COMMENTS ON THE CAMBRIA COMMUNITY SERVICES DISTRICT
JANUARY 13, 2010 PROPOSED NEGATIVE DECLARATION
Submitted by

GREENSPACE THE CAMBRIA LAND TRUST

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Greenspace The Cambria Land Trust offers the following comments on the Cambria Community Services District's Negative Declaration for its proposed geotechnical test well project.

The purpose of the initial study is to "[P]rovide the lead agency with information to use as the basis for deciding whether to prepare an EIR or a Negative Declaration." *CEQA Guidelines §15063(c)(2)*. "CEQA contemplates serious and not superficial or pro forma consideration of the potential environmental consequences of a project." *Leonoff v. Monterey County Bd. of Supervisors, (1990) 222 Cal. App. 3d 1337*

The overarching theme of this Negative Declaration is the failure to include relevant information with the result that an informed decision making process and informed public participation has been precluded. This exclusion of necessary information has occurred because there is no discussion of cumulative impacts, the project is not fully designed or planned, the District decided to prepare the Negative Declaration before the Initial Study was written, and responsible and trustee agencies were not consulted before the District decided to prepare a Negative Declaration rather than an Environmental Impact Report.

At §15064, the CEQA (California Environmental Quality Act) Guidelines state that:

> (b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.

Careful judgment by the District based on information in the record including facts and data is required by the California Environmental Quality Act at all phases of review and analysis. The purpose of CEQA is to provide for informed decision making and when a decision is made it must be backed up by information in the record.

The legal standard for determining whether to prepare a negative declaration or an EIR is whether the project *may* cause a significant effect on the environment. According to Practice Under the California Environmental Quality Act (CEB 2003, §6.29, p. 273), the law includes a strong presumption in favor of requiring preparation of an environmental impact report. Under the "fair argument" standard, an agency must prepare an EIR "whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment." *Laurel Heights Improvement Ass'n v. Regents of the University of California (1993)6 C4th 1112, 1123*.

When an initial study results in adoption of a negative declaration, the courts require that the initial study must show, in a reviewable record, the basis for disputed findings that the project

will result in no significant impacts. *Sundstrom v County of Mendocino (1988) 202 CA3d 296,305; Citizens Ass'n for Sensible Dev.v County of Inyo (1985) 172 CA3d 151; CEB Practice Under the Cal. Env. Quality Act (2003) §6.17,p.264* To be legally defensible, the negative declaration must provide explanations for its conclusions of no impact. The proposed Negative Declaration does not show the factual bases for its findings in the record and does not support its conclusions with evidence in the record. This lack of supporting facts is discussed below.

The facts in the record do show that the District cannot lawfully make the proposed findings that the project will have no significant impacts on the environment and the impacts that are described in the record must be addressed in a full EIR.

The District did not include discussion of cumulative impacts as required.

As defined by §15355 of the CEQA Guidelines:

> "Cumulative impacts" refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.
>
> (a) The individual effects may be changes resulting from a single project or a number of separate projects.
>
> (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. (Emphasis added)

The proposed desalination facility is not only reasonably foreseeable – it is planned. Under CEQA, the District must carefully consider the cumulative effects of the proposed test well project in combination with the effects that the proposed desalination project may have on the environment at the site including the effects of seawater intake and effluent discharge and of construction and maintenance of intake and effluent pipes on the protected and designated Environmentally Sensitive Habitat Areas of Santa Rosa Creek, the lagoon, the sand spit, and the near shore marine habitats.

When a project is linked to and facilitates another planned project, the first step is to review, analyze and determine the cumulative impacts of both projects on the environment. The courts do not allow agencies to avoid the requirements of the California Environmental Quality Act by piecemealing, by"chopping up proposed projects into bitesized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial. (*Plan for Arcadia, Inc. v. City Council of Arcadia (1974, Cal App 2d Dist) 42 Cal App 3d 712, 117*)

The District is required to, but did not, assess at the Initial Study phase whether cumulative effects would require an EIR. CEQA Guidelines at §15064 state that:

> (h)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

As discussed in more detail below, CEQA broadly defines "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." *Guidelines, §15378(a),(c)* (Emphasis added) The whole action in this case is the geotechnical well drilling project and the planned desalination facility. It must be understood that the failure to analyze the cumulative effects of the proposed geotechnical well drilling project and the desalination facility together translates into missing information, missing analyses, and incomplete conclusions and findings as to the entire Negative Declaration and every category of environmental impact.

Greenspace asks the District to deny adoption of the Negative Declaration and direct preparation of an Initial Study that includes analysis of the cumulative impacts of the proposed geotechnical test well drilling project in combination with the planned desalination facility as required by law.

The whole project is not designed or described and as a result the environmental impacts of the whole project are not known and have not been analyzed.

The project plan is still in draft stage and all phases have not been determined or designed. It is described in the Initial Study and the Negative Declaration in concept only and there are multiple inconsistencies and disagreements between the project as described in the Negative Declaration and the Army Corps' Coastal Consistency Determination. Undertaking CEQA analysis before the project is designed precludes full review of the impacts that will be revealed by the fully designed and engineered project.

A review of the environmental impacts of a project is intended to inform an agency's decision about the project. The California Environmental Quality Act places requirements on the time when a project is defined and the scope of the definition. CEQA broadly defines "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." *Guidelines, §15378(a),(c)* (Emphasis added)

The Court in Planning and Conservation League v. Castaic Lake Water Agency (*[2009] 180 Cal. App. 4th 210*) clarified that "CEQA requires that '[a]n accurate, stable and finite description" of the project be established "early enough in the planning stages of [the] project to enable environmental concerns to influence the project's program and design, yet late enough to provide meaningful information for environmental assessment'."

"A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers

balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." (*County of Inyo v. City of Los Angeles, (1977) 71 Cal. App. 3d 185, 193*)

The record shows that, in violation of these CEQA requirements, the project that the District has described is not the whole action, is not an "accurate, stable and finite description" of the project and is, instead, curtailed, distorted, and contradictory. The project described in the Initial Study and Negative Declaration is not yet designed or engineered. As a result, all phases of the project planning and implementation are not considered, and impacts of the fully designed project have not been reviewed. Because there is no accurate, complete, and stable description of the whole project, it is impossible for the public and decision makers to know what the impacts of the project may be and to weigh the benefit of the project against the environmental costs as required.

<u>There is no accountability when the project is designed after the findings of no impacts have been adopted</u>.

If the Negative Declaration is adopted by the District Board, the project will be designed after the fact or simply proceed step by step with no accountability, with no complete project plans or described mitigation measures for environmental protection to which the developers could be held accountable.

And while some project elements may be unknowable until the drilling starts, the <u>whole project</u> that <u>can</u> be planned and engineered <u>must</u> be designed and described as required by law and subjected to open public scrutiny before the project can be deemed to have no significant impacts on the environment. What follows are examples of elements of the project that have not been planned.

It is undecided <u>how many monitoring wells</u> will be installed and monitored. The Negative Declaration states that there will be a maximum of three monitoring wells and the Army Corps' Coastal Consistency Determination states that there will be up to two monitoring wells for each test well for a total of six. The impacts of installation, monitoring and removal or abandoning the wells have not been described or analyzed.

It is as yet undecided <u>how long the monitoring period will last</u>. The Army Corps' CCD states that the monitoring wells may need to remain in place for up to one year while the Negative Declaration states that the groundwater monitoring may continue over two years period.

It is undecided <u>whether the PVC casings</u> on the 9 test and monitoring wells <u>would be fully removed or the upper 10 feet would be removed</u> and the lower 90 to 140 feet grouted and left in place. The Negative Declaration does not mention the option described in the CCD of <u>augering out the entire well casings and sifting the PVC shards from the sand</u>. Each of these options poses different important impacts to species, habitats, and public safety and access as discussed in more detail below.

If a finding of no significant impacts is approved and the augering method is later selected, there would be no environmental review of the impacts of potentially hundreds of pounds of PVC

shards scattered in the sand surrounding 9 wells, of the yet-to-be decided method of "sifting" the shards from the sand, of how the shards will be prevented from migrating beyond retrieval into marine, lagoon, and creek habitats, of the impacts to these habitats if shards do escape collection. If this after-negative declaration planning is allowed, there would be no analysis of how potentially thousands of sharp PVC shards would impact safety and thus beach access.

If the final plan design leaves all but 10 feet of the well casings in place, there will be no environmental review of possible impacts to the sand bar, the lagoon, and the creek; no review of whether the casings could be exposed by creek mouth shifting and wave action, broken up by debris flow in the creek, and how those events might impact habitats, species, safety and beach access.

It is undecided where the heavy equipment will be stored every night. While the plan described in the Negative Declaration states that all the heavy equipment will be moved at the end of every work day to the CCSD's maintenance yard, the Army Corps' Coastal Consistency Determination indicates that the drill rig, trailers, and other vehicles and equipment may be stored at the Shamel Park parking lot. The impacts of storing the equipment at the Shamel Park parking lot (damage to existing black top, toxic spills and leaks, restricted access to parking by the public, safety hazards posed by public access to equipment) are entirely different than the impacts that will be caused by the lumbering parade moving along Windsor to Heath Lane (stopping traffic on the only access road to and from Park Hill residences, the need for twice-daily traffic control, damage to the street surface, safety hazards, toxic spills and leaks along the road and in the CCSD maintenance yard). These impacts will go unexamined because the plan is incomplete.

How the Shamel Park ramp will be retrofitted is unknown. The concrete ramp on which the District intends to twice daily drive heavy equipment including a track mounted drill rig from Shamel Park onto the beach is thin, placed on fill, and worn by weather. It drops off sharply varying distances depending on wave action into rocks and sand.

The CCD states that the capacity of the ramp to support the weight of the drill rig is unknown and will be verified in the future. Common sense questions whether this ramp will hold up under the weight and use proposed. Since adequate access to the beach is not designed or engineered, there will be no environmental review of the impacts the new may have on public access to the beach, access to the ramp by rescue teams and equipment, and the environment.

There is no project plan describing the use of the access pathway through the park. This is a narrow, unpaved strip of creek bluff sandwiched closely between picnic tables and a tree-lined fence that sits directly on the steep bluff of Santa Rosa Creek. Since the District has delayed engineering and design of the access needed by the equipment until after the Negative Declaration deems there to be no impacts, there will be no environmental review of whether trees, fencing or picnic tables will have to be removed to accommodate the equipment. There will be no environmental analysis of whether that section of bluff can withstand the twice-daily weight of over 100,000 pounds of combined weight without collapse, of whether the strip of land will have to be paved to accommodate the heavy equipment and whether the creek bluff will have to be buttressed to prevent collapse.

Certainly the bluff-side road and ramp used by this heavy equipment twice a day during the construction phase and on an ongoing basis during the multiple year testing period will require engineering and a coastal development permit. This is especially probable in light of the fact that the project is in preparation of permanent desalination infrastructure at the site that will require permanent access for maintenance and repair. This, however, was not discussed since the Initial Study did not take cumulative impacts into consideration.

Also deferred for after-CEQA planning are the methods of returning core samples and native material into boreholes. Will the backfilling be done by shovels or by heavy equipment? Considering that evidence of mercury contamination in creek sediments has been provided to the District and considering that the consultants were concerned in particular in their proposal about how the "potentially contaminated soil from borings" would be handled, the District should analyze whether backfilling should occur at all and whether the core samples should be disposed off site. Deciding how to handle potentially contaminated core samples until after findings of no impacts have been adopted precludes accountability and public environmental review of mitigation measures.

Greenspace asks the Board to deny approval of the Negative Declaration and direct staff to first obtain a complete project plan and then prepare an Initial Study for full Board review so the Board can decide whether a Negative Declaration, a Mitigated Negative Declaration or a full Environmental Impact Report should be prepared for the project.

The District directed its consultant to produce a Negative Declaration before the Initial Study was written.

A second overarching problem with the Negative Declaration – that also excluded information from the decision making process – is the fact that the District decided that the project would cause no significant impacts before it had the information in the Initial Study on which that decision must be based. Again, the purpose of the initial study is to provide information to the District Board so it can decide whether it must prepare a full Environmental Impact Report or a Negative Declaration.

Unfortunately, the cart was put before the horse and the decision was made to produce the Negative Declaration (that there were no negative impacts) before the initial study was begun – before the information needed to know whether there would be impacts had even been gathered. The Initial Study was not used "to determine if the project may have a significant effect on the environment" as required by CEQA Guidelines §15063(a).

As the process moved forward, this foundational violation of CEQA, as a practical matter, necessarily spiraled into multiple violations as discussed in these comments.

The record shows this violation clearly. On January 5, 2010, after receiving significant, supported evidence submitted by citizens of potential negative impacts that the project may cause, the District Board refused to approve a categorical exemption from CEQA review as recommended by staff. Instead, the Board properly voted to direct staff to prepare an initial study for the project and return to the board at its January 21, 2010 meeting.

The minutes of the meeting show that no direction was given to staff to prepare a negative declaration and that the authority was not delegated to the General Manager or other staff member to make that decision on his or her own discretion.

Two days later on January 7th, a presumably solicited written proposal was directed to General Manager Tammy Ruddock by Firma Landscape Architects to write the initial study and a negative declaration – which, again, had not been authorized by the Board at the public meeting.

This "Proposal for Environmental Services – Geotechnical and Hydrogeologic Study at Santa Rosa Creek Beach" became the contract between the District and Firma and makes it clear that production of a negative declaration was decided and requested prior to the Initial Study and that the basis for findings in the Initial Study and Negative Declaration is the Coastal Consistency Determination that was produced by the Army Corps of Engineers. The contract states that "[F]irma will prepare an Initial Study and CEQA determination using the CCD …" and "[T]he conclusion of the CCD is that the Project will not have significant adverse impacts on the environment. … [O]n this basis it our [sic] understanding that the ACOE and the CCSD believe a Negative Declaration is appropriate."

Six days later on January 13th Mike Prater and David Foote signed the Initial Study determination that "…the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared." The Proposed Negative Declaration was, however, already completed and General Manager Ruddock signed it with the proposed findings of no significant impact. (Emphases in original)

This act predetermined – before information in the initial study could be reviewed by staff or the Board – that a negative declaration would be produced. This act precluded public deliberation of whether the project may have effects on the environment, side stepped an authentic and informed decision making process and violated statutory and due process requirements. Not only was the consultant directed to write a negative declaration in the absence of an informed, independent review of the project and the environmental setting in an initial study. The consultant admits that, while Mr. David Foote reviewed the public comments from the January 5, 1020 District Board meeting, the negative declaration was prepared, according to Mr. Foote "using the CCD" and on the "understanding that the ACOE and the CCSD believe a Negative Declaration is appropriate."

Thus, the Negative Declaration does not take into consideration multiple compilations of information and data including the data and information submitted by the public that amounts to substantial evidence that the project may have significant effects on the environment such that a full EIR is required under Public Res. Code §§21100, 21151 and the CEQA Guidelines §15064(a)(1), (f)(1).

The District Board did not engage in an independent analysis of the project and its potential effects on the environmental setting. The Negative Declaration was, as discussed above, predetermined before any information was gathered by an initial study and signed on the same day that the Initial Study was completed in the absence of an informed decision making process.

As a result, the Initial Study and the Negative Declaration are defective on multiple counts including the following.

- All phases of the project planning and implementation are not considered as described below. CEQA Guidelines 15063(a)(1)
- Opinions and conclusions that the project would have no significant impacts are not supported by facts, technical studies or other substantial evidence in the record. CEQA Guidelines 15063(a)(3)
- The District prepared a Negative Declaration when substantial evidence exists that the project may cause significant effects on the environment requiring an EIR. CEQA Guidelines 15063(b)(1)
- The District did not properly consult with responsible and trustee agencies prior to its decision to prepare the Negative Declaration to get recommendations on whether an EIR or negative declaration should be prepared in violation of Pub. Res. Code §21080.3 and CEQA Guidelines §15063(g).
- The negative declaration does not reflect the independent judgment of the District in violation of Pub. Res. Code §21082.1.
- The decision to prepare a negative declaration rather than an EIR was improperly made outside of any public meeting and without authorizing delegation of that decision to staff.

The Fact that the District did not consult with responsible and trustee agencies before deciding that the project would have no impacts on a highly sensitive environment with multiple protected species and multiple trustee agencies responsible for safeguarding those public resources is another critical omission of information from the decision making process. Pub. Res. Code §21080.3(a) states as follows:

> **(a)** Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and trustee agencies. Prior to that required consultation, the lead agency may informally contact any of those agencies.

Information from these agencies was omitted from the decision to prepare the Negative Declaration and, again, the informed decision making process was precluded.

Greenspace urges the District to deny approval of the Negative Declaration and direct staff to consult with responsible and trustee agencies so that the Board has the information required for making its decision whether to prepare a negative declaration or an environmental impact report as required by law.

<u>The project involves multiple significant negative impacts to the environment</u>.

As noted above, the legal standard for determining whether to prepare a negative declaration or an EIR is <u>whether the project *may* cause a significant effect on the environment</u> and the law includes a strong presumption in favor of requiring preparation of an environmental impact report. An agency must prepare an EIR "whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment."

To be legally defensible, the Negative Declaration must provide the factual basis for its conclusions of no impact, it must support the findings with evidence in the record. The proposed Negative Declaration does not show factual bases for its findings and does not support its conclusions with evidence in the record. This lack of supporting facts is discussed below.

The facts that do exist in the record show that the District cannot lawfully make the proposed findings that the project will have no significant impacts on the environment and the impacts that are described in the record must be addressed in a full EIR.

This project is proposed to be undertaken in a highly sensitive and protected area. It is categorically designated as Environmentally Sensitive Habitat Area in the Local Coastal Program. The lagoon and creek provide critical habitat for endangered and threatened species including the tidewater goby, red legged frog, and steelhead. The near shore area provides rich habitat for marine species. The sand bar on which the District proposes to drill up to 19 boreholes and install either six or nine PVC lined test and monitoring wells is a living habitat upon which species of shore birds depend. The Initial Study, Negative Declaration and the Army Corps' Coastal Consistency Determination describe multiple significant impacts that are not analyzed or not even acknowledged as impacts.

The Negative Declaration cannot be adopted and an EIR is required because the project may introduce as much as 1 ½ tons of PVC shards into the beach sand around nine well locations which would be sifted from the sand by an undetermined method.

The project involves removal of PVC pipe casings from three test wells and six monitoring wells. Page 8 of the Army Corps' Coastal Consistency Determination states that the PVC well casings may be "…completely removed by drilling out with a hollow-stem-auger drill rig" and that "[T]he individual casing pieces would then be sifted from the beach sand and removed." (Emphasis added) As described below, this could amount to approximately 1 ½ tons of PVC shards being deposited in and then "sifted" from the sand posing potentially significant impacts to the safety of beachgoers and to the sensitive beach, lagoon, and marine habitats and the species that live in those habitats. There is no plan described by which the shards would be safely and completely removed from the sensitive beach environment and disposed of as hazardous waste.

As described by the Army Corps, the project includes three test wells and six monitoring wells. The three test wells will be up to 150 deep and either be 6 or 8 inches in diameter (1-5-2010 CCSD staff report, p.3) and made of Schedule 40 PVC plastic piping – either 6 or 8 inches in diameter. Six inch diameter PVC pipe is .28 inches thick and weighs 3.53 pounds per foot. Eight inch diameter PVC pipe is .322 inches thick and weighs 5.39 pounds per foot.

The six monitoring wells will be two inch diameter Schedule 40 PVC pipe. The depth of the monitoring wells is not stated. For the purposes of this analysis it is assumed that the six monitoring wells will be 100 feet deep. Two inch diameter Schedule 40 PVC pipe is .154 inches thick and weighs .68 pounds per foot.

If the 6 inch diameter PVC is used for the test wells the augering removal would produce 1,996 pounds of PVC shards to be sifted from the sand around 9 locations over an approximately 800 foot strand of beach.

If the 8 inch diameter PVC is used for the test wells, the augering removal would produce 2,833 pounds of PVC shards to be sifted from the sand around 9 well locations over an approximately 800 foot strand of beach.

The size of the shards is not specified – only that they will be small enough to need to be sifted from the sand. PVC, polyvinyl chloride plastic is one of the most hazardous plastics on earth.

In violation of CEQA, the phase of the project involving collection of the shards by sifting has not been designed or analyzed for impacts. The impacts from the PVC shards were not addressed at all. There is no description of how 2,000 or more pounds of PVC shards would be "sifted" out of the sand. No mitigation measures are identified to protect the public from coming into contact on PVC chards during the auger drilling process. Plastic is known to be one of the most harmful substances to birds and there is no discussion of possible harms the shards could cause to shore birds who feed on sand dwelling species. No discussion of how the shards would be prevented from being carried into the marine, lagoon, land creek environments by flood and wave action. What impacts would the shards have on marine, lagoon, and creek habitats and animals? The toxic effects of leaching PVC are not identified and analyzed for possible impacts on marine species, sand dwellers, and shore birds.

Methods for collecting over 1 ½ tons of PVC shards and ensuring that the shards do not migrate into the lagoon and marine environments must be analyzed and adopted and the potential effects of the shards on beach safety and access for humans and the effects on species and surrounding habitats must be determined and mitigated.

Since the release of toxic PVC shards may have an impact on safe public access to the beach and on habitats and species, an EIR is required and the District cannot support approval of the proposed findings of no significant impacts related to hazards and impacts to biological resources.

The Negative Declaration cannot be adopted and an EIR must be prepared because the project may abandon 9 PVC well casings in the shifting path of the mouth of Santa Rosa Creek causing multiple significant impacts.

Since the plan is not finalized, an alternate to breaking up the entire 9 PVC well casings and sifting the shards out of the sand is augering out of the top 10 feet of each casing and abandoning the rest of the casings in place. Under this scheme, both the potential PVC shards and the abandoned casings must be addressed.

This project is proposed on the ever-changing spit of sand that is the mouth of Santa Rosa Creek. Where the creek opens in the winter is a function of nature – the volume and velocity of water coming down the creek, the tides, wave action and weather conditions. The creek mouth shifts during the winter and could expose the casings. The impacts of leaving these toxic PVC casings

in place must be analyzed. What impacts would hundreds of pounds of breaking-up PVC pipe have on the marine, lagoon, and creek habitats in terms of potential toxic releases into the water, the physical disturbance to habitat, and the potential of ingestion by fish, birds, and mammals? What impacts might the 9 casings have on lagoon and creek morphology and hydrology?

Since abandoning the structures of 9 well casings in this fragile, changing spit of sand may have impacts habitats and species, an EIR is required and the District cannot support approval of the proposed findings related to hazards and hazardous materials and of no significant impacts to biological resources.

The District's findings that the project will cause no impacts and less than significant impacts due to hazards and hazardous materials should not be adopted because toxic PVC shards in the beach sand pose significant hazards.

The release of thousands of pounds of toxic PVC shards into the sand may present significant hazards to barefoot beach goers. There is no plan as to how the toxic PVC shards will be contained, collected, and disposed of.

An EIR is required to address these hazards and the District cannot support an across-the-board approval of the proposed findings of no significant impacts related to hazards and hazardous materials.

The District's findings that the project will cause no impacts and less than significant impacts to biological resources should not be adopted because the daily uncontrolled movement of heavy equipment on the beach may cause significant impacts to sand dwelling animals and the birds that feed on them.

The Army Corps' Coastal Consistency Determination states that the following equipment will daily move on and off the beach into positions to drill up to 10 core-sample borings and 9 PVC-lined test and monitoring wells along an approximately 1,400 foot stretch of beach (pp. 4, 5, Figure 2):

- 41 foot long, 37,000 pound track-mounted drill rig or a 51,000 pound rubber tire drill rig of similar length.
- 49,875 pound support truck with truck mounted diesel engine.
- 40 foot long pipe trailer / rig on rubber tracks weighing slightly less than 37,000 pounds.
- four wheel drive pick up truck.

Six by 10 foot fiberglass mats will be placed under the drill rig as it moves along the beach to disburse the weight of the rig to approximately 425 pounds per square foot. Movement by these vehicles and equipment is unrestricted. There are no designated routes by which the equipment must move between well sites which subjects the entire beach to impacts.

The Corps' report identifies species of animals that live in the sand and the shore birds that feed on them but does not identify or discuss the direct impacts daily movement of heavy equipment will have on these animals and on the habitat upon which the animals depend. To what depth

will the sand habitat be compressed and rendered uninhabitable? To what depth will sand dwellers be destroyed? Since the plan does not restrict the twice-daily procession of equipment and multiple trips of trucks to specified routes on the beach, the impacts of drilling up to 19 boreholes and wells and of casing 9 wells could impact the sand habitat and sand dwellers on the entire beach area.

How long will it take for the sand habitat to be regenerated and repopulated by all the species that exist there now? What will be the immediate and long term impacts to bird species that depend on the sand dwellers for food? How will the capacity of the sand dwellers to process dead matter impact the beach environment? Will there be an increase in rotting marine matter?

These are far reaching, potentially habitat-wide impacts to multiple species. These impacts have not been addressed in the negative declaration and require analysis within a full EIR because these impacts may substantially degrade the quality of the environment, reduce the habitat for wildlife, cause wildlife populations to drop below self-sustaining levels, threaten to eliminate the community of sand dwelling animals, and restrict the habitat and range for endangered birds that feed on the sand dwellers. These facts and considerations indicate mandatory findings of significance. On these grounds the District Board should deny approval of the negative declaration and direct staff to prepare an EIR for the project.

<u>The findings that the project will cause no impacts and less than significant impacts due to hazards should not be adopted because the uncontrolled movement of trucks and equipment on the beach pose significant hazards.</u>

Shamel Park is heavily used by families, children including toddlers, and youth and adult sports groups. There are picnic tables, barbeques and a play ground directly adjacent to the access path proposed for twice-daily trips of heavy equipment and ongoing use by supply trucks.

There is no plan for how the public including children will be protected during the movement of equipment and trucks described above along the entire beach over the course of drilling up to 19 boreholes, test wells, and monitoring wells and casing the wells. This parade will include support trucks for transporting staff and soil samples in multiple daily trips on and off site. There is no plan for how the public will be protected from trucks moving up and down the beach and no acknowledgement that the ongoing movement of trucks, and the at least twice-daily movement of the drill rig, support truck, and pipe trailer will create a hazard to beachgoers and impact public access. There is no description of how the PVC pipe well casings will be installed and how these installations may create a hazard to the public that may need to be addressed.

There is no plan showing designated routes on which vehicles must travel. Thus, the whole beach will be impacted all day during daylight hours and there is no “safety zone” where beachgoers including children can safely enjoy the beach.

The only attempt to limit the hazard to public safety acknowledged in the Coastal Consistency Determination project description is a radius directly around the drill rig once it is in place and even this is not finally planned. In another indication that the project is in a draft phase, the

Army Corps' CCD states that a radius of 50 feet around the drilling rigs will be delineated while the Negative Declaration has the protective radius at 20 feet.

The statement in the Negative Declaration that "[P]ublic access onto the beach will be maintained at all times" is not only unsupported but false. The uncontrolled, ongoing movement of trucks and equipment will create a significant safety hazard for beachgoers. The District cannot support an across-the-board approval of the proposed findings of no significant impacts related to hazards and an EIR is required.

Public access will not, as stated in the proposed Negative Declaration, be maintained at all times.

As described above, during the drilling of the 10 boreholes, the collection of core samples, and the transport and installation of PVC well casings, the beach will be dominated by massive equipment and vehicles that will all move twice daily to and from sites covering nearly the entire beach. A support 4 wheel drive truck will drive back and forth as needed. Since the movement is not restricted to delineated routes, there are no safety zones in which the public can safely enjoy the beach. Not only will these vehicles lumber the length of the beach twice a day but they will also go through Shamel Park twice a day and similarly restrict safe access to people including children using the park.

The ongoing tests will also reduce public access due to the pumping equipment, generator, vehicles, the sediment bag, and the discharge of hundreds of thousands of gallons of sediment laden water onto the beach. Access will certainly be restricted from the areas around the 9 test and monitoring wells after the PVC well casings have been ground by auger bits into shards that will have to be sifted from the sand. The loss of access has been ignored.

The proposed findings that the project will cause no hazard related impacts and no significant impacts to biological resources should not be adopted because the drawdown pump tests are not designed and may have impacts on both humans, plants, animals and habitats.

According to the CCD, the project includes an undisclosed number of "drawdown" tests during which water will be pumped from the three test wells to determine the drawdown that occurs in the nearby monitoring wells. In the "constant discharge" test wells will be pumped continuously for 72 hours with a constant discharge of between 100 and 150 gallons per minute. The pumping will be powered by a generator located in the parking lot (using very long cord) or by a generator "mobilized" onto the beach by hand or by an ATV.

At 150 gallons per minute, 9,000 gallons would be discharged every hour, 21,600 gallons would be discharged each of the three days, and during the three days a total of 648,000 gallons of silty ground water would be discharged on the beach. The Negative Declaration states that a filter bag will be used to slow the velocity of the discharged water across the sand and to trap sediment.

Project plans do not include how this bag will be put into place, handled, and removed, how the sediment will be disposed of, how much space the bag will take up on the beach, whether people will be required to manage the pumping and discharge processes throughout the entire 72 hours

including during the night, whether a support vehicle will be on the beach during 72 hour test, how much noise the generator will make, whether lights will be required on the beach during the night time pumping, how potential spills of sediment will be prevented, whether sediments will be tested for contaminants such as mercury, whether sediment spills might impact species and habitats, whether contact with such sediments and discharges may be hazardous to humans, plants, and animals, or how beachgoers will be prevented from walking or playing in the discharge.

The District's findings that the project will cause no impacts and less than significant impacts to biological resources should not be adopted because the pump tests to determine drawdown of the water table may effect creek and lagoon flow and impact endangered and threatened species.

The test pumping may cause the water in the lagoon to be drawn down with potential impacts to critical habitat and endangered species. The lagoon and creek provide habitat for pond turtles, red legged frogs, tidewater gobies and steelhead. The lagoon, the creek, and the riparian area are designated Environmentally Sensitive Habitat Areas.

There is no evidence in the Initial Study that supports the Negative Declaration's finding that there will be no significant impacts to these species and their habitat through drawdown of the lagoon and creek. The only mention of potential mitigation states that "preliminary hydraulic modeling" will be performed to "confirm" that the lagoon will be outside the "cone of influence of the test well". No facts, technical studies or other substantial evidence related to the effectiveness or reliability of this modeling is offered to support the finding of no impact. In addition, the idea that it might be reliable is contradicted by logic.

Ironically, the "modeling" would be conducted to find out how the water levels surrounding the wells would be drawn down by the pumping. If "preliminary hydraulic modeling" could "confirm" where water would be drawn from and how much it would be drawn down there would be no need for the expensive well drillings and tests in the first place. The only way to "confirm" how the lagoon might be drawn down by the pumping is to do the pumping. That's why the pumping is proposed. This is one of the two concerns expressed by the consultant – that more information is needed about the effects of pumping on creek flow. Therefore, the project may impact endangered and threatened species and habitat by drawdown of the lagoon and a full EIR must be prepared.

The District's findings and conclusions that there will be no impacts to water quality due to disturbance of mercury in the soil are not supported by facts and the record shows that there may be significant effects to water quality due to such disturbance.

The District compares apples to oranges when it cites its "consumer confidence report" that mercury in the community's ground water is 40 times less than the maximum contaminant level allowed for potable drinking water. The issue is mercury that has migrated from upstream mining activities in the stream and settled into soils where it could be disturbed by both the geotechnical well drilling and the construction and operation of the seawater intake and effluent pipes associated with the proposed desalination plant.

The District has received data showing that highly toxic methylmercury has been found in creek sediments. Disturbance of methylmercury could impact all interrelated ecosystems involved in the proposed projects including the sandy beach, the marine environment, the creek, and the lagoon indicating that a full EIR must be prepared.

The CCD states that native plants on the site could be impacted by the project and the District's finding of no significant impact is not supported by the facts.

According to the Army Corps' CCD, the onsite vegetation is "dominated by native beach-bur" (emphasis added) and the Negative Declaration acknowledges that "beach-bur may be impacted by study activities." The conclusion that impacts would be insignificant is not supported and is contradicted by facts. A finding of no significant impacts to biological resources cannot be made.

The District's Mandatory Findings of Significance are not supported by facts.

There is no discussion of possible impacts in this section – only conclusions without supporting facts or information. There is no information in the record to make these findings. No data or reports or analyses or studies.

On the other hand, there is information in the record identifying endangered and threatened species that may experience a restricted range if the project causes a drawdown of the creek or lagoon. There is information in the Negative Declaration itself that the project may have the potential to degrade the quality of the environment by scattering PVC shards on the beach, leaving permanent PVC well casings in the sand spit, compressing the habitat of sand dwellers and crushing the animals themselves causing a reduction in food for birds.

The project does have impacts that would be cumulatively considerable which would have been revealed had the District examined the cumulative effects of the geotechical well drilling project in combination with the effects of the planned desalination facility construction and operation as required.

Basing the finding of no cumulative impacts on the statement that the project "involves temporary information gathering activities only" is disingenuous. The project description includes the possibility of leaving up to nine PVC well casings buried deep in the sand up to 140 feet among other things.

And the project will have substantial effects on human beings given the impacts of twice-daily movement of heavy equipment up and down the length of the beach with no limit to routes where they may be driven among other impacts described above.

The District should deny the Negative Declaration and direct staff to prepare EIR.

The District defers mitigation to future actions.

According to the Court in Sundstrom v County of Mendocino ([1988] 202 Cal. App. 3d 296):

> California Code of Regulations, title 14, section 15070, subdivision (b)(1) provides that if an applicant proposes measures that will mitigate environmental effects, the project plans must be revised to incorporate these mitigation measures "*before* the proposed negative declaration is released for public review . . . ." (Italics added.) ….
>
> By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.

The Court clarifies in Sundstrom that revising project plans to incorporate needed mitigations measures after adoption of the negative declaration is contrary to the law.

The Negative Declaration repeatedly engages in this violation. For example, "[I]f nesting plovers are identified the USFWS will be consulted and appropriate avoidance measures will be employed."

The District should deny the Negative Declaration because it unlawfully defers mitigation measures and direct staff to prepare a full EIR because the record shows that the project may cause significant impacts to the environment.