



February 1, 2018

Dear Friends at Marina Coast Water District,

Thank you for participating in the Food Bank for Monterey County's 2017 Holiday Food Drive. The generosity of 329 merchants, community businesses, schools, faith communities, and others who welcomed our volunteers and helped fill the barrels, made this year's Food Drive especially meaningful. Together we collected over **140,000** pounds of food! Thank you!

We are fortunate to have assistance from a caring and dedicated community that is committed to assisting us in the elimination of hunger in Monterey County.

Obtaining enough food is a daily struggle for thousands of families in Monterey County. Being undernourished is devastating and particularly hard on children and seniors. Your kindness and generosity will allow the Food Bank for Monterey County to continue providing food assistance to needy members of the community throughout the year.

If you and your colleagues would like to learn more about the Food Bank for Monterey County, please consider visiting the Food Bank for a tour of the warehouse, to learn about the Food Bank's programs, and to discuss how we can address hunger in Monterey County.

Please contact Cathie Montero, our Community Partnership Coordinator, to arrange a visit. Cathie's email is [cmontero@food4hungry.org](mailto:cmontero@food4hungry.org) and the office phone number is (831) 758-1523.

Thank you so very much for your support!

Sincerely,

Melissa Kendrick  
Executive Director

RECEIVED  
FEB 28 2018

m|r|wolfe  
& associates, p.c.  
attorneys-at-law

BY: .....

February 26, 2018

Board of Directors  
Care of Paula Riso, Clerk to the Board  
Marina Coast Water District  
11 Reservation Road,  
Marina, CA 93933  
priso@mcwd.org

Re: Documents Cited in LandWatch and Parker Comments on Negative Declaration and Initial Study for Ord Community Sphere of Influence Amendment and Annexation for the Marine Coast Water District

Dear Member of the Board:

On February 20, 2018, Michael DeLapa, Executive Director of LandWatch, delivered to your office a thumbdrive containing pdf files of 37 documents cited in comments by LandWatch and by hydrologist Timothy Parker. Mr. DeLapa asked for and was given a receipt for these documents.

Staff state in the February 20, 2018 memo to the Board members that "MCWD could not access the files on the thumb drive provided by LandWatch because the drive was defective, but it is generally familiar with the referenced documents based on the listing in the comment letter."

First, the thumb drive was not defective. Mr. Delapa loaded the pdf files on that drive and verified that they were readable before providing it to MCWD staff. LandWatch asks that MCWD retain and preserve the thumbdrive in its current condition as part of the record of these proceedings.

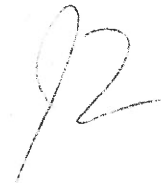
Second, even if MCWD staff were not able to retrieve the documents, LandWatch relied on staff's statement that MCWD is familiar with the referenced documents. Staff prepared a substantive response to the comments by LandWatch and Mr. Parker without notifying Landwatch that it was unable to access the files, apparently based on its familiarity with the documents. Accordingly, the documents are part of the record of these proceedings.

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For MCWD's convenience, LandWatch is prepared to provide MCWD with these documents in another format, digital or paper. Please let me know if MCWD would like LandWatch to do so.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to be 'JF', written over a faint, illegible stamp or background.

John Farrow

JHF:hs

Michael W. Stamp  
Molly Erickson

**STAMP | ERICKSON**  
Attorneys at Law

479 Pacific Street, Suite One  
Monterey, California 93940  
T: (831) 373-1214  
F: (831) 373-0242

February 27, 2018

Via E-Mail

Tom Moore, President  
Board of Directors  
Marina Coast Water District

Re: Brown Act cure and correct letter to Marina Coast Water District

Dear President Moore and Marina Coast Water Board Directors:

We write on behalf of Keep Fort Ord Wild. This letter is to call your attention to what we believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by Marina Coast Water District Board of Directors.

The nature of the violation is as follows: In its meeting of February 20, 2018, the Board of Directors took action to vote 5-0 to adopt Resolution No. 2018-09 to adopt the Public Draft Initial Study/Negative Declaration for the Ord Community Sphere of Influence Amendment and Annexation; find that the Ord Community Sphere of Influence Amendment and Annexation is not subject to CEQA and is exempt from CEQA under CEQA Guidelines sections 15301 (Existing Facilities), 15319 (Annexations of Existing Facilities and Lots for Exempt Facilities), and 15061, subd. (b)(3) (the "common sense" exemption); and directed staff to hold off on submitting the Application with LAFCO for up to 30 days to further work with Seaside County Sanitation District.

Marina Coast Water District promptly filed a notice of exemption and a notice of determination with the County Clerk. Those notices appear to be designed to trigger CEQA statutes of limitations with short time frames. These notices are properly filed *after* the project has been approved. "When a public agency decides that a project is exempt from CEQA ... , the agency may file a notice of exemption. The notice shall be filed, if at all, *after* approval of the project." (CEQA Guidelines, § 15062, subd. (a), italics added.) "A notice of exemption may be filled out and may accompany the project application through the approval process" but it "*shall not be filed ... until the project has been approved.*" (*Id.*, subd. (b), italics added; see CEQA Guidelines, § 15061, subd. (d).) (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, 1374.) By filing the notices, Marina Coast has indicated that the Board of Directors apparently approved the project.

The Board action taken was not in compliance with the Brown Act. There was no adequate notice to the public on the posted agenda for the meeting that an approval of the project would be acted upon, and there was no finding of fact made by the Marina Coast Water District that urgent action was necessary on a matter unforeseen at the

President Moore and MCWD Directors  
Re: KFOW comments on environmental review for MCWD annexation  
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time the agenda was posted. These are not mere technical violations. A member of the public would not have known that the Board was considering project approval. In fact, I appeared before you at the Board's February 20 meeting and told you the project approval was not on the agenda, and thus it could not be acted upon. We also submitted a letter containing a section headed "An Action to Approve the Project Tonight Would Violate the Brown Act." The letter explained in part as follows:

[The] Marina Coast proposed resolution claims in part as follows: "that the Directors authorize the General Manager to file a notice of determination as soon as reasonably practical." Marina Coast cannot properly file a notice of determination until after Marina Coast has approved a project. The February 20, 2018 agenda description for the item does not include approval of a project. Marina Coast has not provided legal notice under the Brown Act of a public hearing to approve an annexation. Marina Coast cannot at this late date add project approval to the agenda and to the resolution because such actions would violate the Brown Act.

KFOW was and is planning on submitting information to Marina Coast Board of Directors prior to project approval, and thus KFOW is prejudiced by the Board's violation of the Brown Act. The Brown Act states that "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda." (Gov. Code, § 54954.2, subd. (a)(2).)

The Court of Appeal opinion in *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167 is instructive here. In that case, the public agency approved a project and adopted a mitigated negative declaration (MND). The agency had agendized the project approval but not the approval of the mitigated negative declaration. The agency argued that the agenda requirement was satisfied because the public would have implicitly understood that CEQA documents, if any, would likely be considered at the time of the project's approval. The Court of Appeal disagreed and affirmed the award of costs and attorney fees to the public-interest petitioners. The Court of Appeal held that "the Brown Act was violated in this case because the Commission took action on the MND when that matter was not expressly disclosed on the meeting agenda." (*Id.* at p. 1170.) That is almost identical to Marina Coast's actions here, except reversed: here Marina Coast agendized approvals of the MND and notices of exemption, but failed to agendize approval.

In the event it appears to you that the conduct of the Board of Directors specified herein did not amount to the taking of action, we call your attention to Government Code section 54952.6, which defines "action taken" for the purposes of the Act expansively,

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Re: KFOW comments on environmental review for MCWD annexation  
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i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

The Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be acted upon. The Brown Act also creates a legal remedy for illegally taken actions—namely, the judicial invalidation of them upon proper findings of fact and conclusions of law. (Gov. Code, § 54960.1.) Pursuant to that provision, we demand that the Board of Directors cure and correct the illegally taken action as follows: The Board should properly and legally notice a meeting at which the approval of the annexation – as a project – is considered for action, and the Board should formally and explicitly withdraw the filed notices of determination and exemption. Those filed notices trigger statutes of violations under CEQA that place Marina Coast at risk of lawsuits. from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.)

As provided by section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform us of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave KFOW no recourse but to seek a judicial invalidation of the challenged action pursuant to section 54960.1, in which case KFOW would also ask the court to order you to pay KFOW's court costs and reasonable attorney fees in this matter, pursuant to section 54960.5. If you delay your action, fees may be awarded, as shown by *San Joaquin Raptor, supra*. The CEQA statute of limitations triggered by Marina Coast's notices of determination and exemption will require action sooner than 30 days, so if Marina Coast is going to act I urge you to do it promptly and inform us of your intent to act so as to reduce the amount of attorney fees incurred by my client and by Marina Coast.

The Project Requires an EIR. The Filed NOE and NOD Are Legally Inadequate.

There is no question the annexation project required an environmental impact report. Marina Coast should formally rescind the filed notices of exemption and determination, and prepare an EIR.

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Offer to Meet.

Keep Fort Ord Wild offers to meet with Marina Coast Water District to discuss these any and all of these issues in an effort to resolve the concerns and settle the controversies. Marina Coast controls the clock here. We urge you to advise us as soon as possible as to the actions to be taken by Marina Coast and where and when those actions will be considered.

These are important matters. Please let me know if you would like to meet.  
Thank you.

Very truly yours,

STAMP | ERICKSON

*/s/ Molly Erickson*

Molly Erickson

c: LAFCo Monterey County

March 1, 2018

Board of Directors  
Care of Paula Riso, Clerk to the Board  
Marina Coast Water District  
11 Reservation Road,  
Marina, CA 93933  
priso@mcwd.org

Re: Brown Act Violation - Ord Community Sphere of Influence Amendment  
and Annexation

Dear Members of the Board:

This letter is to call your attention to what LandWatch Monterey County believes was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Board of Directors of Marina Coast Water District.

The nature of the violation is as follows: In its meeting of February 20, 2018, the Board of Directors took action to adopt Res. No. 2018-09 that included adoption of the Initial Study/Negative Declaration; making findings that the Ord Community Sphere of Influence Amendment and Annexation is not subject to CEQA and is exempt from CEQA; and directing staff to hold off submitting an application to LAFCO for 30 days to further work with Seaside County Sanitation District.

Marina Coast Water District then filed a Notice of Exemption and a Notice of Determination with the County Clerk, indicating that the Board of Directors had apparently approved the project.

The action taken was not in compliance with the Brown Act because there was no adequate notice to the public on the posted agenda for the meeting that the Board might act to approve the project, and there was no finding of fact made by the Board of Directors of Marina Coast Water District that urgent action was necessary on a matter unforeseen at the time the agenda was posted. In fact, members of the public objected that an action to approve the project on February 20, 2018 would violate the Brown Act provision that action not be taken on an item not appearing on the agenda.

In the event it appears to you that the conduct of the Board of Directors of Marina Coast Water District specified herein did not amount to the taking of action, I call your



March 1, 2018

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attention to Section 54952.6, which defines “action taken” for the purposes of the Act expansively, i.e. as “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions—namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), LandWatch Monterey County demands that the Board of Directors of Marina Coast Water District cure and correct the illegally taken action as follows: (1) formally withdraw the Notice of Determination and Notice of Exemption filed on February 21, 2018, and (2) should MCWD wish to approve the project, provide adequate notice on a posted agenda and an opportunity for informed comments by members of the public at a future meeting.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform LandWatch of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave LandWatch no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case LandWatch would also ask the court to order you to pay LandWatch’s court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

As indicated in previous letters, LandWatch remains willing to confer further with MCWD and its counsel to resolve its concerns that the proposed annexation was not adequately reviewed under CEQA and that the Board action violated the Brown Act.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

Michael W. Stamp  
Molly Erickson

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Attorneys at Law

479 Pacific Street, Suite One  
Monterey, California 93940  
T: (831) 373-1214  
F: (831) 373-0242

March 6, 2018

Via E-Mail

Tom Moore, President  
Board of Directors  
Marina Coast Water District

Re: Brown Act cure and correct letter to Marina Coast Water District

Dear President Moore and Marina Coast Water District directors:

This letter addresses three topics, described below.

Request for Response to "Cure and Correct" Letter.

On February 27, 2018, we sent you a Brown Act "cure and correct" letter. We also sent it to your district counsel and your general manager. We asked you to advise us as soon as possible as to the actions to be taken by Marina Coast and where and when those actions will be considered. We have not received a response.

Is Marina Coast going to agendaize the matter for a properly noticed meeting under the Brown Act, or not? We would appreciate the courtesy of a response as soon as possible, because Marina Coast has started the clock running.

Request for Notice.

Please place Keep Fort Ord Wild, in care of me, on the distribution list for timely notice of all agendas and actions of all kind as to annexation and any other action with regard to service to the former Fort Ord. This request includes all notice under Public Resources Code section 21092.2.

Offer to Meet.

Keep Fort Ord Wild again offers to meet with Marina Coast Water District to discuss any and all of these issues in an effort to resolve the concerns and settle the controversies. We again remind you that Marina Coast controls the clock here. These are important matters. Please let me know if you would like to meet. Thank you.

Very truly yours,

STAMP | ERICKSON

*/s/ Molly Erickson*

Molly Erickson

c: MCWD agency counsel; MCWD general manager; LAFCo Monterey County

Michael W. Stamp  
Molly Erickson

**STAMP | ERICKSON**  
Attorneys at Law

479 Pacific Street, Suite One  
Monterey, California 93940  
T: (831) 373-1214  
F: (831) 373-0242

March 7, 2018

Via Facsimile to (831) 883-5995  
Tom Moore, President  
Board of Directors  
Marina Coast Water District

Re: Brown Act cure and correct letters to Marina Coast Water District

Dear President Moore and Marina Coast Water District directors:

I am enclosing two letters that have been emailed to you already on their respective dates of February 27, 2018 and March 6, 2018. The letters are a total of 5 pages. Today I am faxing them to you. If you did not receive the letters emailed to you on February 27 and March 6, or if you do not receive all five pages attached to this letter, please let me know promptly and I will provide them to you promptly.

Thank you.

Very truly yours,

STAMP | ERICKSON

  
Molly Erickson

Attachments: as stated

Michael W. Stamp  
Molly Erickson

**STAMP | ERICKSON**  
Attorneys at Law

479 Pacific Street, Suite One  
Monterey, California 93940  
T: (831) 373-1214  
F: (831) 373-0242

March 6, 2018

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c: MCWD agency counsel; LAFCo Monterey County

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February 27, 2018

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Board of Directors  
Marina Coast Water District

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President Moore and MCWD Directors  
Re: KFOW comments on environmental review for MCWD annexation  
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In the event it appears to you that the conduct of the Board of Directors specified herein did not amount to the taking of action, we call your attention to Government Code section 54952.6, which defines "action taken" for the purposes of the Act expansively,

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There is no question the annexation project required an environmental impact report. Marina Coast should formally rescind the filed notices of exemption and determination, and prepare an EIR.

President Moore and MCWD Directors  
Re: KFOW comments on environmental review for MCWD annexation  
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STAMP | ERICKSON

*/s/ Molly Erickson*

Molly Erickson

c: LAFCo Monterey County