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November 21, 2016

Mr. John Osborne  
Senior Planner  
Department of Conservation and Development  
Contra Costa County  
30 Muir Road  
Martinez, CA 94553

Re: Tassajara Parks: County File #'s GP07-0009, etc.

Dear Mr. Osborne:

The following comments are submitted in addition to our previous comments on the subject DEIR and the Recirculated DEIR for the Tassajara Parks Project (the "Project")

#### MOU

The proposed Appendix L, the Memorandum of Understanding ("MOU"), purported purpose is to create a Preservation Agreement consistent with Contra Costa County's General Plan and the County's ordinance code, Section 821.018. We object to this MOU for the following reasons:

1. The so called Preservation Agreement provides no protection for the so called Agricultural Enhancement Area ("AEA") of the Tassajara Valley ("TV") that is not already protected by the County's ULL. No additional protections or preservations for TV are created by this MOU. The sole purpose of this MOU is to allow the developer to gain approval for his development by the very transparent means of a) setting aside 500 acres of his property for "non-urban uses...." and b), writing a check for \$4 million to the County. Since the 500 acres is already protected from non-urban uses by means of the County's ULL and current zoning, the MOU language provides nothing of value. Second, the \$4 million check to the county for "agricultural enhancement" is nothing more than a quid pro quo bribe for approval of the Project.

2. Since the ULL has been in effect, only one project has been approved using the 30-acre exception to the requirement for voter approval of changes to the ULL. This project was the Bay Point Waterfront project and moved approximately 21 acres of undeveloped open space and commercial recreation lands inside the ULL in exchange for moving 22 acres of regional parkland outside the ULL. Approval for the change was possible because the Board adopted the finding specified in Measure L that the change would more accurately reflect topographical characteristics or legal boundaries. The TP development does not qualify under that exception and does not qualify under any other exception.
3. We do not believe that the MOU in its current form constitutes a preservation agreement. The lands within the AEA are already fully preserved for agriculture and open space uses and protected from future urban development to the maximum extent feasible under the County's current ULL, General Plan, and County ordinances. Thus the preservation provisions are simply illusory. The MOU is simply a flawed device to gain approval of this specific project.
4. In any event, the MOU's preservation provisions are not enforceable in any meaningful way. Any of the cities or the county can withdraw from or violate the MOU's terms. The county and cities gain nothing from this agreement, unless the \$4 million "donation" is now the price of admission that the County demands for ULL violations and increased urban sprawl. In sum, the MOU would directly enable urban development on lands now outside the ULL, without securing any new, substantive protections for other agricultural or open space lands in exchange. For that reason, it does not constitute a "preservation agreement" for purposes of approving an expansion of the ULL under Section 82-1.018(a)(3) of the County Zoning Code.
5. The MOU actually encourages further development in the proposed TV AEA because the language of paragraph 13 in the Agreement allows any developer who a) finds 500 acres of land to "preserve" (not necessarily in the TV) and b), writes a check for \$4 million to the County, with this MOU in place could develop 30 acre parcels outside the ULL and within the AEA 17,718 acres. Multiple 30 acre developments could be created outside the ULL and within the AEA, without voter approval, as long as the developer cites this MOU and writes a \$4 million check.
6. Although we strongly disapprove of this project's so called MOU, we would propose the following wording in paragraph 13 of the Agreement section of the MOU if this EIR is to go forward:

*Notwithstanding anything contained in this MOU to the contrary, the Parties agree that in the event the County, in its discretion as Lead Agency, certifies an Environmental Impact Report (“EIR”) pursuant to CEQA and the CEQA Guidelines, and approves the project described in that EIR (“Project”) where the Project (1) permanently preserves at least Five hundred (500) acres of land in the Tassajara Valley for non-urban uses such as recreation, open space, agriculture, grazing, scenic, wetland preservation and creation, and habitat mitigation and provides an irrevocable donation at the time of Project approval of at least \$4 million (“Donation”) to an agricultural enhancement fund established by the County (“Fund”), for the exclusive purpose of furthering agricultural enhancement and other non-urban uses in the Tassajara Valley, the County shall have authority to find that this MOU satisfies the requirements of section 82-1.018(a)(3) of the County Ordinance Code. Notwithstanding anything contained in this MOU, this MOU expressly prohibits any future developer from using this MOU as justification for future development in the Tassajara Valley Agricultural Enhancement Area.*

The above suggested language for paragraph 13 is intended to a) insure that the developer donates land in the TV, b) immediately deposits \$4 million with the County at time of Project approval, c) that the funds are dedicated exclusively for use in the TV, and finally d), that this MOU is a single use device, not open ended, as presently written, to allow future 30 acre development chunks in the AEA.

Again, to be completely clear, this MOU is defective for the reasons cited above and others in comments previously submitted. The undersigned believes that the MOU as part of the EIR must be rejected by the Board of Supervisors

Sincerely,

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Richard L. Fischer  
Co-founder  
Tassajara Valley Preservation Association

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Gretchen Logue  
Co-founder  
Tassajara Valley Preservation Association