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Via Email and Overnight Mail
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Jay Schlosser, Development Services Director
Jennifer Paolozzi, Development Services Technician
City of Tehachapi
117 S. Robinson Street
Tehachapi, CA 93561

Re: City of Tehachapi 6th Cycle Housing Element Update – Revised
Draft 2 (March 2025)
Our File No. 5397.003

Dear Mr. Schlosser and Ms. Paolozzi:

On behalf of the Tehachapi-Cummings County Water District (“TCCWD” or “District”) for itself and as Watermaster for the Tehachapi Basin, we respectfully submit the following comments on the Revised Draft 2 of the City of Tehachapi’s (“City”) 6th Cycle Housing Element Update (“Housing Element Update” or “Project”). These comments, submitted within the City’s 7-day public review period, are made pursuant to the California Housing Element Law (Gov. Code, § 65580 et seq.). They also relate to the City’s forthcoming analysis of the Project’s significant impacts under the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.). In addition to this letter, the District concurrently submitted a letter regarding the Housing Element Update to the California Department of Housing and Community Development (“HCD”), as authorized by Government Code section 65585(i)(2).¹ While the District was not

¹ / In its role to increase the supply of affordable places to live in California, HCD provides the following guidance for requisite analysis of proposed amendments to a local government’s housing element:

To effectively implement the law, local governments are strongly encouraged to consult with water and sewer providers **during** the development and update of the housing element (as opposed to only notifying the providers after the adoption of the housing element).

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notified or consulted as required by the obvious interconnection of the City's land use planning activities and its water supply, the District nonetheless appreciates the opportunity to provide comments and recommendations regarding the Project.

The District recognizes that HCD requires the City to update its Housing Element for the planning period of 2023-2031. The City's Housing Element Update must be consistent with state law to ensure that the City is "appropriately planning for" additional housing to ensure "that the existing and projected demands are adequately met." (Housing Element Update, pp. 1-2.) Adequate housing requires adequate water supplies to sustain such development. As such, the City must evaluate whether land within its jurisdiction is realistic suitable for residential development based on an analysis of the public facilities and services (e.g., water supply) available to these sites. (Gov. Code, §§ 65583(a)(3).) This analysis must evaluate the various "potential and actual" governmental and non-governmental (e.g., environmental) constraints that "create a gap between the [City's] planning for the development of housing for all income levels and the construction of that housing." (Gov. Code, §§ 65583(a)(5), 65583(a)(6).) Appropriate planning for additional housing must reflect the realities of the City's water supplies and its demonstrated ability to provide expanded water services during all water-year types. (*Ibid.*; HCD, *supra.*)

Unfortunately, the Housing Element Update fails to comply with these mandatory requirements and must be substantially revised. As demonstrated by the District's prior comments and the Sacramento County Superior Court's ("Court") ruling in the Sage Ranch matter, the City's most fundamental challenge is the tension between the state's housing goals and the City's water supply realities. (Sacramento Superior Court, Case No. 34-2022-80003892, June 18, 2024, Ruling on Submitted Matter – Petition for Writ of Mandate ("Ruling"), pp. 1-2, 6-9.) Among its other deficiencies, the Project:

Involvement during the development and update process will facilitate effective coordination between local planning and water and sewer service functions to ensure adequate water and sewer capacity is available to accommodate housing needs, especially housing for lower-income households.

(<https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/priority-water-and-sewer> [emphasis in original].)

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1. Contains an unrealistic and inadequate discussion of the water services and supplies required to support the City's Regional Housing Needs Allocation ("RHNA") of 902 units for the 2023-2031 planning period. (Housing Element Update, p. 9.) The City fails to disclose the District's water supply role, which is linked, by law, to the City's land use planning role.
2. Fails to disclose the true scope of the City's environmental and infrastructure constraints or demonstrate meaningful efforts to remove these "nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing." (Gov. Code, § 65583(a)(6).)
3. Fails to disclose the true scope of the City's self-imposed governmental constraints via its prior approvals of development projects without sufficient water supplies.
4. Proposes material regulatory and legislative changes that are unsupported by substantial evidence, contradictory, and would codify the City's "pattern and practice" of approving projects without properly analyzing each project's impacts related to water supply. (*Californians for Native Salmon Etc. Ass'n v. Dep't of Forestry* (1990) 221 Cal.App.3d 1419, 1426.)

The District, largely responsible for managing the Greater Tehachapi Area's water resources, including management of the adjudicated Tehachapi Groundwater Basin ("Basin") and imported State Water Project ("SWP") supplies, is alarmed by these deficiencies. The City's Housing Element Update must reflect reality and should not establish expectations that cannot be met without substantial risks to public health and safety. The update process is neither a blank check to allow unsustainable development, nor a license to continue the City's pattern and practice of ignoring real-world water constraints. The District's comments and concerns are described in further detail below.

1. The City's Sites Inventory and Its Associated "By Right" Development Program Violate the Housing Element Law.

A. Appendix B, “Housing Capacity Analysis and Methodology” Ignores the Essential Elements That Must be Met Before the City can Include Sites in its Inventory of Land and Must Be Substantially Revised.

The City’s Housing Element “must include an inventory of adequate sites that are zoned and available within the planning period to meet the jurisdiction’s fair share of regional housing needs across all income levels.” (Housing Element Update, p. B-1.) The Housing Element update provides that Appendix B “details the sites inventory and supporting analysis methodology and assumptions.” (*Ibid.*) However, the City’s sites inventory fails to even address the criteria that must be satisfied before including sites within its inventory of land. (Gov. Code, § 65583.2(b).) Consequently, the City’s sites inventory is inconsistent with state law, is unsupported by substantial evidence, and must be revised. Based upon the premise that jurisdictions analyze water supply availability and environmental constraints upfront, the Housing Element Law allows jurisdictions to use their sites inventories as a streamlining tool. (*Ibid.*) By essentially frontloading its CEQA analysis, in certain cases jurisdictions may allow residential development “by right.” (*Id.* at, § 65583.2(c), (i).)² Therefore, the City’s failure to evaluate whether the parcels identified in its inventory will have a sufficient water supply is a material violation that perpetuates the City’s pattern and practice of ignoring its real-world water constraints.

The purpose of a city’s “inventory of land suitable for residential development” is to identify lands that can realistically be developed. (Gov. Code, § 65583.2(a).) To include land within its inventory, the City must satisfy exacting requirements, many of which the City completely disregarded. Specifically, Government Code section 65583.2(b) provides that the “inventory of land shall include” seven (7) items, including:

- **“A description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities.”** (*Id.* at § 65583.2(b)(4) [emphasis added].)

² / As demonstrated below, due to the City’s violations of Government Code section 65583.2, its proposed Program 5.5, would make multi-family uses allowed by right in certain zones, is unsupported by substantial evidence and therefore invalid. (Housing Element Update, p. 27.)

- **“Parcels included in the inventory must have sufficient water, sewer, and dry utilities supply available and accessible to support housing development** or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development.” (*Id.* at § 65583.2(b)(4) [emphasis added].)

Based on this information “provided in subdivision (b),” the City must determine “whether each site in the inventory can accommodate the development or some portion of its share of the regional housing needed.” (*Id.* at § § 65583.2(c).) After adequately considering water supply availability, “[t]he inventory shall specify for each site the number of units **that can realistically be accommodated** on that site.” (*Ibid.*) The City also has an ongoing duty to revise its site inventory in response to changed conditions to ensure it remains in line with reality:

The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, **the realistic development capacity for the site**, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, **and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.**

(Gov. Code, § 65583.2(c)(2).)

Appendix B of the City’s Housing Element Update utterly fails to satisfy these requirements. It does not contain *any* description of the City’s existing or planned water supply or its availability. The City did not consider any water availability data in preparing its sites inventory analysis. (Housing Element Update, p. B-2.) It therefore also failed to demonstrate that each parcel identified in its sites inventory will have a sufficient water supply to serve each potential development. Instead, the City disregarded these requirements and merely concluded: “There are no known barriers to the completion of entitled and proposed developments in the City.” (*Id.* at p. B-5.) Due to these failures the City’s sites inventory is unsupported by substantially evidence and must be substantially revised to acknowledge its water supply constraints.

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At minimum, the City must revise Appendix B and its sites inventory as follows:

1. As more particularly described below, the City must adequately disclose its existing water supplies and related constraints. (See pp. 9-15, *infra*.) The City must disclose that its demands have outstripped its available groundwater supply. City must consult with the District to realistically discuss its existing constraints and the limited availability of the District's imported SWP supply.
2. Based upon these constraints and the Court's decision to void the City's approvals regarding the 995-unit Sage Ranch project, the City must recognize that there are "known barriers" to the completion of proposed developments in the City. Relatedly, the City must disclose that the Sage Ranch project is no longer an entitled development.
3. As the Court provided in the Sage Ranch matter, the City's discussion of planned water supply must analyze the actual source of water and demonstrate a reasonable likelihood of this water actually becoming available. (Ruling, pp. 5, 11.) Otherwise, the City is merely relying "paper water." (*Id.* at p. 5.) If the City intends to rely on the District's imported SWP supply, it must consult with the District. As provided in the Sage Ranch matter, the City cannot merely assume the District can meet the City's future demands without any facts or analysis regarding historical or future availability of SWP water. (Ruling, p. 9.)
4. The City's verification that each parcel included in the inventory "**must** have sufficient water, sewer, and dry utilities supply available and accessible to support housing development," must be supported by substantial evidence. (Ruling, pp. 17-18.) "[T]he verification must be based on 'firm indications the water will be available in the future, including written contracts for water rights, approved financing programs for delivery facilities, and the regulatory approvals required to construct infrastructure and deliver the water.' (*Vineyard, supra*, 40 Cal.4th at p. 433; Gov. Code, § 66473.7, subd. (d).)" (*Id.* at p. 17.) Government Code section 65583.2(b)(5)(B) provides that parcels included in the inventory *must* have a sufficient water supply because these parcels, under certain circumstances, may be developed *by right* (i.e., not subject to review under CEQA).

- a. If the City intends to rely on a mandatory plan or program to secure sufficient water, the sources of water purchased pursuant to such program(s) must meet the same standards. As the Court held, merely requiring a developer to secure water “as a condition of approval of building permits” is insufficient. (Ruling, p. 12.) “As stated above, “[t]he law’s informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize.” (*Vineyard, supra*, 40 Cal.4th at p. 432.) Without meaningful analysis, the availability of these additional sources of water discussed in the EIR amount to nothing more than ‘paper water’ unsupported by substantial evidence.” (*Ibid.*)
5. After adequately performing this required analysis, which will require consultation with the District, the City must realistically determine the number of units it can accommodate on each site. As currently drafted, the Updated Housing Element, to the detriment of the public, grossly overstates the amount of housing development the City can accommodate.

B. Program 5.5, “Facilitating Multi-Family Housing in Residential Zones” Must Be Deleted or Revised Once the City’s Sites Inventory Complies with the Law.

Program 5.5 proposes that the “*City shall amend the Zoning Code to permit by-right and without discretionary approval multi-family residential uses in the R-2, R-3, T-4, T4-.5, T-5, and SD-2.1 Zones – subject to the objective design standards of these form-based transect zones intended for multi-family uses.*” (Housing Element Update, p. 24 [italics].) The program would also significantly increase allowable density by allowing three-story “Courtyard Housing” and four-story “Lined Flex Building” and “Flex Building” developments in certain zones. (*Ibid.*) According to the Housing Element Update, currently “Multi-family housing is allowed by-right in the R-3 zone and with a Minor Use Permit (MUP), an administrative process, in the R-2, T4, T4.5, T5, and SD2.1 zones.” (*Id.* at p. C-38.) The MUP process contains various requirements, including that the project complies with all applicable laws (e.g., CEQA), and proposed use will not be materially detrimental to the health, safety, and welfare of the public or to property and residents in the vicinity. (*Ibid.*)

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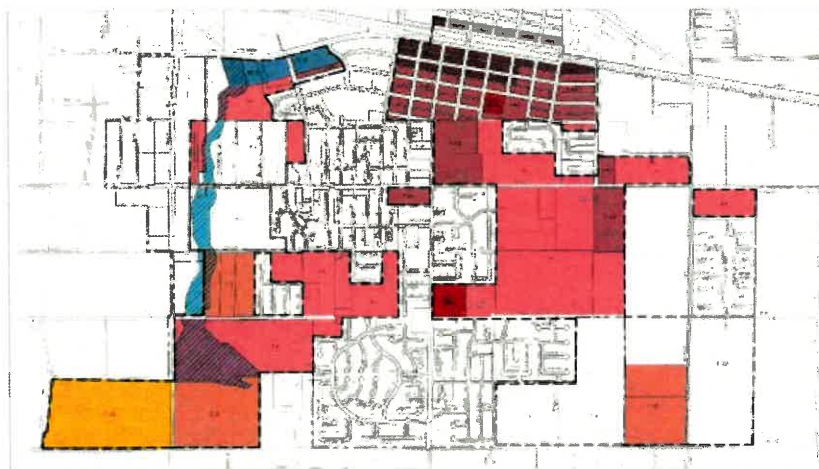
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It is not clear whether the City has a legal basis to implement this program. The “by right” provisions set forth in Government Code section 65583.2 only relate to “owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households during the planning period.” (See Gov. Code, § 65583.2(h).) But Program 5.5 does not mention any affordability requirement.

Nevertheless, the District understands that the City intends to rely on the streamlining provisions set forth in section 65582.2. However, as provided above, the City cannot rely on these provisions until, among other things, meaningfully evaluates water supply availability and ensures that each parcel included in its sites inventory “must have a sufficient water” supply. Implementing this policy without first performing this required analysis would result in significant unstudied impacts to the region’s water resources.

The quantified objective is to build “[a]t least 48 new multi-family residential units by 2031.” (Housing Element Update, p. 28.) But no information is provided regarding how many units, for example, a four-story “Flex Building” would include. It is also unclear if multiple buildings could be permitted as part of the same project. The “geographic targeting” for this program includes a substantial amount of apparently vacant land (in pink, purple, and blue).

Geographic Targeting: R-2, R-3, T-4, T4-5, T-5, and SD-2.1 Zones.



Excerpt from the Zoning Map, showing T4, T4.5, T5, and SD2.1 Zones in pink, purple, and blue.

Given this extensive area, it appears that this policy could lead to substantially more than 48 units of multi-family housing and could result in significant environmental impacts. Based on its familiarity with the Basin, the region’s water supplies, and the City’s inadequate water supply, the land area

suitable for inclusion in this program, if any, must be substantially smaller than that depicted above. At minimum, the City should not pursue this program without adequately analyzing the water supply requirements of projects that could reasonably foreseeably be developed under this program.

2. Appendix C Fails to Adequately Disclose the City’s Housing Constraints Related to Water Supply.

Government Code section 65583(a)(3) provides that the City’s Housing Element Update must identify land realistically suitable and available for residential development based on an analysis of the public facilities and services available to these sites. The City must also fully disclose and analyze the governmental environmental (i.e., non-governmental) “constraints that create a gap between the [City’s] planning for the development of housing for all income levels and the construction of that housing.” (Gov. Code, §§ 65583(a)(3), 65583(a)(5), 65583(a)(6).) After disclosing these barriers to housing, the City must demonstrate “local efforts” to remove these constraints that are realistic and supported by substantial evidence. (*Ibid.*) The Housing Element Law requires each affected city to analyze its particular obstacles that impact its ability to meet the state’s housing goals and policies.

The proposed Housing Element Update fails to comply with these mandatory requirements and must be substantially revised. Specifically, it fails to adequately disclose its inadequate water supply, which limits its capacity to accommodate additional growth. This tension between the state’s housing goals and the City’s water supply realities is driven by a combination of environmental and infrastructure constraints and governmental constraints.

A. Appendix C, Section C.4 Environmental and Infrastructure Constraints Is Not Supported by Substantial Evidence and Must Be Revised.

i. Section C.4.1, “Environmental Constraints,” Ignores Material Constraints and Must be Revised.

Section C.4.1, “Environmental Constraints,” must be revised to include the following information:

1. The City overlies the adjudicated Tehachapi Groundwater Basin (“Tehachapi Basin” or “Basin”). The sustainable yield of the Basin is

5,000 acre-feet per year (“AFY”). The City’s current groundwater pumping allocation is 1,959.33 acre-feet per year AFY.

2. Due to the City’s location in the Tehachapi Mountains at an elevation of 3,970 feet, the District must pump water about 3,500 vertical feet from the California Aqueduct on the San Joaquin Valley floor through a series of enormous pumping stations to bring SWP water into the City. (AR 5419, 5593.)
3. Due to the City’s relatively isolated location in the Tehachapi Mountains, the City’s only presently available water sources are derived from either groundwater or imported SWP water.
4. California’s highly variable precipitation is becoming increasingly variable with climate change.³

These constraints could also be addressed in the Housing Element Update’s discussion of constraints related to “water.” Ultimately, however, these are physical environmental constraints, as opposed to infrastructure constraints.

ii. Section C.4.2, “Infrastructure Constraints,” Is Contradictory, Is Not Supported By Substantial Evidence, and Omits Material Information Regarding the City’s Water Constraints.

This section must be substantially revised in light of the following comments.

1. Misleading Description Because The City’s Water Supply Constraints are Not Purely “Infrastructure Constraints and Are Predominantly Environmental.

This section is inherently misleading because it characterizes the City’s “water” constraints as “infrastructure constraints.” (Housing Element Update, pp.

³ / See, e.g., DWR, New Report Estimates Potential Water Losses Due to Climate Crisis, Actions to Boost Supplies (Jul. 31, 2024), [“According to the report, SWP delivery capability and reliability could be reduced as much as 23 percent in 20 years due to changing flow patterns and extreme weather shifts . . . A 23 percent decline would be equivalent to about 496,000 acre-feet a year, enough to supply 1,736,000 homes for a year”].)

C-54-C-55.) Rather, the City’s water constraints are primarily environmental. The City must disclose the interconnectedness between its environmental, governmental, and infrastructure constraints that limit its available water supply.

2. The City Must Disclose Its Inadequate Water Supply.

This section is contradictory and its conclusions are not supported by substantial evidence. Overall, the City concludes it “*does not experience issues with public infrastructure demands (electricity, gas, and telephone services), water district supply, and sewage and drainage systems, as these services have been determined to be stable and adequate for the foreseeable future.*” (*Id.* at p. C-54 [italics added].) The Housing Element Update then provides that “**[t]he inability to obtain additional water supply is a major constraint against providing additional housing.**” (*Id.* at p. C-55 [emphasis added].) It then summarizes the City’s proposed measures “**[t]o address the constraints of an inadequate water supply** for residents and businesses.” (*Ibid.* [emphasis added].) Thus, the City’s overall conclusion that its water supply, including supply from the District is “stable and adequate for the foreseeable future,” directly contradicts its admission that the City has “an inadequate water supply.”

The City plainly has an inadequate water supply. On June 18, 2024, the Sacramento Superior Court issued a ruling in favor of the District that invalidated the City’s approval of the 995-unit Sage Ranch development project. (Ruling, pp. 2, 5, 18.)⁴

The EIR also appears to simply assume that the City’s increasing demand for water, including the water required by the project, will be met by SWP water provided by the District under the M&I Agreement. The EIR declares that the City’s increased water demand in any given year is based on reasonable population growth, and the District “has agreed to provide [SWP] water to the City ... in perpetuity.” (AR 1788.) But the M&I Agreement does not provide nearly the level of certainty that the City claims.

*** The M&I Agreement hardly establishes that the District has “agreed to provide State Water Project water to the City of

⁴ / Due to the Court’s ruling, the Sage Ranch project is no longer an approved, entitled, or permitted development. The Housing Element Update must be revised accordingly. (Housing Element Update, pp. B-7, F-63, F-64.

Tehachapi in perpetuity,” and certainly not in amounts over 1,153 afy, which is the express upper limit on the District’s obligation to sell to the City. The EIR offers no basis or explanation for how or why it expects that the City will receive SWP water in excess of this cap, such as the projected amount of 1,560.5 afy in 2040. (AR 1792 [column H].)

The EIR also fails to meaningfully discuss whether there will be *enough* SWP water for the City. During the CEQA process, the District expressed its concern that it has received substantially lower amounts of SWP water in the recent years and that it anticipates not being able to meet the projected demands of the City and other customers of the District. (AR 1658- 1661.) In response, the City claimed that SWP water will be available because it “consistently has been available in varying amounts depending on environmental conditions (lower for dry years, higher for wet years).” (AR 1668.) But this conclusory statement is not supported by any facts or analysis regarding historical or future availability of SWP water. (See *ibid.*) Also, the fact that in recent years, the City has received an average of only 264 afy of SWP water should have prompted a practical assessment of whether amounts closer to the contractual cap of 1,153 afy would realistically even be available.

(Ruling, pp. 8-9.)

In the City’s Water Supply Assessment (“WSA”) for the Sage Ranch project, the City projected a 2.3% growth rate without the Sage Ranch project. By 2021, the WSA projected that the City would be utilizing every drop of its 1,897 AFY of native groundwater allocation and 347.5 AFY of SWP water purchased from the District. (AR 1792.) By 2024, the WSA projected that the City would be utilizing every drop of its 1,897 AFY of native groundwater allocation, and 505.8 AFY of SWP water purchased from the District. (AR 1792.) The WSA further projected that, without the Sage Ranch project, the City would run out of water by 2034 under a best case scenario.⁵

⁵ / The City’s unrealistic best-case scenario assumed that the District could provide the City with 1,153 AFY (the theoretical maximum available under the M&I Agreement) during all water year types. As the Court found, in recent years, the City has received an average of only 264 AFY of SWP water from the District.

The water the City relied upon was “nothing more than what the courts have called ‘paper water.’” (June 18, 2024, Sage Ranch Ruling (“Ruling”), p. 10; (*Vineyard Area Citizens for Responsible Growth*, supra, 40 Cal.4th at p. 432; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 720-723 [“future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations (‘paper water’) are insufficient bases for decisionmaking under CEQA”])).)

The Court’s decision to void the City’s approvals regarding the 995-unit Sage Ranch project illustrates the City’s lack of adequate water supplies to support an additional 902 units as recommended by the RHNA process. Though the court voided the City’s certification of the Sage Ranch environmental impact report (“EIR”), it appears that the Sage Ranch project is still proceeding and will therefore still require at least 350 AFY of water. Including Sage Ranch, although no longer entitled, there are a total of 1,526 new residential units that are entitled but not built according to Table B-3. (Housing Element Update, p. B-4.) Based on the WSA prepared for Sage Ranch (i.e., 995 units with a total demand of 350 AFY), these 1,526 units would require approximately 536.78 AFY at full buildout – water the City does not have. The City’s prior approvals regarding these other inadequately studied housing projects further constrain its ability to provide adequate water service. The City’s unbridled approach to growth is unsustainable.

3. The City’s description that it uses “groundwater pumped from the Tehachapi Basin aquifer for **all** potable water use” is misleading because it indicates that it only relies on its native groundwater supply. (Housing Element Update, p. C-85.) However, the Court found that in recent years the City’s demands have exceeded its pumpable groundwater rights for several years. (Ruling, p. 6 [“The EIR recognizes that the City’s 10-year average demand for water had been 2,017 afy as of 2019, suggesting that the City consistently has been and will be depending on SWP water to meet demand beyond the City’s groundwater allocation”].)
4. The Housing Element Update provides: “The City has about 2,000 acre-feet (AF) of native water rights from the adjudicated Tehachapi Water Basin.” (Housing Element Update, p. C-55.) The District understands the City’s adjudicated Base Water Rights are 2,939 AFY, and its allowable pumping allocation is 1,959.33 AFY. The City must provide the exact

quantity of its groundwater rights to permit meaningful evaluation of the Housing Element Update and the City's proposed programs.

5. The City stated that one of its "[t]wo primary options" to secure "additional sources of water to permit growth" is to "[p]urchase imported water from TCCWD to be recharged into the Tehachapi Water Basin for future use by the City." (Housing Element Update, p. C-55.) The City must disclose the constraints that affect the effectiveness of this option, such as the variability of the District's SWP supply and the District's already strained supply. Specifically, if the City intends to rely on the District's SWP supply, it must disclose the following constraints in the Housing Element Update:
 - Over the past 20 years, the Department of Water Resources ("DWR") has dramatically reduced the amount of State Water Project ("SWP") water it delivers to TCCWD. In an average water year, TCCWD can only expect to receive approximately 40% of its contracted water supply.
 - Further restricting TCCWD's ability to meet water demands is the fact that its pumping capacity is limited to a maximum of 10,000 acre-feet per year ("AFY"). Even though TCCWD's combined SWP allocation is 19,300 AFY, TCCWD cannot import more than 51.8% (10,000/19,300) of its Table A allocation in a given year. Thus, estimated deliveries must take into account the acute restriction on TCCWD's ability to import water in years when SWP allocation exceeds 51.8%.
 - When SWP allocations are adjusted to factor in system capacity, actual SWP deliveries are reduced to 33.2% on a 10-year average and 37.5% on a 15-year average.
 - In addition to the City of Tehachapi, TCCWD has Term M&I agreements with a number of other customers, including three public water purveyors. These are Golden Hills, Bear Valley and Stallion Springs community services districts. While these communities are master-planned, they also have significant numbers of undeveloped lots that will further increase District-wide demand for SWP water over time and thereby decrease SWP water available for City growth.
 - Given these factors, TCCWD does not have sufficient water supplies and recharge capacity to meet the City's anticipated demand. TCCWD's supply is already strained and imported water supplies vary year to year. TCCWD cannot reliably meet a fixed demand for residential development with a variable imported water supply.

6. To meaningfully evaluate its feasibility and potential water supply benefits, the City must provide additional information regarding its intent to “[c]onstruct a water recycling system to beneficially reuse City generated wastewater.” (Housing Element Update, p. C-55.) The District appreciates being recognized as both a responsible and a trustee agency that must approve this potential project. However, more information is required regarding the City’s efforts to pursue this project “over the last seven years,” how much the project would cost, whether there are barriers to financing, how much water it would treat, potential impacts on the Tehachapi Basin and adjudicated rights holders, and whether it would supply potable uses. Without a realistic assessment of the project’s feasibility and consequences, the City’s cursory discussion is merely speculation and cannot be relied upon.
7. The City must disclose the status of the District’s litigation against the City, including (1) the Court’s June 18, 2024 Ruling, which invalidated the Sage Ranch project; and (2) the Court’s March 6, 2025 Order Overruling the City’s demurrer and motion to strike as to the District’s Fourth Cause of Action, which alleges that the City has a pattern and practice of violating CEQA regarding its failure to adequately consider water supply before approving land use and development projects.

3. Program 3.10, “Water Supply for New Development” Is Not Supported by Substantial Evidence and Will not Meaningfully Address the City’s Inadequate Water Supply.

The City’s proposed Program 3.10 provides, in full:

As the City’s water operations have neared a point of equilibrium, it has sought additional sources of water to support growth. The City has and will continue to take proactive steps within its control to maintain and expand its water supply during the planning period, targeting a 30 acre-feet increase per year (cumulative). This will be achieved by a combination of the following actions:

- Purchase of available native water rights;
- Secure native water right leases;
- Secure imported water supply from the Tehachapi-Cummings County Water District (TCCWD); and

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- Conservation of water through irrigation conservation projects that either replace high-consuming water uses with lower-consuming uses (e.g., replace turf with drought-tolerant plants), or transfer irrigated property within the City from the City's potable water network to TCCWD's agricultural supply, freeing up City supplies for other uses.

(Housing Element Update, p. 21.)

First and foremost, increasing its water supply by 30 AFY is inadequate to satisfy the City's *existing* projected demands. (See above.) It is therefore insufficient to accommodate an additional 902 units during the 2023-2031 planning period. The City also fails to explain why it is targeting a 30 AF increase per year. As demonstrated by the Sage Ranch matter, the City's demands have already outstripped its supply. The District's capacity to provide additional water is severely limited and will remain substantially consistent with its historical deliveries to the City (i.e., approximately 264 AFY). (Ruling, p. 2.) As provided above, including the now-void Sage Ranch project, the City has already approved approximately 1,526 units that will demand approximately 536.78 AFY at full buildout. It would take the City eighteen (18) years to accumulate that quantity of water supply at a rate of 30 AFY. While the City did not provide sufficient information to determine its exact water requirements, it clearly needs more. The City must revise the Housing Element Update's analysis of water supply constraints to determine its projected shortfall.

Second, the City, without any explanation concludes that a combination of four (4) vague actions "will" achieve the desired 30 AFY supply increase per year. The Court already held that such conclusory statements unsupported by any fact or analysis regarding the realistic availability of that water does not constitute substantial evidence. (Ruling, pp. 5 ["future water supplies identified and analyzed must bear a likelihood of actually proving available"], 9, 11.)

No information is provided regarding purchasing or leasing native water rights. Temporary easements within the Basin are limited to a term of one-year and must be approved by the Watermaster. Given their short duration, such leases are not a reliable source of water supply. For the reasons provided above, the City cannot reliably "[s]ecure imported water supply from the Tehachapi-Cummings County Water District (TCCWD)." The District categorically rejects the City's proposal to "transfer irrigated property within the City from the City's potable water network to TCCWD's agricultural supply, freeing up City supplies

for other uses.”⁶ As the District will not agree to this proposal, please eliminate this option from the Project.

4. Like Other Jurisdictions With Inadequate Water Supplies, the City of Tehachapi Must Disclose That it Does Not Have Adequate Water Supplies to Meet its RHNA Allocation.

As a general policy, RHNA process “works to direct housing away from farmland, and towards cities which *normally* have adequate sewer and water service.” (Association of Monterey Bay Area Governments (Oct. 2022) Final 6th Cycle Regional Housing Needs Allocation Plan 2023-2031, p. 21 [*italics added*]).⁷ However, given California’s diverse geography, increasingly strained surface and groundwater supplies, and the effects of climate change, some cities do *not* have adequate water service to meet the state’s ambitious targets.⁸ Accordingly, the viability and sustainability of additional housing cannot be assumed. The Housing Element Law requires the City to meaningfully evaluate its constraints related to water supply, governmental, legal, and environmental factors. (Gov. Code, §§ 65583(a)(3), 65583(a)(5), 65583(a)(6).) This is not a pro forma exercise. Like other water-limited jurisdictions, the City must acknowledge its real-world water supply constraints, as recognized by the court in the Sage Ranch matter.

For example, the Final 6th Cycle Regional Housing Needs Allocation Plan adopted by the Association of Monterey Bay Area Governments (“AMBAG”) provides that the cities of Monterey, Carmel-by-the-Sea, Del Ray Oaks, Pacific Grove, Scotts Valley, Seaside all cited the lack of a sustainable and adequate

⁶ / The District is unfamiliar with this proposal and is not even sure if any such property exists.

⁷ / Association of Monterey Bay Area Governments (Oct. 2022) Final 6th Cycle Regional Housing Needs Allocation Plan 2023-2031, https://ambag.org/sites/default/files/2022-09/PDFA_AMBAG%20RHNA%202023-2031_Final%20Plan_091522V4.pdf.

⁸ / See, e.g., DWR, *New Report Estimates Potential Water Losses Due to Climate Crisis, Actions to Boost Supplies* (Jul. 31, 2024), [“According to the report, SWP delivery capability and reliability could be reduced as much as 23 percent in 20 years due to changing flow patterns and extreme weather shifts . . . A 23 percent decline would be equivalent to about 496,000 acre-feet a year, enough to supply 1,736,000 homes for a year”].)

water supply to support proposed housing developments. (Association of Monterey Bay Area Governments, *supra*, at pp. 146, 152, 176, 178, 186, 190, 222, 226.)⁹ Consistent with its comments as part of its RHNA process, the City of Monterey’s analysis of housing constraints related to water supply provided:

The primary constraint to development on the Monterey Peninsula is water supply. Most of the Monterey Peninsula, including the City of Monterey, is supplied by the California American Water Company (Cal Am) through wells in Carmel Valley, a dam on the Carmel River, and a well drawing from the Seaside Aquifer. Historically, the Carmel River provided the bulk of water supply to the Monterey Peninsula; however, in 1995, the State Water Resources Control Board (SWRCB) adopted Order WR 95-10, which found that Cal Am was diverting about 10,730 acre-feet per annum of water from the Carmel River without a valid basis of right and directed that Cal Am should diligently implement actions to terminate its unlawful diversion. The restrictions are in place to limit the amount of water from the Carmel River to protect critical habitat and endangered species; however, they have effectively halted the development of housing in the region and severely impacted the development of workforce housing, resulting in workers who work on the Monterey Peninsula living far outside the community and enduring long and expensive commutes.

*** The City is required by state law to plan for 3,654 new housing units. While the AMBAG RHNA allocation requires the City to plan for 3,654 new housing units, there may not be sufficient water supply allocated to meet water demands to construct all 3,654 units by 2031. The required RHNA allocation for the City of Monterey would result in approximately 7,819 new residents². The Monterey Peninsula Water Management District’s (MPWMD) adopted Technical Memorandum 2022 Supply and Demand Forecast³ only includes forecasted water demands for a population increase in

⁹ / For example, the City of Monterey disclosed: “The City does not have adequate water supplies. All development must stay-within the current site’s water allocation. The City is experiencing some housing growth as long there are adequate water credits onsite. . . .Overall, growth is dramatically impacted by the lack of a long-term, viable water supply.” (*Id.* at p. 176.)

Monterey of 1,469 new residents by 2045 (2045 Monterey projected population of 29,639 – 2020 Monterey population estimate of 28,170) (Table C-1, Adopted 2045 Water Demand Projections)

(City of Monterey, 2023-2031 Housing Element, Appendix C: Housing Constraints, pp. C-1-C-2.)¹⁰

The City of Tehachapi faces substantially similar water supply constraints to the City of Monterey. Both cities face “unique water supply challenges that are likely to be exacerbated by climate change.” (*Id.* at p. C-5.) Although for different reasons, both cities have limited groundwater supplies, with the Tehachapi Basin adjudicated in 1972 due to severe overdraft. They also have access to limited surface water supplies and are geographically isolated, which makes importing water supplies difficult, and, in some respects, infeasible. While growth in the Monterey Peninsula was constrained by the more recent State Water Resources SWRCB Order WR 95-10 in 1995, the City has been on notice for decades that it has a fixed groundwater allocation that imposes limits on its growth. In both cases, complicated and expensive projects are realistically the only way to increase each jurisdiction’s available water supply. Like the City of Monterey, the City must disclose its real-world water supply constraints and develop policies accordingly. Specifically, the City’s Housing Element Update must recognize:

The proposed Housing Element Update further demonstrates that the City has yet to grapple with the cumulative impacts of its growth and the real-world constraints on its water supply. Just like in the Sage Ranch matter, the City merely assumes that it can rely on the District to provide water supplies to an additional 902 units. The City therefore continues its pattern and practice of failing to adequately consider available water supplies.

The District requests that the City comply with its obligations under state law and work with the District to achieve their mutual goals. City staff should

¹⁰ / Unlike the City of Tehachapi, the City of Monterey included a table that shows the water required to meet the AMBAG regional growth forecast to disclose the relevant water supply gap. (*Id.* at Table C-1, p. C-3.) The City of Tehachapi must do the same.

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(March 2025)

March 21, 2025

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contact Tom Neisler, TCCWD General Manager, for proper consultation and coordination.

Very truly yours,

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