with pollutant levels exceeding Benchmark values establishes that the Facility has discharged

pollutants above a level commensurate with application of BAT and BCT. This violates the Facility's General Permit and thus also violates the conditions of its Coastal Development Permit. These pollutant discharges to environmentally sensitive habitat areas of Elkhorn Slough have never been evaluated.

2. Auto dismantling is Not Occurring on Impervious Surfaces in Violation of the 1995 CDP

The 2015 Staff report incorporates the 1995 staff report which required that to approve the CDP, "Auto dismantling must occur on impervious surfaces with secondary containment features." According to the 2014 SWPPP for parcel A, approximately $\frac{1}{3}$ of the yard is on pervious gravel surface. According to the SWPPP for parcel B, the entire customer yard, where customer dismantling operations occur, is on pervious gravel surface.

The 1995 Staff report required that auto dismantling occur on impervious surfaces. Both parcels have extensive customer yards that are pervious where customer dismantling activities are occurring. Because dismantling activities are occurring on pervious surfaces, the Facilities are not in compliance with the CDP.

Furthermore, the 2005 MND requires that "all dismantling occur under covered canopies on top of impervious surface, with secondary containment features in case of spills." However, both on Parcel A and Parcel B customers are dismantling vehicles in the customer yards. These customer yards are not under covered canopies, are much of the dismantling activities are occurring on pervious gravel surfaces without secondary containment features.

3. The Auto Dismantling Operations are Not in Compliance With the 2005 Draft Resolution Section 6 Because of additional development and intensity of use between 2005 and 2015.

The 2005 CDP resolutions for Parcels A, B and C state in Section 6. CEQA (Mitigated Negative Declaration "A Mitigated Negative Declaration was adopted in 2005 for the previously-approved Combined Development Permits. This document is attached as **EXHIBIT D** of the February 25, 2015 staff report to the Planning Commission, for reference. Staff considers this Mitigated Negative Declaration to be of continued adequacy and relevance to the Extensions as proposed

as the uses analyzed within the document will continue to be of the same type with **no increase in intensity of use and no additional development proposed.**" (emphasis added).

Evidence shows that between 2005 and 2015 Parcel A has changed ownership from Salinas Salvage to A&S Metals. In addition, aerial images obtained from Google Earth show that prior to August 2006 the entire parcel was unpaved. The images show that the northern portion of Parcel A was paved by June 2007. The change from a graveled surface to a paved surface would have a large increase in the volume of storm water runoff that the Parcel would have to control and process, and as such was an "additional improvement."

Therefore, because between the 2005 MND and the 2015 applications for extension, the northern portion Parcel A has been paved, the parcel has been improved, and the intensity of use has increased due to higher storm water volumes and potential increases in pollutant loads. This change does not conform to the assertion that the MND is adequate and relevant to the extensions as proposed.

**4. The Auto Dismantling activities are contrary to the 2015 CDP draft resolution
"operation will not be detrimental or injurious to property in the neighborhood."**

Paragraph 6 of the 2005 CDP resolutions states that "The ... operation of the project applied for will not under the circumstances of this particular case ... be detrimental or injurious to property...."

On January 5, 2010, attorney Mark W. Hafen, representing adjacent landowner Loan Exchange Group, LLC, sent a letter to Richard LeWarne, Assistant director of the Hazardous Materials Management Services Division of the Monterey County Environmental Health Department concerning discharges of toxic materials from the Facility. In addition to the concerns regarding the discharge of toxic materials issuing from the Facility onto Parcel D, the letter further states "Parcel D, in this condition, can not be marketed. Loan Exchange Group, LLC has lost ascertainable monetary value as a result of the ongoing contamination of Parcel D."

The operations at the Facility have resulted in toxic discharges to Parcel D, making it less valuable and potentially unsuitable for agricultural enterprises. The discharges of pollutants onto Parcel D and into the Elkhorn Slough have been detrimental and injurious to property and therefore the activities violate the CDP.

5. The Facilities' Discharges of Pollutants to Elkhorn Slough are Incompatible with the Goals and Policies of the Coastal Act and the Monterey County Local Coastal Program, including the North Coast Land Use Plan ("NCLUP")

The Coastal Act was passed by the State Legislature in 1976, and came into effect on January 1, 1977. In adopting the Act, the Legislature declared its first stated goal was to "protect, maintain and, where feasible, enhance and restore the overall quality of the Coastal Zone environment and its natural and man-made resources." The Act established a framework for resolving conflicts among competing uses for limited coastal lands. The highest priority is placed upon the preservation and protection of natural resources including environmentally sensitive habitat areas, i.e., wetlands, dunes, and other areas with rare, endangered, or threatened plant and animal life. In the case of habitat areas, only uses dependent on these resources are allowed within such areas.

The Coastal Act emphasizes the importance of maintaining environmentally sensitive habitats and further stresses that future development within or adjacent to sensitive areas must be appropriate with respect to type of use, siting, and design to ensure that the sensitive areas are not degraded or threatened. Only coastal-dependent uses are permitted within sensitive habitat areas including nature education and research, hunting, fishing, and aquaculture. Among the sensitive habitat areas found nearest the coast are the Monterey Bay itself, the delicate dunes and beaches, and the large sloughs and saltwater marshes--each with a different and changing degree of salinity. A unique community of vegetation and wildlife is supported in each area. Inland portions of the North Monterey coastal area support a diversity of sensitive habitats including: riparian corridors, freshwater marshes, and maritime chaparral. These have been threatened to varying degrees by agricultural and residential uses. Perhaps most unique among all of these habitats are the sloughs, the estuarine waters resulting from the mixing of seawater with freshwater. They are also some of the most sensitive. The sloughs provide a sanctuary for harbor seals, sea otters, and a great variety of fish and birds. Factors with the potential to severely affect the stability and viability of the estuarine habitat are alterations in the drainage systems, sedimentation, and obstacles to water circulation (i.e., tide gates or undersized culverts). Oil spills are a particularly devastating possibility. (NCLUP §2.3)

The list of rare and endangered species of plants and animals is lengthy for this area and many of these species exist only in the most sensitive and limited habitats. In order to preserve the

viability of these habitats and the plants and animals they support, they must be protected from the damaging effects of development or inappropriate activities (NCLUP §2.3)

The NCLUP's "key policy" regarding "Environmentally Sensitive Habitats" is as follows:

"The environmentally sensitive habitats of North County are unique, limited, and fragile resources of statewide significance, important to the enrichment of present and future generations of county residents and visitors; accordingly, they shall be protected, maintained, and, where possible, enhanced and restored." (NCLUP §2.3.1)

Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource. (NCLUP §2.3.2(2)).

"All wetland areas of the North County Coastal Zone shall be protected and preserved for their plant and wildlife values, including but not limited to McClusky Slough, Pajaro River, Salinas River, Salinas River Lagoon, Elkhorn Slough, Bennett Slough, and Moro Cojo Slough. The County's existing Non Pointsource Pollution Program shall be implemented." (NCLUP §2.3.3(B)(5)).

"Oil and other toxic substances shall not be allowed to enter or drain into the estuarine system. Oil spill and toxic substance discharge contingency plans shall be developed by the appropriate agencies of Monterey County to coordinate emergency procedures for clean-up operations of all foreseeable conditions. New development shall be permitted adjacent to estuarine areas only where such development does not increase the hazard of oil spill or toxic discharge into the estuaries." (NCLUP §2.3.3(B)(8)).

"Development of Agricultural Conservation lands shall be allowed for agriculture-related facilities and very low- density residential use at a density of one unit per 40 acres. These uses shall be located, where possible, on the least agriculturally viable area of the parcel. The minimum parcel size for land divisions is 40 acres." (NCLUP §2.6.3.3).

"Conversion of Agricultural Conservation lands to non-agricultural uses shall be allowed only if such conversion is necessary to: a) establish a stable boundary between agriculture and adjacent

urban uses or sensitive habitats; or b) accommodate agriculture-related or other permitted uses which would economically enable continuation of farming on the parcel and adjacent lands.” (NCLUP §2.6.3.5).

“Industrial development in the rural areas of the coastal zone is generally not appropriate. However, there is a coastal-dependent industry, PG&E, in the planning area on Dolan Road. An oil tank farm is located on this property. This site and a portion of an adjacent property containing auto wrecking yards is recommended for Heavy Industry and Light Industry Categories. Also, agricultural related industries such as greenhouses, warehouses, packing sheds, storage facilities for farm related equipment, etc. may be appropriate in the Agricultural Industrial Category. **The industrial uses allowed must be compatible with agriculture and the preservation of the resources of Elkhorn Slough.** The Armstrong Ranch area east of Highway 1 is designated for Light Industry. **Special Treatment Areas are designated for the Dolan property and the Armstrong Ranch. Agriculture-related or coast-dependent industries are recommended for these light industrial special treatment areas. In the case of the Dolan property, this designation is not intended to prohibit the wrecking yards from continued operation. Renewal of use permits for these operations will be based on the merits of the specific proposal and feasible mitigation measures to offset any adverse impacts of continued operation.**” (NCLUP §4.3.2).

While the NCLUP carves out a Special Treatment Area where continued operation of the Dolan Road wrecking yards is not absolutely prohibited, the allowance of continuing operations must “be based on the merits of the specific proposals and feasible mitigation measures to offset any adverse impacts of continued operation.” And must also be consistent with the policy objectives of the Coastal Act as well as other policies expressed in the NCLUP and other governing documents of the County’s Local Coastal Program, including:

Section 2.3 Environmentally Sensitive Habitats

“Perhaps most unique among all of these habitats are the sloughs, the estuarine waters resulting from the mixing of seawater with freshwater. They are also some of the most sensitive. Oil spills are a particularly devastating possibility.”

Section 2.3.1 Key Policy

“The environmentally sensitive habitats of North County are unique, limited, and fragile resources of statewide significance, important to the enrichment of present and future

generations of county residents and visitors; accordingly, they shall be protected, maintained, and, where possible, enhanced and restored.”

Section 2.3.2.1 General Policies

“With the exception of resource dependent uses, all development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the following environmentally sensitive habitat areas: riparian corridors, wetlands, dunes, sites of known rare and endangered species of plants and animals, rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as environmentally sensitive.”

Section 2.3.2.2.

“Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.”

Section 2.3.3(B)(8)

“Oil and other toxic substances shall not be allowed to enter or drain into the estuarine system.”

Elkhorn slough and its surrounding wetlands are environmentally sensitive habitat areas, including sites of known rare and endangered species such as the southern sea otter, California red-legged frog, and the California tiger salamander. The Facility’s discharges are to an area that includes haul-out sites for harbor seals and southern sea otters heavily use the wetlands in the area, especially in the nearby Yampah Marsh portion of ESNERR. The Yampah area has the highest density of mothers with pups anywhere in the range of this recovering species. Otter pups are particularly susceptible to the harmful effects of bioaccumulative toxic substances such as heavy metals that are present in the Facility’s discharges. The Facility’s documented discharges of high biochemical and chemical oxygen demand can deplete the estuarine waters of oxygen and kill organisms. Silt and suspended solids can smother important breeding grounds and diminish wetlands. The discharges of toxics have also likely impacted the neighboring property and limited its viability as agricultural land.

There is substantial evidence from analytical testing of the Facility's storm water showing discharges of oil and grease, petroleum hydrocarbons and other toxic substances, including heavy metals that are disallowed by the above policies and goals. Twenty-plus years of storm water discharges from the Facilities has likely led to the accumulation of toxic compounds in the wetland soils and sediments of Elkhorn Slough. Once there, toxics, such as copper, will bioaccumulate in benthic organisms and biomagnify up the trophic levels of the food chain, causing potential harm to numerous species including sea otters. To date, no environmental analysis has been completed to characterize contamination on or off site at the Facilities, or to determine the potential and likely impacts to resident species and humans who consume local fish and shellfish. There is substantial evidence showing that the mitigation measures outlined in the 2005 Mitigated Negative Declaration have been insufficient to prevent toxic discharges to environmentally sensitive habitat areas, thus any finding that project as mitigated will have no significant effect on the environment is mere speculation and is clearly not supported by the record.

Section 4.3.2

Section 4.3.6(F)

1. "Lands designated for Heavy and Light industrial use in the North County Coastal Zone, shall be reserved for coastal dependent industry as defined in Sections 4.3.1. L and M."
2. "The County's general policy is to encourage these uses to relocate to appropriate industrial areas." Sections 4.3.1 L and M describe light and heavy industry.

Section 4.3.1

L. "This includes such industries as fish processing, aquaculture processing, limited-scale boat building, boat repair, agriculture processing, and other agriculture-related or coastal dependent operations not engaged in heavy manufacturing or requiring extensive plants for operation."

M. "This includes such industries as PG&E's power plant and Kaiser Refractories in Moss Landing."

The descriptions in subsections L and M are examples of industries and the word "includes" suggests that the examples are not meant to be an exhaustive list. However, vehicle dismantling,

parts sales and wrecking does not comport with coastal dependent activities such as fishing, aquaculture, or boating, nor as electric power generation. Because the auto wrecking and dismantling operations at the Facility do not fall within these designations, they are not coastal dependent activities. Under Section 4.3.6(F)(2) general policy, these uses should be relocated to appropriate industrial areas.

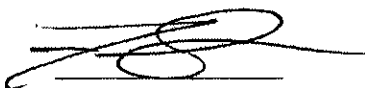
Considering all of the above policies, the nature of the activities occurring at the Facilities, and the ongoing discharge of storm water with high BOD/COD and EC, and levels of petroleum, sediment, and metals exceeding relevant benchmark values into the Elkhorn Slough ESHAs, makes the facilities incompatible with the NCLUP.

VI. Conclusion

As shown by consistently high levels of pollutants being discharged from the Facility to Elkhorn Slough and its surroundings, and the potential adverse environmental effects of those discharges, the vehicle dismantling and recycling operations are incompatible with the County's Local Coastal Plan and North Coast Land Use Plan policies and objectives. The Facility's Coastal Development Permit renewals should be denied.

Substantial changes at the Facilities, including grading and paving, re-routing of storm water pathways, and new circumstances and new information of substantial importance about pollutant discharges to environmentally sensitive habitats, and special status species' use of the Slough in the vicinity of the polluted discharges, command the need for a complete environmental impacts analysis before the CDP extensions may be granted. The sparse record and lack of environmental analysis to date were insufficient to protect the incredibly sensitive and rich biological, recreational, educational and scientific resources of Elkhorn Slough. For all of the above reasons, the Monterey County Planning Commission should not have approved the extensions of the Coastal Development Permits for PLN140677, PLN140713, and PLN140714.

Thank you for your consideration,



Fredric Evenson,
Ecological Rights Foundation

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