

Monterey Peninsula Unified School District

PK Diffenbaugh, Superintendent
700 Pacific Street, Monterey, CA 93940
Phone: 831.645.1204 Fax: 831.649.4175

June 27, 2023

Re: Housing element program for ministerial permitting of employer-sponsored housing

Dear Planning Director:

The Monterey Peninsula Unified School District (MPUSD) depends on highly qualified and diverse staff in order to meet our educational mission. One of the key constraints to attracting and retaining staff is Monterey County's critical housing shortage and high cost of living. In order to be a proactive part of the solution to our housing crisis, MPUSD is interested in building housing for our employees on underutilized District owned property. I write to propose a program to make production of employer-sponsored housing more feasible on District owned property.

As you update your General Plan Housing Element for the 6th Cycle RHNA, state law requires you to review and mitigate governmental constraints to housing production. A critical governmental constraint is the uncertainty, delay, and expense of obtaining entitlements to build housing.

To address this constraint, the District proposes the adoption of a policy and a program for streamlined ministerial permitting of employer-sponsored housing. Modeled after existing law AB 2295 (which was enacted in 2022 and becomes fully effective on January 1, 2024) and SB 35, the program would be implemented by an ordinance providing ministerial approval of multi-family infill housing that meets objective development and design review standards. This housing would be offered first to our employees, then to public agency employees, and then to members of the public in accordance with existing law. The program would not apply to environmentally sensitive sites or sites with existing affordable housing or historic buildings.

Our proposal is set out in the sample language for a policy and program that could be incorporated into your forthcoming Housing Element update.

Ministerial permitting of infill housing through a well-defined, streamlined process would enable local educational agencies to make significant investments in housing to ensure the continued vitality of our educational program, our employees, and the community at large.

We welcome the opportunity to discuss our proposal with you and address your questions.

Sincerely,

PK Diffenbaugh
Superintendent

Attachment: Proposed Employer-Sponsored Housing Policy and Program

Proposed Housing Element Policy

The City shall provide streamlined ministerial permitting for workforce housing on sites owned by a local education agency.

Proposed Implementing Program

The City shall enact an ordinance to provide for ministerial permitting of housing development projects on sites owned by a local education agency.

Qualifying projects: Projects shall meet the following qualifications:

- The project shall meet all requirements of AB 2295, including but not limited to:
 - The project is on an infill site as defined by AB 2295;
 - The project qualifies as an allowable use under AB 2295;
 - The project meets the density and height standards applicable under AB 2295; and
 - The project meets other objective development standards applicable under AB 2295.
- The project shall not be sited on habitat for endangered, rare or threatened species; farmland of statewide and local importance; wetlands; earthquake/ seismic hazard zones; federal, state, and local preserved lands, NCCP and HCP plan areas, and conservation easements; riparian areas; Department of Toxic Substances Control (DTSC) facilities and sites; landslide hazard, flood plains and, floodways; and wildfire hazard as determined by the Department of Forestry and Fire Protection.
- The project does not require demolition of deed-restricted affordable units, rent-controlled units, or historic structures on a national, state, or local register and will not use a mobilehome site.
- The project does not require subdivision.

Application: The City shall notify a sponsoring employer within 60 days of submission whether or not an application meets objective zoning standards. Absent such notice, applications shall be deemed to meet objective zoning standards.

Design Review: The City shall notify a sponsoring local education agency within 90 days of submission whether or not an application meets objective design review standards. Absent such notice, applications shall be deemed to meet objective design review standards.

Expiration: Approvals shall expire within 3 years unless vertical construction is in progress. A one-year extension may be granted if the employer sponsor demonstrates significant progress such as applying for a building permit.

July 15, 2023

City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940

RE: [Del Rey Oaks Public Review Draft Housing Element](#)

Denise Duffy & Associates Team:

LandWatch has reviewed [Del Rey Oaks Public Review Draft Housing Element](#). We applaud the attention and policy focus to support the City's most vulnerable community members. We support the goals to eliminate constraints and make it easier to build housing consistent with Regional Housing Needs Assessment (RHNA). However, we are concerned that the draft relies exclusively on sites on the former Fort Ord to comply with RHNA. These sites are very problematic and may not be feasible for residential development. Set forth below are specific comments on the draft site inventory and proposed policies and programs.

A. Unexploded ordnance constraints require explanation and may render Fort Ord sites infeasible.

The Housing Element provides

... the State of California has approved the transfer of the entirety of the portion of the former Fort Ord within City limits to the City for all uses approved by the City General Plan currently. Additionally, a major portion of the interior of Site 1 is cleared for residential use. Additional lifting of covenants and restrictions in portions of the former Fort Ord is required to be approved by the State of California Department of Toxic Substances Control (DTSC) prior to provision of residential use on all of the former Fort Ord sites.

(Housing Element, p. 4-22.) Figures 3 and 4 and Table 3-4 indicate that the General Plan does not designate the Fort Ord sites (sites K1, K2, 1, and 1A) for residential use but only for General Commercial-Visitor, Service-Commercial, and Office-Professional. Table 3-4 acknowledges that the City would have to amend its general plan to designate these sites for residential use. Accordingly, there is no evidence that the State of California has approved any of these sites for residential use. Typically, DTSC cleanup requirements for residential use are significantly more stringent than its requirements for commercial use.

The Housing Element should

- identify what sites included in the site inventory are not yet approved for residential use
- explain whether those sites will require additional cleanup
- explain what party would be required to pay for the expense of getting DTSC approval of residential land use including, if required, the expense of additional testing, monitoring, insurance, or cleanup
- provide some estimate of the ranges of these expenses
- explain whether development of residential uses would be economically feasible in light of these expenses.

If development of residential uses would not be economically feasible, the Housing Element should not include these sites in its site inventory.

B. Water constraints require explanation and may render Fort Ord sites infeasible.

The site inventory states that “water and sewer services, as well as other utilities, are planned for all four [Fort Ord] sites.” (Housing Element, p. 3-12.) Table 3-4 indicates for each Fort Ord site that water service is expected to be provided by MCWD: “Water and sewer service is planned but would need to be extended from General Jim Moore Boulevard, where the existing MCWD infrastructure water and recycled water lines are in place.”

Table 3-4 indicates that a 10 acre-feet water supply is “assigned” to sites 1a and K1 and that a 50 acre-feet supply is “assigned” to site K2. Table 3-4 indicates that Site 1 “has an existing water allocation from the MCWD in accordance with MCWD’s 2020 Urban Water Management Plan.”

There are numerous problems with the claim that the Fort Ord sites have a water supply or even a plan for a water supply.

First, the MCWD UWMP does not “allocate” water to local jurisdictions. To the contrary, the MCWP UWMP states that the “Marina Coast Water District Board does **not** allocate water supply to projects, but instead advises customer land use jurisdictions as to the current and historic water use within their boundaries and the estimated remaining supply available for new developments.” (UWMP, p. 13, emphasis added, available [here](#).) These purported “remaining supplies” referenced in the UWMP are based on allocations made by the Fort Ord Reuse Agency of a purported 6,600 AFY water supply allocated to the Army by MCWRA in 1997, purportedly transferred to FORA, reallocated by FORA to seven land use jurisdictions, and then “sub-allocated” by those jurisdictions to specific projects. (UWMP, pp. 13-14.) The MCWD UWMP Appendix E-3 contains a memorandum purporting to report the current state of jurisdictional water allocations in the former Fort Ord. However, nowhere does the UWMP indicate that MCWD has allocated or assigned water to the Del Rey Oaks sites 1, 1a, K1, or K2, much less the specific amounts claimed in the Housing Element.

Second, FORA no longer exists. The Housing Element should explain whether and how allocations made by FORA remain relevant as a basis to claim a water supply.

Third, contrary to the Housing Element, site 1 does not have “an existing water allocation from the MCWD in accordance with MCWD’s 2020 Urban Water Management Plan.” Appendix E-3 to the UWMP indicates that there have been no sub-allocations to specific projects by Del Rey Oaks. The Housing Element should explain what it means by claiming that water has been “allocated” or “assigned” to specific parcels, because there is simply no evidence in the UWMP that this has been done.

Fourth, the Housing Element fails to acknowledge that there is a 6,160-unit cap on water supply connections for new residential development in the former Fort Ord and that cap has been reached. The Fort Ord Reuse Agency placed a 6,160-unit cap on new residential units to be served by groundwater in the former Fort Ord. Although FORA no longer exists, MCWD entered into a settlement agreement with LandWatch and Keep Fort Ord Wild that requires that MCWD continue to honor and enforce that 6,160 unit cap. A copy of that settlement agreement is attached to these comments.

The rationale for the cap was the well-known problem of overdraft and seawater intrusion, which is particularly aggravated by coastal pumping, and for which no public agency has yet implemented or even committed to any effective solutions. For example, the Groundwater Sustainability Agencies have not committed to or implemented projects and management actions found to be sufficient to ensure sustainability in the Monterey or 180/400-Foot Aquifer subbasins. Nor have MCWD and Monterey One Water yet committed to a project to supply recycled or surface water sufficient to support new housing units.

The most recent accounting of units approved under the 6,160-unit cap indicates that the cap was essentially exhausted with the approval of the Campus Town Project in 2019. The Campus Town FEIR states that “there is a remaining capacity of 1,495 new residential units as of May 3, 2019,” which is “adequate to accommodate the Project, which proposes 1,485 new residential units.” (City of Seaside, Campus Town FEIR, p. 3-170, excerpt attached.) **In short, as of 2019, there were only 10 units left in the 6,160-unit residential connection cap, beyond which MCWD is contractually bound by its settlement agreement not to provide any additional residential connections served by groundwater.** MCWD has no apparent source of water supply that is not dependent on groundwater to serve new residential development in Del Rey Oaks. Accordingly, the Housing Element should be revised to acknowledge these substantial constraints on water supply for residential development on the Fort Ord sites. Unless the Housing Element can identify a plan to provide water supply despite these constraints, it should not rely on the Fort Ord sites as part of its housing site inventory.

C. Proposed policies and programs require measurable objectives or objective standards.

Many policies identified in the Housing Element are couched in unenforceable wishful language without clear and measurable objectives or objective standards. Accordingly, we comment only on the programs purporting to implement these policies, which programs by default should be the locus of enforceable language, e.g., the term “shall.” Measurable objectives and objective

standards should quantify the expected or intended attainment of housing element goals, e.g., so many ADU permits issued, so many grant applications submitted, so many days for permit issuance, how much fees will be reduced for affordable units. We appreciate that results may be uncertain, but it is difficult to hold decision makers accountable for results when programs are expressed in terms of "considering," "encouraging," "supporting," or "working with."

Program A1 to provide sites to accommodate the City's RHNA relies exclusively on development of Fort Ord sites. No portion of the RHNA is assigned to sites outside Fort Ord. As noted above, residential development on Fort Ord may be infeasible in light of water supply constraints and the costs to address contaminated sites that have not been cleared for residential uses. The Housing Element should be revised to assign some portion of the RHNA to sites outside Fort Ord, including

- ADU sites
- Vacant and non-vacant residentially zoned sites that could be upzoned to provide higher densities for new development or redevelopment
- Vacant or non-vacant commercially zoned sites that could be rezoned to accommodate both residential and mixed-use projects

Program A2 to develop higher intensity mixed use zoning in existing mixed-use areas and to develop mixed use zoning in visitor serving areas makes sense. However, the program lacks any measurable objective or objective standard.

The program should identify specific sites for higher densities, identify the higher densities to be allowed, and specify the visitor serving areas to be zoned for mixed use.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

The claim that this program is not needed to meet the 6th Cycle RHNA should be eliminated because it cannot be accurate in light of the water supply and site contamination constraints that may render Fort Ord sites infeasible, as discussed above.

Program A3 to permit small-lot Planned Unit Developments for multiple cottage or bungalow-type homes should include a provision for ministerial approval without a conditional use permit or PUD permit based on objective development and design review standards. We discuss below the need for objective standards and for ministerial review and approval of residential uses in all zones that permit residential uses.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program B1 to "require development agreements or adopt an inclusionary and affordable housing ordinance that meets the RHNA inclusionary housing requirements" by 4Q25 lacks any definition of what would constitute meeting "the RHNA inclusionary housing requirements." Jurisdictions may

elect to use an inclusionary ordinance as part of a housing element designed to meet its RHNA, but there is no requirement to do so.

In pursuing Program B1, the City should first assess whether an inclusionary housing ordinance will enhance or hinder housing production. If upon further analysis, the City determines that an inclusionary ordinance is appropriate, Program B should be revised to specify the objective parameters and/or the measurable objectives of an inclusionary ordinance. For example, which development projects would be subject to an inclusionary ordinance? What percentage of affordable units would be required, and for what affordability category (e.g., very low, low, or moderate income)?

Furthermore, it is not clear whether the provision for an “affordable housing ordinance” is distinct from the provision for an “inclusionary” ordinance. If so, what would an “affordable housing ordinance” provide? The program should be revised to explain what is meant by an “affordable housing ordinance” and to provide objective standards and measurable objectives for such an ordinance if it is distinct from the proposed inclusionary ordinance.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program B2 to “facilitate affordable housing for all income levels” lacks any measurable objectives or objective standards. Its language is entirely precatory, e.g., “support,” “seek to participate in and promote,” and “work with.” It is entirely unclear what activity this program would actually require the City to undertake. The program cannot be relied on as evidence that the City can meet its RHNA.

Program B3 to provide information and incentives for the use of housing vouchers fails to specify measurable objectives or objective standards.

The program should be revised to specify what “incentives” would be provided, both for landlords of existing units and for developers of new rental units. Incentives for new rental units could include increased density and/or development concessions similar to those provided under the state density bonus law.

If there are no effective incentives available to existing landlords, the program should be revised to mandate acceptance of housing vouchers.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program B4 to provide preferential housing for City residents and workers should be revised to explain why such a program would have any effect on whether the City meets its RHNA. Even if such a program were legal, it is difficult to understand how preferences for certain tenants would provide any incentives for provision of housing. Indeed, such a program may have the unintended

consequence of discouraging development of housing units if developers feared that implementation of preferences might limit effective demand and therefore limit prices or rental rates.

Program B5, to develop a density bonus consistent with the state density bonus law, should be revised to provide for a density bonus and/or development concessions in excess of the minimum requirements under state law. For example, the City could provide for bonuses equal to 150% of the state minimum. Such an approach is being taken by Sand City, which is proposing a 250 percent density bonus as long as 15% of the units are affordable to lower income households.

Program B5 should also be revised to clarify that density bonuses are available not just for residential zones R-1 and R-2, but also for all other zones in which residential uses are permitted, including D, C, C-1, and ST zones.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program C2 to encourage ADU construction references measures to encourage ADUs such as fee reductions or waivers and expedited permit processing but fails to specify measurable objectives or objective standards. The program should be revised to specify a time period in which the ADU ministerial permit would be granted or the application deemed approved. Specific fee waivers should be identified.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

D. Additional programs are required.

Upzoning: The Housing Element should be revised to include a program to upzone existing residential areas to allow development or redevelopment at higher densities. Higher densities make affordable housing possible and are particularly appropriate along transit routes. The program should identify specific areas to be upzoned for higher densities and identify the higher densities to be allowed.

Elimination of R1 zoning: The Housing Element should be revised to eliminate R1 zoning and to allow multifamily residential uses in all residential areas.

Objective standards: We support the call for streamlining regulations. The Housing Element should require the development of objective development and design review standards to streamline review and provide for certainty. The City's commitment to objective standards should be made evident by using language like "shall develop" in the program, not language like "should consider." With or without ministerial by-right approval processes, objective standards accelerate permitting and increase certainty. Development of objective standards should be required for development in

residential zones R-1 and R-2 and all other zones in which residential uses are permitted, including D, C, C-1, and ST zones.

Ministerial approvals: Using objective development and design review standards, the Housing Element should provide for ministerial permitting of multifamily infill developments that meet these objective standards. The Housing Element should require by-right, ministerial permitting for any 100% residential unit project in the residential zones R-1 and R-2 and all other zones in which residential uses are permitted, including D, C, C-1, and ST zones as follows:

- Development review for residential projects in R-1, R-2, D, C, C-1 and ST zoning districts shall be ministerial, based entirely on objective development standards, e.g., the lot size, density, setback, and height standards set out in Tables 4-1 and 4-3
- Design review for residential projects in R-1, R-2, D, C, C-1 and ST zoning districts shall be ministerial, based entirely on objective standards;
- 100% residential projects shall be permitted in D, C, C-1, and ST zoning districts;
- 100% residential projects in D, C, C-1, and ST zoning districts shall not require a PUD permit or a conditional use permit; and
- 100% residential projects in D, C, C-1, and ST consistent with objective development and design standards shall not require any form of discretionary permit.

By relying on objective standards and ministerial review and by eliminating the need for discretionary permits, residential project permitting can be greatly streamlined. Discretionary review could be provided for projects seeking a variance from objective standards.

Ministerial permitting of residential projects in infill areas like Del Rey Oaks is appropriate because CEQA review should be accomplished at the program rather than the project level. That is, CEQA review should take place when the City amends its General Plan or zoning code, not when a developer comes to the City with a conforming project.

The City should continue to require discretionary review with site-specific CEQA review of projects on specified sites that are environmentally sensitive, e.g., habitat for endangered, rare or threatened species; farmland of statewide and local importance; wetlands; earthquake/seismic hazard zones; federal, state, and local preserved lands, NCCP and HCP plan areas, and conservation easements; riparian areas; Department of Toxic Substances Control (DTSC) facilities and sites; landslide hazard, flood plains and, floodways; and wildfire hazard as determined by the Department of Forestry and Fire Protection. (See, e.g., Gov. Code 65913.4(6)(B) through (K) [sites excluded from ministerial permitting in SB 35].) Concerns for gentrification and historic resources could be addressed by continuing to require discretionary review for projects on existing affordable housing, mobile home sites, or historic resources. (See, e.g., Gov. Code 65913.4(a)(7), (10) [SB 35].)

In sum, only non-infill projects, projects on environmentally sensitive sites, projects on historic sites, or projects on sites already providing affordable housing should be excepted from ministerial permitting, e.g., by using the criteria for such sites specified in SB 35. (Gov. Code, §§ 65913.4(a)(2), (6), (7), (10).)

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Delapa". The signature is stylized with a large, circular initial "M" and a long, sweeping underline.

Michael Delapa
Executive Director

Attachments:

Settlement Agreement between MCWD, LandWatch, and Keep Fort Ord Wild
Excerpt from City of Seaside, FEIR for Campus Town project

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of September 17, 2018 by and between Petitioners LANDWATCH MONTEREY COUNTY (“LandWatch”) and KEEP FORT ORD WILD (“KFW”) (collectively referred to herein as “Petitioners”) and Respondents MARINA COAST WATER DISTRICT and MARINA COAST WATER DISTRICT BOARD OF DIRECTORS (collectively referred to herein as “MCWD”). The parties hereto are LandWatch, KFW, and MCWD, and may be collectively referred to as the “Parties” and individually as a “Party.”

DEFINITIONS

For the purposes of this Agreement, including the Exhibits hereto, the terms listed below are defined as follows:

1. “Actions” mean *LandWatch Monterey County v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000877) and *Keep Fort Ord Wild v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000883).
2. “ATW” means advanced treated water.
3. “Agreement” means this Settlement Agreement.
4. “Annexation” means the Annexation Application to the Local Agency Formation Commission (“LAFCO”) of Monterey County approved by the MCWD Board of Directors in Resolution No. 2018-09 on February 20, 2018.
5. “CEQA” means the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.).
6. “CEQA Guidelines” means the Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations, title 14, Section 15000 et seq.)
7. “County” means the County of Monterey.
8. “Court” means the Superior Court of the State of California in and for the County of Monterey.

9. "Effective Date" means the date this Agreement takes effect. The Effective Date shall be the date the Parties sign this Agreement, as indicated below. If the Parties sign this Agreement on different dates, then the latest date of signing by a Party shall be the Effective Date.

10. "Final Land Use Approval" means that a parcel or a portion of a parcel has received final land use approval by the Land Use Jurisdiction through a specific plan, master plan, or individual project approval adopted or approved in reliance on a post-1997 CEQA document prepared and approved by the Land Use Jurisdiction for that plan or project. "Final" means that the Land Use Approval has not been challenged in court and the limitations period for a challenge has run.

11. "FORA" means the Fort Ord Reuse Authority.

12. "Future Annexation of Deleted Areas" means approval by MCWD of any application for annexation of any of the parcels or portions of parcels listed in Exhibit A to this Agreement that were included in the Project but are not included in the Modified Project, or approval by LAFCO of such an application.

13. "GS Plan" means the future Groundwater Sustainability Plan for the Monterey Subbasin.

14. "IS/ND" means the Initial Study/Negative Declaration adopted by the MCWD Board of Directors on February 20, 2018 for the Ord Community Sphere of Influence Amendment and Annexation.

15. "KFOW" means Keep Fort Ord Wild, the unincorporated association identified in the *Keep Fort Ord Wild v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000883), including its officers, directors, and agents, to the extent the officer, director, or agent is acting in his or her capacity as a representative or agent of Keep Fort Ord Wild.

16. "LAFCO" means the Local Agency Formation Commission of Monterey County.

17. “LandWatch” means LandWatch Monterey County, the California non-profit public benefit corporation identified in *LandWatch Monterey County v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000877), including its officers, directors, and agents, to the extent the officer, director, or agent is acting in his or her capacity as a representative or agent of LandWatch Monterey County.

18. “LUJ” means Land Use Jurisdiction.

19. “MCWD” means Marina Coast Water District.

20. “Modified Project” means the MCWD’s Ord Community Sphere of Influence Amendment and Annexation Application that the Board authorized MCWD’s General Manager to file with LAFCO on February 20, 2018, as modified by MCWD to be consistent with the terms of this Agreement. The Modified Project includes all the parcels or portion of parcels included in MCWD’s February 20, 2018 approvals with the exception of the parcels or portions of parcels listed in Exhibit A to this Agreement.

21. “Petitioners” means the Keep Fort Ord Wild and LandWatch Monterey County, individually and jointly, including each entities’ officers, directors, and agents.

22. “Project” means MCWD’s Ord Community Sphere of Influence Amendment and Annexation Application that the Board authorized MCWD’s General Manager to file with LAFCO on February 20, 2018.

23. “SGMA” means the Sustainable Groundwater Management Act (SGMA).

24. “SOI” means Sphere of Influence.

25. “SVBGSA” means the Salinas Valley Basin Groundwater Sustainability Agency.

RECITALS

A. On February 20, 2018, the Board of Directors for Respondent MARINA COAST WATER DISTRICT (“MCWD”) adopted Resolution No. 2018-09 that authorized the filing of a Sphere of Influence (“SOI”) amendment and annexation application with the Local Agency Formation Commission (“LAFCO”) of Monterey County and adopted the Initial Study/Negative Declaration (“IS/ND”) for the Ord Community Sphere of Influence Amendment and Annexation (“Annexation” or “Project”) pursuant to the California Environmental Quality Act (“CEQA”). As part of Project approval, the Board of Directors adopted findings that the Annexation is not a project subject to CEQA; made findings that the Annexation is exempt from CEQA; authorized MCWD’ General Manager to submit an Annexation application to the Monterey County LAFCO; and directed staff to hold off submitting an application for the Annexation to LAFCO for 30 days to further work with Seaside County Sanitation District.

B. MCWD’s position is that it is contractually obligated to provide water, wastewater and recycled water service to the former Fort Ord (or “Ord Community”) under the Water/Wastewater Facilities Agreement with the Fort Ord Reuse Authority (“FORA”) dated March 13, 1998 and under contracts with the U. S. Army,-

C. FORA will cease to exist in 2020, unless extended by State legislation.

D. MCWD’s position is that it holds title to, and is the owner of, all of the public water, sewer and recycled water infrastructure within the Ord Community.

E. MCWD has made significant investments in the Ord Community in the form of water, wastewater and recycled water infrastructure, addition of staff and equipment, adoption of redevelopment standards and procedures, and the preparation of urban water management plans, master plans, and water supply project studies.

F. Annexation of the part of the Ord Community that MCWD currently serves for water supply and wastewater collection would provide improved governance for customers by virtue of their inclusion in the jurisdictional boundaries of the District for purposes of voting for, and being eligible to seek election to, the District’s Board of Directors.

G. In the LAFCO-adopted 2006 Municipal Services Review, the LAFCO made the determination that MCWD may consider annexation of the former Fort Ord portion of its service area.

H. MCWD exercises no land use authority for the areas to be annexed, therefore the boundary modification cannot grant any entitlement for land uses in the affected area.

I. The FORA Annual Report for FY 2016-17 on page 7 reports that total new residential units actually built within the former Fort Ord through FY 2016-17 was 909 residential units. The report projected an additional 234 new residential units would be built during FY 2017-18.

J. Except for the northern portion of the Marina Municipal Airport, a substantial portion of the former Fort Ord is located within the Monterey Subbasin along with all of MCWD's existing production wells. The southern portion of the former Fort Ord is within the adjudicated Seaside Subbasin and MCWD has no production wells within the Seaside Subbasin.

K. MCWD under a coordination agreement with the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) will be preparing the Groundwater Sustainability Plan (GS Plan) for the Monterey Subbasin pursuant to the Sustainable Groundwater Management Act (SGMA). The GS Plan will among other requirements identify the sustainable yield, the sustainability goal, and the sustainable groundwater management program for the Monterey Subbasin in accordance with SGMA. The GS Plan is required to be adopted no later than January 31, 2022 pursuant to Section 10720.7(a)(2) of the Water Code.

L. Pursuant to contractual rights to recycled water, MCWD is entitled to 1,427 AFY of advanced treated water from the Pure Water Monterey Project for use within the former Fort Ord. The first 600 AFY of that advanced treated water ("ATW") is projected to be available for use within the former Fort Ord in 2019. The intent of this ATW is to replace and offset existing groundwater irrigation uses and to provide ATW for uses within yet-to-be-built residential developments thereby eliminating the use of groundwater for non-potable uses for those new units.

M. Petitioner LandWatch filed a Petition for Writ of Mandate on March 9, 2017 against MCWD that challenged the Board of Directors adoption of Resolution No. 2018-09 pursuant to CEQA, including adoption of the Initial Study/Negative Declaration for the Annexation, its CEQA findings regarding the Annexation, and its authorization of an application to LAFCO for the Annexation.

N. Petitioner KFOW filed a separate Petition for Writ of Mandate on March 9, 2017 against MCWD that also challenged the Board of Directors adoption of Resolution No. 2018-09 pursuant to CEQA, including adoption of the Initial Study/Negative Declaration for the Annexation, its CEQA findings regarding the Annexation, and its authorization of an application to LAFCO for the Annexation.

O. On April 27, 2018, the Parties participated in a mandatory settlement conference pursuant to CEQA.

P. Following the April 27, 2018 settlement conference, the parties continued to engage in settlement discussions and exchanged proposed settlement terms until reaching this agreement.

Q. The Parties to this Agreement believe that their mutual interests will be best served if any and all legal disputes between them included in the Actions are resolved without further litigation.

[End of Recitals]

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS

The above recitals are true and are hereby incorporated by reference as part of this Agreement.

2. OBLIGATIONS OF MARINA COAST WATER DISTRICT

A. **Agreement Binding on MCWD.**

MCWD will abide by all terms of this Agreement for the term of this Agreement, including but not limited to the terms set forth in this Section.

B. **MCWD's Obligations Relating to Annexation Application.**

1. The MCWD Board will promptly consider approving a resolution in the form of the draft resolution attached as Exhibit B to this Agreement, which the Parties intend will modify its February 20, 2018 project approvals to delete parcels and portions of parcels that do not have Final Land Use Approvals.

2. If LAFCO objects to the exclusion of any parcels or portions of parcels set forth in this agreement or requires their inclusion in MCWD's proposed annexation, MCWD agrees to confer with Petitioners in good faith to amend this Agreement or take other action necessary to achieve the intent of this Agreement and to address LAFCO's concerns, if agreed by Petitioners.

3. Pursuant to contractual rights to recycled water, MCWD is entitled to 1,427 AFY of advanced treated water from the Pure Water Monterey Project for use within the former Fort Ord. The first 600 AFY of that advanced treated water (ATW) is projected to be available for use within the former Fort Ord in 2019. The intent of this ATW is to replace and offset existing groundwater irrigation uses and to provide ATW for uses within yet-to-be-built residential developments thereby eliminating the use of groundwater for non-potable uses for those new units. With reference to this provision, MCWD agrees that it will not provide, or commit to provide in the future, a groundwater-sourced water supply for new residential units in Fort Ord beyond the 6,160 of total new residential units within the former Fort Ord in accordance with Fort Ord Reuse Plan Section 3.11.5.4(b)(2) of the FORA's Development and Resource

Management Plan, as that number may be amended from time to time by FORA, and subject to the Groundwater Sustainability Plan for the Monterey Subbasin as approved by the California Department of Water Resources.

4. If the Exhibit B resolution is approved, MCWD will promptly file a Notice of Exemption and a Notice of Determination as specified in Exhibit B, notify LAFCO of the Modified Project, and will support and defend the Modified Project in good faith and consistently with this Agreement.

5. Notwithstanding Section 20, Notices, MCWD shall notify Petitioners as soon as practical by email, and no later than one (1) business day, of service of any initial pleadings on MCWD challenging the approval of the Modified Project.

6. If litigation is filed by a third party before the limitations period has expired for challenging approval of the Modified Project, MCWD agrees to confer with Petitioners in good faith to consider amending this Agreement or taking other action necessary to achieve the intent of this Agreement and to address LAFCO's concerns, if agreed by Petitioners.

3. PUBLIC AGENCY DISCRETION

The Parties understand and acknowledge that approval of the actions under this Settlement Agreement cannot be guaranteed, and may be subject to procedural or substantive obligations under CEQA, the CEQA Guidelines, the State Planning and Zoning Law, or other laws potentially applicable to such approvals. The Parties further understand and acknowledge that land use regulations involve the exercise of a public agency's police power and, at the time of executing this Agreement, it is settled California law that government may not contract away its right to exercise its police power in the future. (*Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 182–83; *Avco Community Developers Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800 (1976).)

4. OBLIGATIONS OF PETITIONERS

A. Agreement Binding on Petitioners.

Petitioners LandWatch and KFOW will abide by all the terms of this Agreement for the term of this Agreement, including but not limited to the terms set forth in this Section.

B. Dismissal of Lawsuit.

Petitioners agree to file fully executed requests for dismissal “with prejudice” in each Action within fifteen (15) days after the expiration of the 35-day limitations period for the Notice of Exemption and the 30-day limitations period for the Notice of Determination filed by MCWD pursuant to Section 2(B)(4), whichever is later, provided that no litigation has been filed by any third party challenging approval of the Modified Project. If litigation is filed by a third party before the limitations period has expired challenging approval of the Modified Project, Petitioners agree to confer with MCWD in good faith to consider amending this Agreement or taking other action necessary to achieve the intent of this Agreement, if agreed by MCWD.

C. Petitioners’ Agreements Regarding Future Approvals

1. If the Exhibit B resolution is approved by the Board, Petitioners shall not oppose MCWD’s annexation application and any discretionary approvals that may be required from any governmental agency to implement the Modified Project. Petitioners agree the spreadsheet and maps attached as Exhibit “A” to this Agreement list all of the parcels in dispute and how they are resolved by this Agreement. Petitioners agree the maps included in Exhibit “A” will resolve any question regarding what parcels and portions of parcels in dispute are to be excluded from MCWD’s annexation application.

2. If LAFCO objects to the exclusion of any parcels or portions of parcels set forth in this agreement or requires their inclusion in MCWD’s proposed annexation, Petitioners agree to confer with MCWD in good faith to amend this Agreement or take other action necessary to achieve the intent of this Agreement and to address LAFCO’s concerns, if agreed by MCWD.

3. Provided the Exhibit B resolution is approved by the Board and is being implemented and conducted in a manner consistent with its approval by MCWD’s Board and in accordance with the terms of this Agreement, Petitioners agree to the following:

a. Petitioners shall not submit any written comments or present oral testimony to MCWD or LAFCO objecting to the Modified Project or Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018;

b. Petitioners shall not submit written comments or present oral testimony to MCWD or LAFCO in connection with any environmental review of the Modified Project or

Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018;

c. Petitioners shall not file, join, or support any litigation challenging the Modified Project or Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018; and

d. Petitioners shall not fund any litigation by any other party challenging the Modified Project or Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018.

3. Without limiting the generality of the foregoing, Petitioners shall not directly or indirectly participate in any activities described in Section 4(C)(3) above by or on behalf of any person or entity that is not a party to this Agreement.

4. Other than as specified in this Agreement with regard to MCWD and LAFCO, Petitioners shall retain and do not waive their rights in any way with regard to any actions by agencies, including land use actions related to water supply and groundwater. Petitioners retain and do not waive their right to challenge Future Annexation of Deleted Areas if the area to be annexed has not received a Final Land Use Approval subsequent to the effective date of this Agreement.

5. **ATTORNEY FEES AND COSTS**

Provided that the 35-day limitations period for the Notice of Exemption and the 30-day limitations period for the Notice of Determination filed by MCWD pursuant to Section 2(B)(4) expires and no litigation has been filed by any third party challenging approval of the Modified Project by the MCWD Board of Directors: (1) the Parties agree not to file a memorandum of costs with the Court, or otherwise claim or seek to recover costs or attorneys' fees against any other Party to this Agreement in connection with the Actions, and (2) as against any other Party to this Agreement, the Parties will not retain any rights to attorneys' fees or costs arising out of the Actions and no right to fees or costs in connection with the Actions accrue to any third parties. The Parties' counsel have been made aware of the releases of attorneys' fees and all other claims including, but not limited to, claims pursuant to Code of Civil Procedure section 1021.5 contained in this Agreement.

6. **TERMINATION**

This Agreement shall continue in effect from its effective date until the earlier of the following dates: (a) the date all parties agree in writing to terminate this Agreement; (b) litigation is filed by a third party before the limitations period has expired challenging approval of the Modified Project and the Parties are not able to reach an agreement to modify this Agreement satisfactory to all Parties; or (c) the date MCWD elects to terminate this Agreement in the event Petitioners fail to cure a breach of Sections 4(C)(3)(a) or 4(C)(3)(b) as provided in Section 17(B) of this Agreement. If MCWD elects to terminate this agreement based on the foregoing provision, MCWD shall provide Petitioners with notice 10 days in advance of the termination of this Agreement.

7. **NO ADMISSIONS**

The Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission by any Party of any inadequacy or impropriety in connection with the allegations contained in this Action. This Agreement is the result of a compromise and nothing contained herein shall be construed as an admission of liability, responsibility, or wrongdoing by any Party hereto. It is agreed that all statements contained herein and the conduct of any Party in connection with this Agreement shall be inadmissible as evidence under Federal Rules of Evidence 408 and California Evidence Code § 1152(a), except that the statements contained herein shall be admissible in any action to enforce or interpret this Agreement.

8. **MODIFICATIONS; WAIVER**

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, representations, and understandings of the Parties. This Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

Petitioners for and in consideration of the mutual promises and consideration set forth in this Agreement, expressly release, waive and relinquish and forever discharge MCWD from all

claims, demands, actions, liabilities and causes of action, of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, or hereafter discovered or ascertained, in law or equity, by reason of any matter, cause or thing whatsoever, it has with respect to MCWD's February 20, 2018 approval of the Project including claims set forth in the Petitions, and those claims Petitioners could have included in their Petitions or otherwise presented in the Actions. Petitioners understand, acknowledge, and agree that this Agreement constitutes a complete and sufficient defense barring any such claim, and MCWD can rely upon this Agreement as a complete defense.

Upon the Effective Date of this Agreement and consistent with Petitioners' representations and warranties contained herein, and except as to such rights or claims that may be created by this Agreement, Petitioners fully release and discharge MCWD, and all its directors, employees, attorneys, and consultants, from any and all claims of attorneys' fees or expenses in the Actions, including without limitation claims for private attorney general fees pursuant to Code of Civil Procedure section 1021.5, out-of-pocket expenses and costs, arising from the events and permit approval process that are the subject of the Actions and the Actions themselves.

Upon dismissal of the Actions as provided herein, and except as to such rights or claims that may be created by this Agreement, MCWD fully releases and discharges Petitioners and all its directors, employees, attorneys, and consultants, from any and all claims relating to attorneys' fees or expenses in the Actions, including those for attorneys' fees, out-of-pocket expenses and costs of suit, and claims for malicious prosecution and abuse of process arising from the events and permit approval process that is the subject of the Actions and the Action themselves.

The Parties acknowledge and agree that all rights under Section 1542 of the California Civil Code are expressly waived. That section provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that their attorneys-at-law have explained to it the meaning and effect of this statute. The Parties understand fully the statutory language of Civil Code Section 1542

and, with the understanding, the Parties nevertheless elect to, and do, assume all risk for claims released under this Agreement heretofore and hereafter arising, known or unknown, and the Parties specifically waive any rights it may have under Civil Code Section 1542. The Parties fully understand that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed by it to be true, that each party expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall be and remain effective, notwithstanding such difference in facts.

_____	LandWatch Monterey County (Initials)
_____	Keep Fort Ord Wild (Initials)
<u>WPM</u>	Marina Coast Water District (Initials)
<u>WPM</u>	MCWD Board of Directors (Initials)

Petitioners hereby further agree never to commence, prosecute, or fund against MCWD, any litigation based upon any rights, liens, claims, demands or causes of action waived, released or discharged by this Agreement. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or Party which arises out of the rights, liens, claims, demands or causes of action waived, released and discharged by this Agreement.

The Parties acknowledge that this Agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The Parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as an admission on the part of any Party of any liability regarding the claims in the Actions, and nothing herein shall be admissible in any proceeding as an admission of any factual matter, liability or fault against any Party.

9. **AMBIGUITIES AND INTERPRETATION**

This Agreement shall be deemed to have been drafted equally by all of the Parties and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each Party acknowledges that it is represented by counsel, and has had the benefit of advice from counsel with respect to this Agreement.

and, with the understanding, the Parties nevertheless elect to, and do, assume all risk for claims released under this Agreement heretofore and hereafter arising, known or unknown, and the Parties specifically waive any rights it may have under Civil Code Section 1542. The Parties fully understand that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed by it to be true, that each party expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall be and remain effective, notwithstanding such difference in facts.

 MDD **LandWatch Monterey County (Initials)**
 Keep Fort Ord Wild (Initials)
 Marina Coast Water District (Initials)
 MCWD Board of Directors (Initials)

Petitioners hereby further agree never to commence, prosecute, or fund against MCWD, any litigation based upon any rights, liens, claims, demands or causes of action waived, released or discharged by this Agreement. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or Party which arises out of the rights, liens, claims, demands or causes of action waived, released and discharged by this Agreement.

The Parties acknowledge that this Agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The Parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as an admission on the part of any Party of any liability regarding the claims in the Actions, and nothing herein shall be admissible in any proceeding as an admission of any factual matter, liability or fault against any Party.

9. AMBIGUITIES AND INTERPRETATION

This Agreement shall be deemed to have been drafted equally by all of the Parties and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each Party acknowledges that it is represented by counsel, and has had the benefit of advice from counsel with respect to this Agreement.

and, with the understanding, the Parties nevertheless elect to, and do, assume all risk for claims released under this Agreement heretofore and hereafter arising, known or unknown, and the Parties specifically waive any rights it may have under Civil Code Section 1542. The Parties fully understand that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed by it to be true, that each party expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall be and remain effective, notwithstanding such difference in facts.

_____ Land Watch Monterey County (Initials)
MS _____ Keep Fort Ord Wild (Initials)
_____ Marina Coast Water District (Initials)
_____ MCWD Board of Directors (Initials)

Petitioners hereby further agree never to commence, prosecute, or fund against MCWD, any litigation based upon any rights, liens, claims, demands or causes of action waived, released or discharged by this Agreement. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or Party which arises out of the rights, liens, claims, demands or causes of action waived, released and discharged by this Agreement.

The Parties acknowledge that this Agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The Parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as an admission on the part of any Party of any liability regarding the claims in the Actions, and nothing herein shall be admissible in any proceeding as an admission of any factual matter, liability or fault against any Party.

9. **AMBIGUITIES AND INTERPRETATION**

This Agreement shall be deemed to have been drafted equally by all of the Parties and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each Party acknowledges that it is represented by counsel, and has had the benefit of advice from counsel with respect to this Agreement.

10. CONVENIENCE AND REFERENCE

The headings and numbers used in this Agreement are included for the purpose of convenience of reference only and they shall not be used to explain, limit, or extend the meaning of any part of the Agreement.

11. MISTAKE

Each of the Parties to this Agreement has investigated the facts pertaining to the Petition and to this Agreement to the extent each Party deems necessary. In entering into this Agreement, each Party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.

12. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable, in which case the Parties shall work in good faith to amend this Agreement and/or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the court.

13. NO PRIOR ASSIGNMENT

The Parties represent and warrant that they have not sold, assigned, transferred, hypothecated, pledged, encumbered or otherwise disposed of or set over to any person or entity, in whole or in part, voluntarily or involuntarily, any claim, demand, or right covered by this Agreement.

14. SUCCESSORS AND ASSIGNS BOUND

The terms of this Agreement shall be binding and inure to the benefit of the Parties hereto and their successors, assigns, heirs, and representatives.

15. NO THIRD PARTY BENEFICIARIES

The Parties do not intend to create any third party beneficiaries to this Agreement. This Agreement is not intended to confer upon any person other than the Parties any rights or remedies thereunder and no person or entity other than the Parties shall have standing to enforce this Agreement.

16. GOVERNING LAW; VENUE

This Agreement shall be construed under and governed by the laws of the United States and the State of California with venue in Monterey County.

17. REMEDIES FOR BREACH OF AGREEMENT

A. Notice and Opportunity to Cure

The Parties agree that they will promptly meet and confer in good faith with regard to any alleged material breach of this Agreement. Any Party shall give written notice within 30 days of the discovery of any alleged material breach of this Agreement. Upon receipt of any written notice of material breach, the receiving Party has 30 days to cure the alleged material breach. If after 30 days the alleged breach has not been cured to the satisfaction of the Party alleging the material breach, the alleging Party may seek a court order demanding specific performance consistent with subparagraph B of this Section. The Party alleging the breach may not unreasonably refuse to accept a Party's cure of an alleged breach of an affirmative obligation as set forth in this Agreement. The Parties agree that the formal written withdrawal of a comment letter or oral testimony submitted to a governmental agency is an adequate for any violations of Sections 4(C)(3)(a) or 4(C)(3)(b) of this agreement. Any enforcement of this Agreement may be sought against only the Party or Parties claimed to be in breach of the Contract, as well as their heirs, successors, assignees, and transferees.

B. Remedy if Party Fails to Undertake an Obligation under This Settlement Agreement

The Parties agree that specific performance is the exclusive remedy for enforcement of this Agreement. The Parties further agree that MCWD may elect to terminate this Agreement if Petitioners fail to cure a breach of Sections 4(C)(3)(a) or 4(C)(3)(b) of this Agreement within 30 days as specified in subparagraph A of this Section. This Agreement shall be admissible in any proceeding for its enforcement in accordance with Sections 1118 and 1123 of the California

Evidence Code. The prevailing party in any action to enforce this Agreement shall be entitled to their reasonable attorney fees and costs.

18. AUTHORITY TO ENTER INTO THIS AGREEMENT

Each person signing this Agreement on behalf of a Party hereby represents and warrants that he or she has complete authority to bind that Party to the terms and conditions of this Agreement.

19. SUBJECT TO PUBLIC AGENCY APPROVAL

The Parties acknowledge that the Agreement is subject to approval by the MCWD Board of Directors. The individual signing this Agreement on behalf of MCWD represents that the governing body of that public agency has approved the Agreement.

20. NOTICES

All notices required under this Agreement shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested). Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. All notices required under this Agreement shall be given to the Parties at their addresses set forth below:

IF TO LANDWATCH:

Michael Delapa
LandWatch Monterey County
306 Capitol St. Suite 101
Salinas, CA 93901
execdir@landwatch.org

With copies to:

John H. Farrow
M. R. WOLFE & ASSOCIATES, P.C.
555 Sutter Street, Suite 405
San Francisco, CA 94102
jfarrow@mrwolfeassociates.com94111
Telephone: (415) 369-9400
Fax: (415) 369-9405

IF TO KFOW:

Michael Salerno
c/o Molly Erickson,
STAMP ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
erickson@stamplaw.us
Telephone: (831) 373-1214
Facsimile: (831) 373-0242

With copies to:

Molly Erickson,
STAMP ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
erickson@stamplaw.us
Telephone: (831) 373-1214
Facsimile: (831) 373-0242

IF TO MCWD:

Keith Van Der Maaten
General Manager
Marina Coast Water District
1 Reservation Road
Marina, CA 93933-2099
(831) 883-5938
KVanDerMaaten@mcwd.org

With copies to:

Howard F. Wilkins III
Christopher Stiles
Remy Moose Manley, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
(916) 443-2745
hwilkins@rmmenvirolaw.com

Roger K. Masuda
David L. Hobbs
Griffith & Masuda
A Professional Law Corporation
517 E. Olive Street
Turlock, CA 95380
(209) 667-5501
rmasuda@calwaterlaw.com

21. COUNTERPART EXECUTION

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinafter written.

LANDWATCH MONTEREY COUNTY

By: _____
Name: **Michael D. Delapa**
Title: **Executive Director**
Dated: September __, 2018

KEEP FORT ORD WILD

By: _____
Name: **Michael Salerno**
Title: **Authorized Representative**
Dated: September __, 2018

MARINA COAST WATER DISTRICT AND MARINA COAST WATER DISTRICT BOARD OF DIRECTORS

By: Thomas P. Moore
Name: Thomas P. Moore
Title: President
Dated: September 17, 2018



21. COUNTERPART EXECUTION

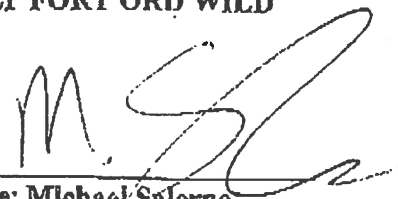
This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinafter written.

LANDWATCH MONTEREY COUNTY

By: _____
Name: Michael D. Delapa
Title: Executive Director
Dated: September __, 2018

KEEP FORT ORD WILD

By: 
Name: Michael Salerno
Title: Authorized Representative
Dated: September 14, 2018

MARINA COAST WATER DISTRICT AND MARINA COAST WATER DISTRICT BOARD OF DIRECTORS


By: _____
Name: _____
Title: _____
Dated: September __, 2018

21. **COUNTERPART EXECUTION**

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinafter written.

LANDWATCH MONTEREY COUNTY

By: 
Name: **Michael D. Delapa**
Title: **Executive Director**
Dated: September 15, 2018

KEEP FORT ORD WILD

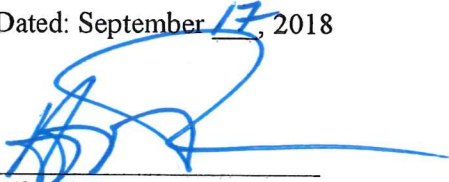
By: _____
Name: **Michael Salerno**
Title: **Authorized Representative**
Dated: September __, 2018

**MARINA COAST WATER DISTRICT AND MARINA COAST WATER DISTRICT
BOARD OF DIRECTORS**

By: _____
Name: _____
Title: _____
Dated: September __, 2018

Approved as to form:

Dated: September 17, 2018

A handwritten signature in blue ink, appearing to be 'HFW', written over a horizontal line.

HOWARD F. WILKINS III on behalf Marina Coast Water District and Marina Coast Water District Board of Directors

Dated: September ___, 2018

JOHN H. FARROW on behalf of LandWatch Monterey County

Dated: September ___, 2018

MOLLY ERICKSON on behalf of Keep Fort Ord Wild

Approved as to form:

Dated: September ___, 2018

HOWARD F. WILKINS III on behalf Marina Coast Water District and Marina Coast Water District Board of Directors

Dated: September 17, 2018



JOHN H. FARROW on behalf of LandWatch Monterey County

Dated: September ___, 2018

MOLLY ERICKSON on behalf of Keep Fort Ord Wild

Approved as to form:


Dated: September ___, 2018

HOWARD F. WILKINS III on behalf Marina Coast Water District and Marina Coast Water District Board of Directors

Dated: September ___, 2018

JOHN H. FARROW on behalf of LandWatch Monterey County

Dated: September 14, 2018



MOLLY ERICKSON on behalf of Keep Fort Ord Wild

SETTLEMENT AGREEMENT
EXHIBIT A

Erickson Questioned Properties May 7, 2018 Letter; Proposed Removed June 25, 2018 (R1); Final List September 10, 2018 (R2)

Remove parcel
Remove a portion of the parcel (split parcel)

Note: "Land Use Approvals" means when a parcel or parcels receive land use approvals by the Land Use Jurisdiction through a specific plan, master plan, or individual project approval.

Parcels within proposed "Campus Town":

Map ID	Parcel	Description	Status	Customers	Note
1	031-151-032	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
2	031-151-029	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
3	031-151-031	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
4	031-151-040	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
5	031-151-037	FORA	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
6	031-151-039	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
7	031-040-024	MST	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
8	031-151-025	MST	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
9	031-151-036	County of Monterey	No approved projects or allocations.	No	Will be annexed upon future land use approvals.

Parcels that have existing Customers with Existing Meters, Area between 7th and 8th:

Map ID	Parcel	Description	Status	Customers	Note
10	031-101-060	County of Monterey	Appears no water use.	No	Will be annexed upon future land use approvals.

Parcels that have existing Customers with Existing Meters

Map ID	Parcel	Description	Status	Customers	Note
11	031-151-048	Parker Flats below DOD Center	Existing barracks/office area. Existing water/sewer mains and services. Existing tank site	Yes	Remove portion of parcel except the portion with the tank site and substation to be kept in annexation (split parcel). Removed portion will be annexed upon future land use approvals.
12	031-111-027	MBEST west of Blanco	Existing warehouses/offices. Existing water/sewer mains and services	Yes	Remove portion of parcel except the portion with the building that has existing customers (split parcel). Removed portion will be annexed upon future land use approvals.

Specific Plans/CEQA complete on Parcel

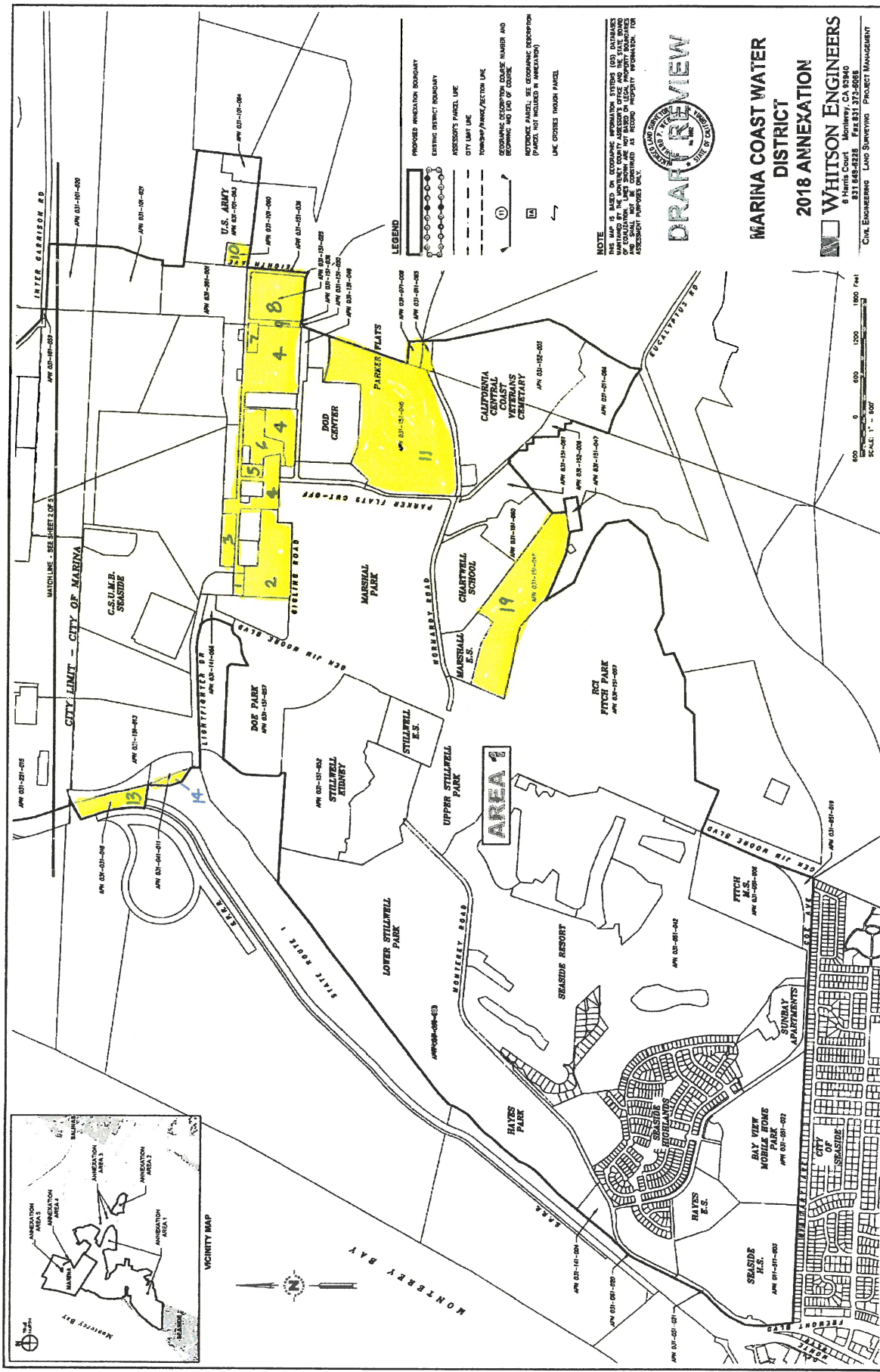
Map ID	Parcel	Description	Status	Customers	Note
13	031-031-018	Main Gate Specific Plan Area	Specific Plan approved by City of Seaside	No	Remove portion of parcel outside Main Gate SP (split parcel). Removed portion will be annexed upon future land use approvals.
14	031-041-011	Main Gate Specific Plan Area	Specific Plan approved by City of Seaside	No	Remove portion of parcel outside Main Gate SP (split parcel). Removed portion will be annexed upon future land use approvals.
15	031-021-050	Marina near Hwy 1/Del Monte	Parcel is partially in University Villages (Dunes at Monterey Bay), partially in Cypress Knolls. Parcel is in both specific plans. Existing housing area. Existing water service but no customers yet. City allocated water to both. MCWD has the Booker lift station on this Parcel.	No	Remove portion of parcel outside Dunes and Cypress Knolls (split parcel). Removed portion will be annexed upon future land use approvals.

MCWD Infrastructure Parcels

Map ID	Parcel	Description	Status	Customers	Note
16	031-081-023	North of Preston Park (City of Marina Property)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Will be annexed upon future land use approvals.
17	031-121-003	North of Preston Park (UC Regents Property)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Will be annexed upon future land use approvals.
18	031-121-004	North of Preston Park (City of Marina Property)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Will be annexed upon future land use approvals.
19	031-121-045	Area s/o Chartwell School (MCWD pipeline parcel for the D zone tanks)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.

Other Parcels

Map ID	Parcel	Description	Status	Customers	Note
20	031-101-052	City of Marina	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
21	031-201-012	MST	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
22	031-201-013	MST, Other	Doesn't appear to be any water use.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
23	031-112-026	City of Marina, Skydiving Monterey, Ross Roofing, Other	Doesn't appear to be any water use.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
24	031-111-040	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
25	031-111-042	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
26	031-111-043	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
27	031-111-041	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.



Removed Parcel (or partial Parcel)
 Parcels not in dispute, not exd. in annex. application

PG 1/3

KEY:



KEY:

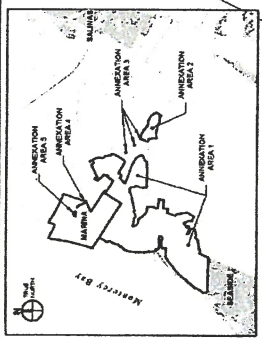


MARINA COAST WATER DISTRICT
 2018 ANNEXATION
 WHITSON ENGINEERS
 8 Harris Court Monterey, CA 93940
 408.251.5280
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

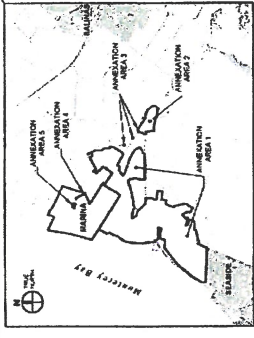
DATE: APRIL 12, 2018 SHEET NO. 302 OF 302

NOTE:
 THIS MAP IS BASED ON AERIAL PHOTOGRAPHY SYSTEM (GPS) DATA
 OBTAINED BY THE DISTRICT COUNTY ASSESSOR'S OFFICE AND THE STATE BOARD
 OF EQUALIZATION. THE DISTRICT COUNTY ASSESSOR'S OFFICE AND THE STATE BOARD
 OF EQUALIZATION SHALL NOT BE RESPONSIBLE FOR ANY DISCREPANCIES OR
 ERRORS THAT MAY OCCUR AS A RESULT OF THIS MAP. THE DISTRICT COUNTY ASSESSOR'S
 OFFICE SHALL NOT BE RESPONSIBLE FOR ANY DISCREPANCIES OR ERRORS THAT
 MAY OCCUR AS A RESULT OF THIS MAP. THE DISTRICT COUNTY ASSESSOR'S
 OFFICE SHALL NOT BE RESPONSIBLE FOR ANY DISCREPANCIES OR ERRORS THAT
 MAY OCCUR AS A RESULT OF THIS MAP.

- LEGEND
- PROPOSED ANNEXATION BOUNDARY
 - EXISTING DISTRICT BOUNDARY
 - ASSessor'S PARCEL LINE
 - CITY LIMIT LINE
 - TOWNSHIP/ANEXATION LINE
 - GEODESIC DESCRIPTION CORNER NUMBER AND BEARING AND END OF COURSE
 - EXTENSIVE PARCEL, SEE GEODESIC DESCRIPTION (PARCEL NOT INCLUDED IN ANNEXATION)
 - LINE CLOSES INSIDE PARCEL



Pg 2/3



LEGEND

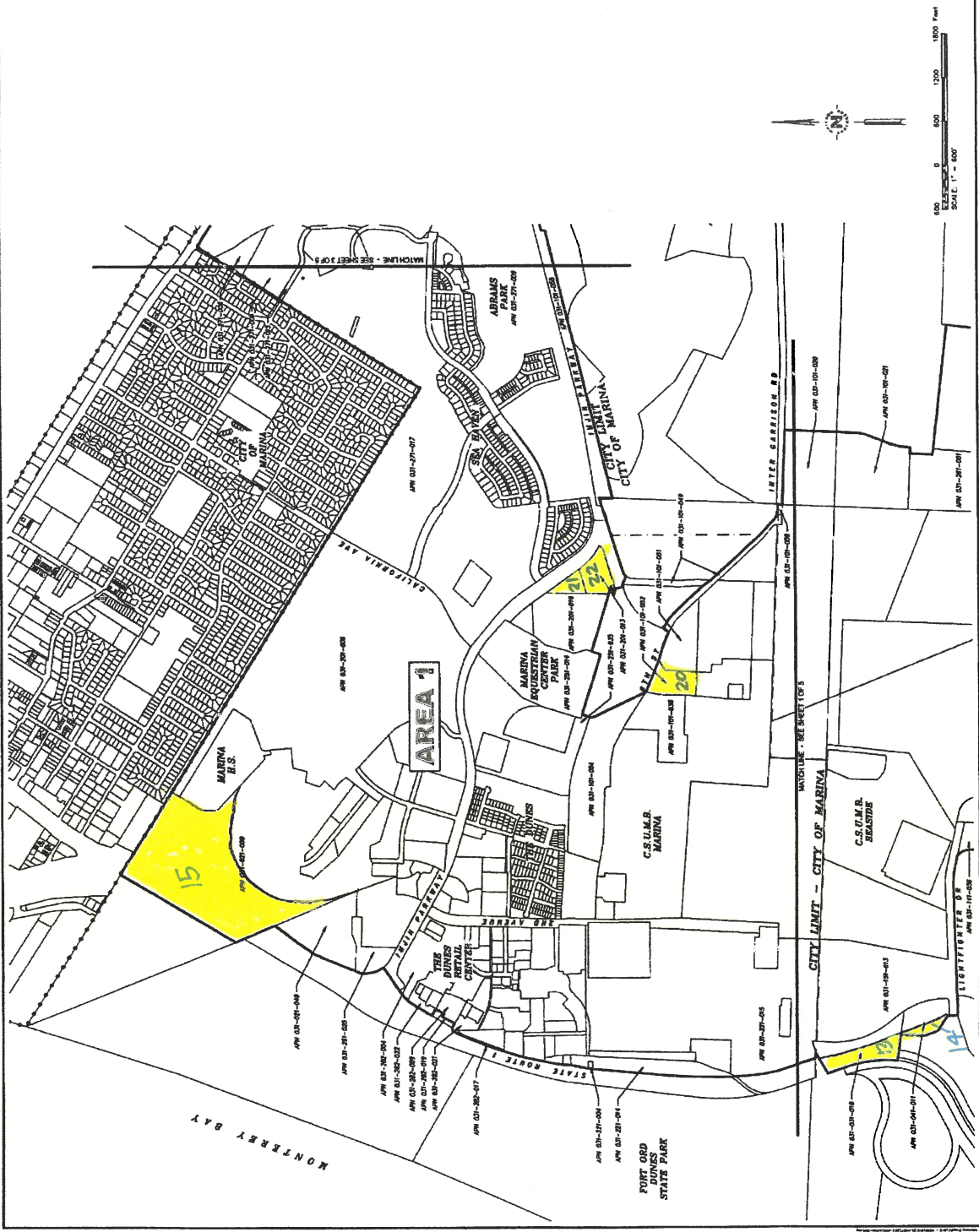
- PROMISED ANNEXATION BOUNDARY
- EXISTING DISTRICT BOUNDARY
- ADJACENT PARCEL LINE
- CITY LIMIT LINE
- TOWNSHIP/PARCELS/SECTION LINE
- GEODESIC DESCRIPTION COURSE NUMBER AND BEARING AND END OF COURSE
- REFERENCE PARCEL, SEE GEODESIC DESCRIPTION (PARCEL NOT INCLUDED IN ANNEXATION)
- LINE CROSSES THROUGH PARCEL

NOTE
 THIS MAP IS BASED ON GEODESIC INFORMATION SYSTEM (GIS) DATA MAINTAINED BY THE MONTEREY COUNTY ASSESSOR'S OFFICE AND THE STATE BOARD OF EQUALIZATION. THE USER SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE INFORMATION FOR ALL PURPOSES.

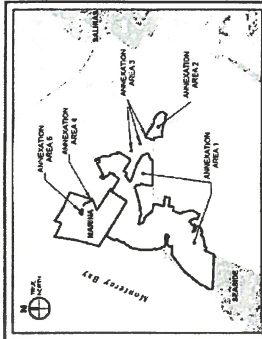


MARINA COAST WATER DISTRICT
2018 ANNEXATION
WHITSON ENGINEERS
 4175 CALIFORNIA AVENUE
 SUITE 200
 MARINA, CALIFORNIA 93953
 TEL: 831.688.5225 FAX: 831.372.5588
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 15, 2018 18:00 HRS. SHEET 2 OF 5



19/3/3



- LEGEND**
- PROPOSED ANNEXATION BOUNDARY
 - EXISTING DISTRICT BOUNDARY
 - ASSESSOR'S PARCEL LINE
 - CITY LIMIT LINE
 - TOWNSHIP/RANGE/SECTION LINE
 - COORDINATE LOCATION CORNER NUMBER AND BEARING AND USE OF PLAT
 - INTERSECTION POINT, SET GEODOMIC DESCRIPTION (PARCEL NOT INCLUDED IN ANNEXATION)
 - LINE CROSSES THROUGH PARCEL

NOTE

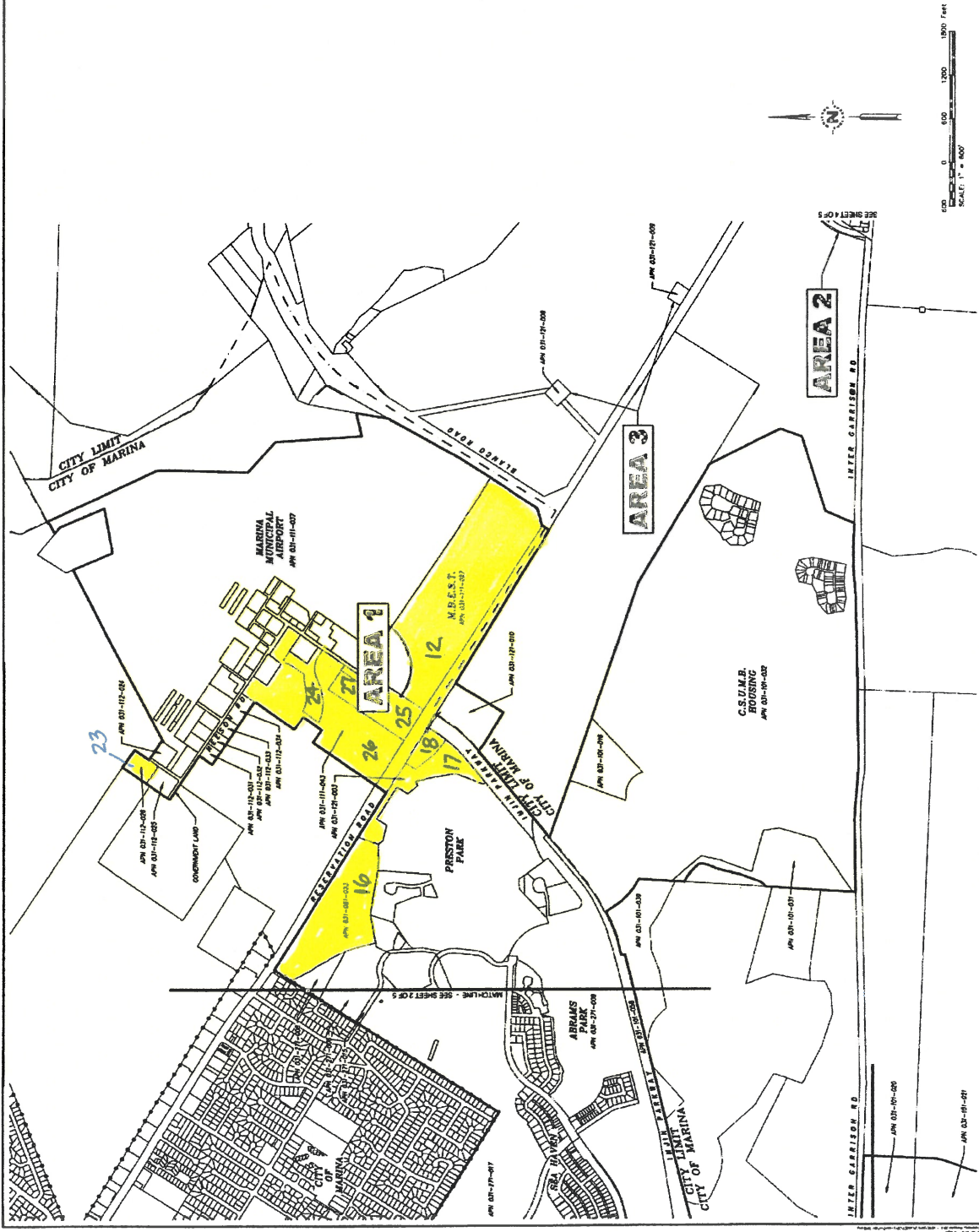
THIS MAP IS BASED ON GEODOMIC INFORMATION SYSTEM (GIS) DATA. THE BOUNDARIES OF THE DISTRICT ARE NOT BASED ON LEGAL PROPERTY BOUNDARIES. THE BOUNDARIES SHOWN ARE NOT BASED ON LEGAL PROPERTY BOUNDARIES. THE BOUNDARIES SHOWN ARE NOT BASED ON LEGAL PROPERTY INFORMATION FOR THE PURPOSES OF THIS MAP.



MARINA COAST WATER DISTRICT
DISTRICT
2018 ANNEXATION

WHITSON ENGINEERS
 6 Harris Court, Monterey, CA 93940
 831.648.8225 Fax 831.373.5985
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 12, 2018 ME JOB NO. 3012 SHEET 3 OF 5



SETTLEMENT AGREEMENT
EXHIBIT B

September 17, 2018

Resolution No. 2018-56
Resolution of the Board of Directors
Marina Coast Water District

Modifying Resolution No. 2018-09 by Excluding Certain Parcels and Portions of Parcels from the Ord Community Sphere of Influence Amendment and Annexation Application

RESOLVED by the Board of Directors (“Directors”) of the Marina Coast Water District (“District” or “MCWD”), at a regular meeting duly called and held on September 17, 2018, at 211 Hillcrest Avenue, Marina, California as follows:

WHEREAS, on February 20, 2018, the Directors adopted Resolution No. 2018-09, adopting an Initial Study/Negative Declaration for the Ord Community Sphere of Influence Amendment and Annexation, finding that the Ord Community Sphere of Influence Amendment and Annexation was not a project subject to CEQA and was also exempt from CEQA, and directing District staff to file the Sphere of Influence Amendment and Annexation Application (“Application”) with Monterey County Local Agency Formation Commission (“LAFCO”); and

WHEREAS, District staff filed the Application with LAFCO on April 17, 2018; and

WHEREAS, LandWatch Monterey County and Keep Fort Ord Wild each filed a Petition for Writ of Mandate in the Monterey County Superior Court challenging the Directors’ approval under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”); and

WHEREAS, a settlement agreement (“Settlement Agreement”) has been proposed that provides for modifications to the Ord Community Sphere of Influence Amendment and Annexation by excluding certain parcels and portions of certain parcels identified on the spreadsheet and maps attached as Exhibit A to this resolution and to the Settlement Agreement. The Ord Community Sphere of Influence Amendment and Annexation as modified by Exhibit A is referred to as the “Modified Project.”

NOW, THEREFORE, BE IT RESOLVED, that the MCWD Board of Directors, after consideration of the terms of the Settlement Agreement and the information contained in the September 17, 2018, Staff Report to the Directors, hereby:

1. Finds that it is in the best interests of the District to approve the Settlement Agreement (which is incorporated into this resolution by reference); approves the Settlement Agreement; and authorizes and directs the President to sign and initial the Settlement Agreement on behalf of the District and on behalf of the Board of Directors.

2. Finds that, pursuant to the Settlement Agreement, the parcels and portions of parcels set forth in Exhibit A shall be excluded from the District’s Ord Community Sphere of Influence Amendment and Annexation Application to LAFCO because they have not received final land use approvals by the applicable land use jurisdiction through a specific plan, master plan, or

individual project approval adopted or approved in reliance on a post-1997 CEQA document prepared and approved by the land use jurisdiction for that plan or project. All references in Resolution No. 2018-09 to parcels included in the Ord Community Sphere of Influence Amendment and Annexation hereby exclude all of the parcels and portions of parcels set forth in Exhibit A. All other parcels and portions of parcels shall remain in the Application unchanged. The excluded parcels shall be re-designated for future study only.

3. Rescinds the CEQA findings adopted in Resolution No. 2018-09 only as they relate to the parcels or portions of parcels listed in Exhibit A. The CEQA findings in Resolution No. 2018-09 shall otherwise remain unchanged.

4. Finds that any public agency considering land use approvals for the parcels or portions of parcels listed in Exhibit A will need to determine whether CEQA applies to said land use approvals independent of MCWD's February 20, 2018, project approvals and CEQA findings.

5. Finds that, having considered the Initial Study/Negative Declaration adopted by the Board on February 20, 2018, and the analysis in the Staff Report, the modifications to the Ord Community Sphere of Influence Amendment and Annexation under the "Modified Project" would not result in any potential environmental impacts beyond those analyzed in the Initial Study/Negative Declaration and none of the conditions in CEQA Guidelines section 15162 have occurred, and therefore, no additional environmental review is required under CEQA (see Public Recourses Code section 21166 and CEQA Guidelines sections 15162).

6. Finds that the "Modified Project" is not subject to CEQA because it would not cause or lead to any change in the physical environment.

7. Finds that the "Modified Project" is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15319, entitled "Annexations of Existing Facilities and Lots for Exempt Facilities" ("Class 19").

8. Finds that the "Modified Project" is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, entitled "Existing Facilities" ("Class 1").

9. Finds that the "Modified Project" is exempt from CEQA under the "common sense" exemption provided under CEQA Guidelines section 15061, subdivision (b)(3), which applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (see *Muzzy Ranch Co. v. Solano County Airport Land Use Comm.* (2007) 41 Cal.4th 372), because the "Modified Project" would not cause or allow any changes in the physical environment and there is no possibility that the project may have a significant effect on the environment.

10. Finds that there are no "exceptions" to the categorical exemptions that would remove the "Modified Project" from the exempt classes of projects; there are not unusual circumstances that distinguish this proposal from other projects covered under the categorical exemptions and the proposal would not cause any significant impacts due to any unusual circumstances; the proposal would not cause or contribute to any cumulatively significant impacts and there are no successive projects of the same type in the same place that will result in a significant cumulative impact.

11. Adopts this Resolution No. 2018-56.

12. Authorizes the General Manager to file a Notice of Determination and Notice of Exemption as soon as reasonably practical.

13. Authorizes and directs the General Manager to notify LAFCO of the "Modified Project" and to take all actions and execute all documents as may be necessary or appropriate to give effect to this resolution.


PASSED AND ADOPTED on September 17, 2018, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors Lee, Shriner, Moore

Noes: Directors Cortez, Gustafson

Absent: Directors None

Abstained: Directors None


Thomas P. Moore, President

ATTEST:


Keith Van Der Maaten, Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Marina Coast Water District hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 2018-56 adopted September 17, 2018.


Keith Van Der Maaten, Secretary

Exhibit A

Resolution No. 2018-56

Erickson Questioned Properties May 7, 2018 Letter; Proposed Removed June 25, 2018 (R1); Final List September 10, 2018 (R2)

Remove parcel
Remove a portion of the parcel (split parcel)

Note: "Land Use Approvals" means when a parcel or parcels receive land use approvals by the Land Use Jurisdiction through a specific plan, master plan, or individual project approval.

Parcels within proposed "Campus Town":

Map ID	Parcel	Description	Status	Customers	Note
1	031-151-032	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
2	031-151-029	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
3	031-151-031	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
4	031-151-040	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
5	031-151-037	FORA	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
6	031-151-039	Redevelopment Agency of Seaside	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
7	031-040-024	MST	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
8	031-151-025	MST	No approved projects or allocations.	No	Will be annexed upon future land use approvals.
9	031-151-036	County of Monterey	No approved projects or allocations.	No	Will be annexed upon future land use approvals.

Parcels that have existing Customers with Existing Meters, Area between 7th and 8th:

Map ID	Parcel	Description	Status	Customers	Note
10	031-101-060	County of Monterey	Appears no water use.	No	Will be annexed upon future land use approvals.

Parcels that have existing Customers with Existing Meters

Map ID	Parcel	Description	Status	Customers	Note
11	031-151-048	Parker Flats below DOD Center	Existing barracks/office area. Existing water/sewer mains and services. Existing tank site	Yes	Remove portion of parcel except the portion with the tank site and substation to be kept in annexation (split parcel). Removed portion will be annexed upon future land use approvals.
12	031-111-027	MBEST west of Blanco	Existing warehouses/offices. Existing water/sewer mains and services	Yes	Remove portion of parcel except the portion with the building that has existing customers (split parcel). Removed portion will be annexed upon future land use approvals.

Specific Plans/CEQA complete on Parcel

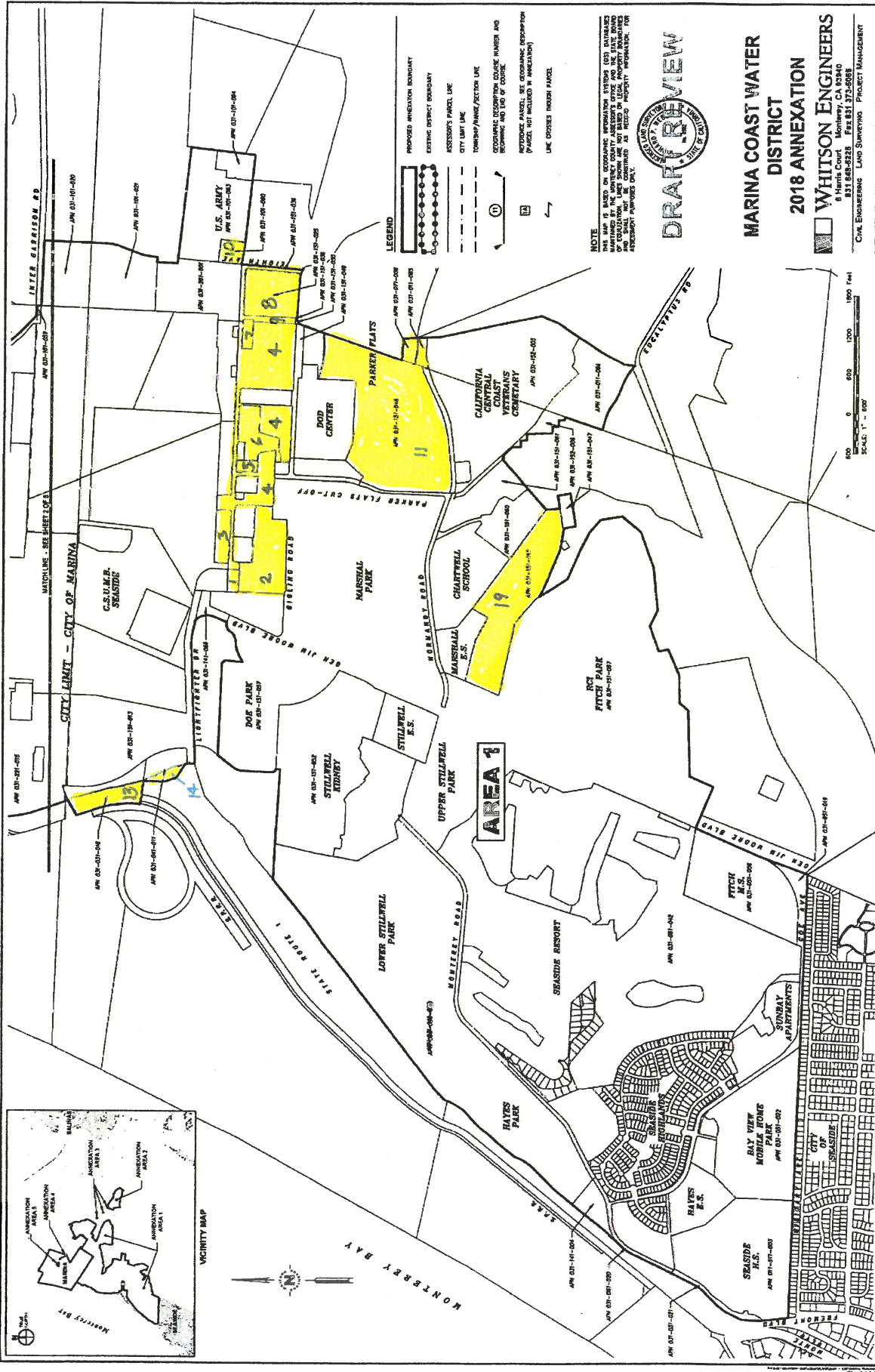
Map ID	Parcel	Description	Status	Customers	Note
13	031-031-018	Main Gate Specific Plan Area	Specific Plan approved by City of Seaside	No	Remove portion of parcel outside Main Gate SP (split parcel). Removed portion will be annexed upon future land use approvals.
14	031-041-011	Main Gate Specific Plan Area	Specific Plan approved by City of Seaside	No	Remove portion of parcel outside Main Gate SP (split parcel). Removed portion will be annexed upon future land use approvals.
15	031-021-050	Marina near Hwy 1/Del Monte	Parcel is partially in University Villages (Dunes at Monterey Bay), partially in Cypress Knolls. Parcel is in both specific plans. Existing housing area. Existing water service but no customers yet. City allocated water to both. MCWD has the Booker lift station on this Parcel.	No	Remove portion of parcel outside Dunes and Cypress Knolls (split parcel). Removed portion will be annexed upon future land use approvals.

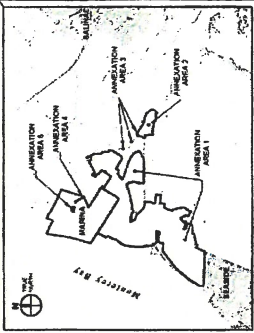
MCWD Infrastructure Parcels

Map ID	Parcel	Description	Status	Customers	Note
16	031-081-023	North of Preston Park (City of Marina Property)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Will be annexed upon future land use approvals.
17	031-121-003	North of Preston Park (UC Regents Property)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Will be annexed upon future land use approvals.
18	031-121-004	North of Preston Park (City of Marina Property)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Will be annexed upon future land use approvals.
19	031-121-045	Area s/o Chartwell School (MCWD pipeline parcel for the D zone tanks)	Existing MCWD Infrastructure on property (Property contains MCWD easements, water pipes, and sewer pipes).	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.

Other Parcels

Map ID	Parcel	Description	Status	Customers	Note
20	031-101-052	City of Marina	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
21	031-201-012	MST	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
22	031-201-013	MST, Other	Doesn't appear to be any water use.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
23	031-112-026	City of Marina, Skydiving Monterey, Ross Roofing, Other	Doesn't appear to be any water use.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
24	031-111-040	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
25	031-111-042	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
26	031-111-043	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.
27	031-111-041	UCSC (regents) in Airport area	No projects, no allocations.	No	Added by MCWD to Erickson's list. Will be annexed upon future land use approvals.





- LEGEND**
- PROPOSED ANNEXATION BOUNDARY
 - EXISTING DISTRICT BOUNDARY
 - ANNEXATION AREA
 - CITY LIMIT LINE
 - TOWNSHIP/RANGE/SECTION LINE
 - SECTIONAL DESCRIPTION COURSE, MARKER AND BEARING AND USE OF COURSE
 - REFERENCE PARCEL, SEE COORDINATE DESCRIPTION PARCEL, NOT INCLUDED IN ANNEXATION
 - LINE CROSSES THROUGH PARCEL

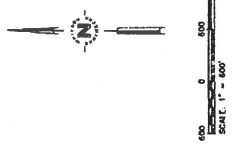
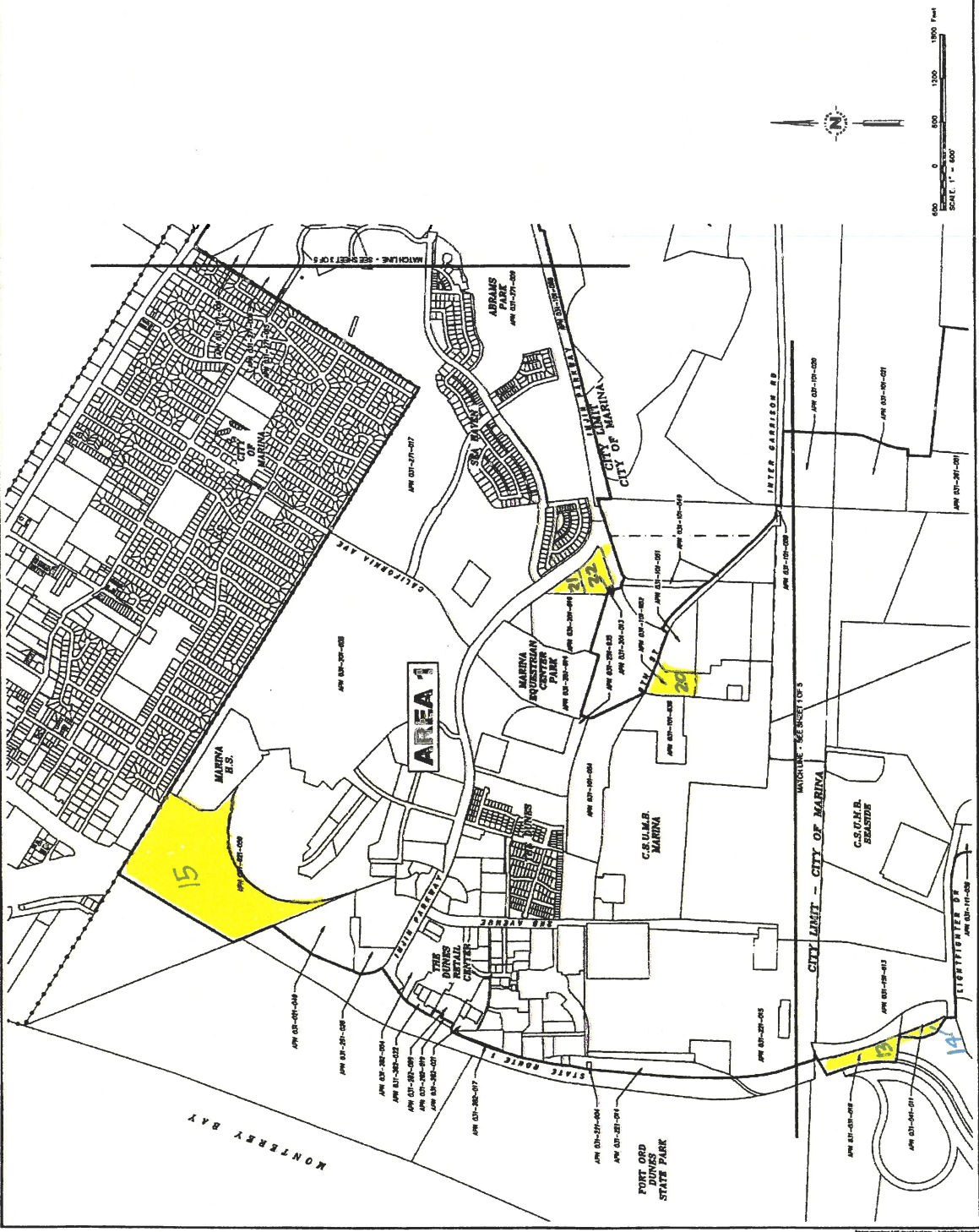
NOTE
 THIS MAP IS BASED ON COORDINATE MONITORING SYSTEM (CMS) DATA OBTAINED FROM THE MARINA COUNTY AGENCIES. COURSE AND DISTANCE MEASUREMENTS SHALL NOT BE CONTROLLED BY RECORD PROPERTY INFORMATION FOR ACCIDENT INVESTIGATION ONLY.



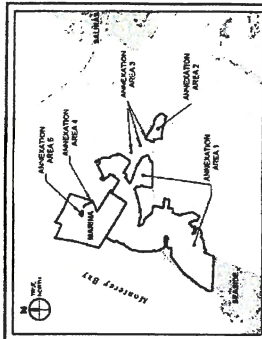
MARINA COAST WATER DISTRICT
2018 ANNEXATION
WHITSON ENGINEERS
 8 North Coast Monterey, CA 93940
 831 948-8225 Fax 831 372-6686
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 12, 2018 WE JOB NO. 1812 SHEET 2 OF 3

PG 2/3



193/3



- LEGEND**
- PROPOSED ANNEXATION BOUNDARY
 - EXISTING DISTRICT BOUNDARY
 - ASSESSOR'S PARCEL LINE
 - CITY LIMIT LINE
 - TOWNSHIP/RANGE/SECTION LINE
 - ECONOMIC ASSESSMENT CODES, NUMBER AND DESCRIBE AND USE OF ZONING
 - REFERENCE PARCEL, SEE ECONOMIC DESCRIPTION (PARCEL NOT INCLUDED IN ANNEXATION)
 - UIC CROSSES THROUGH PARCEL

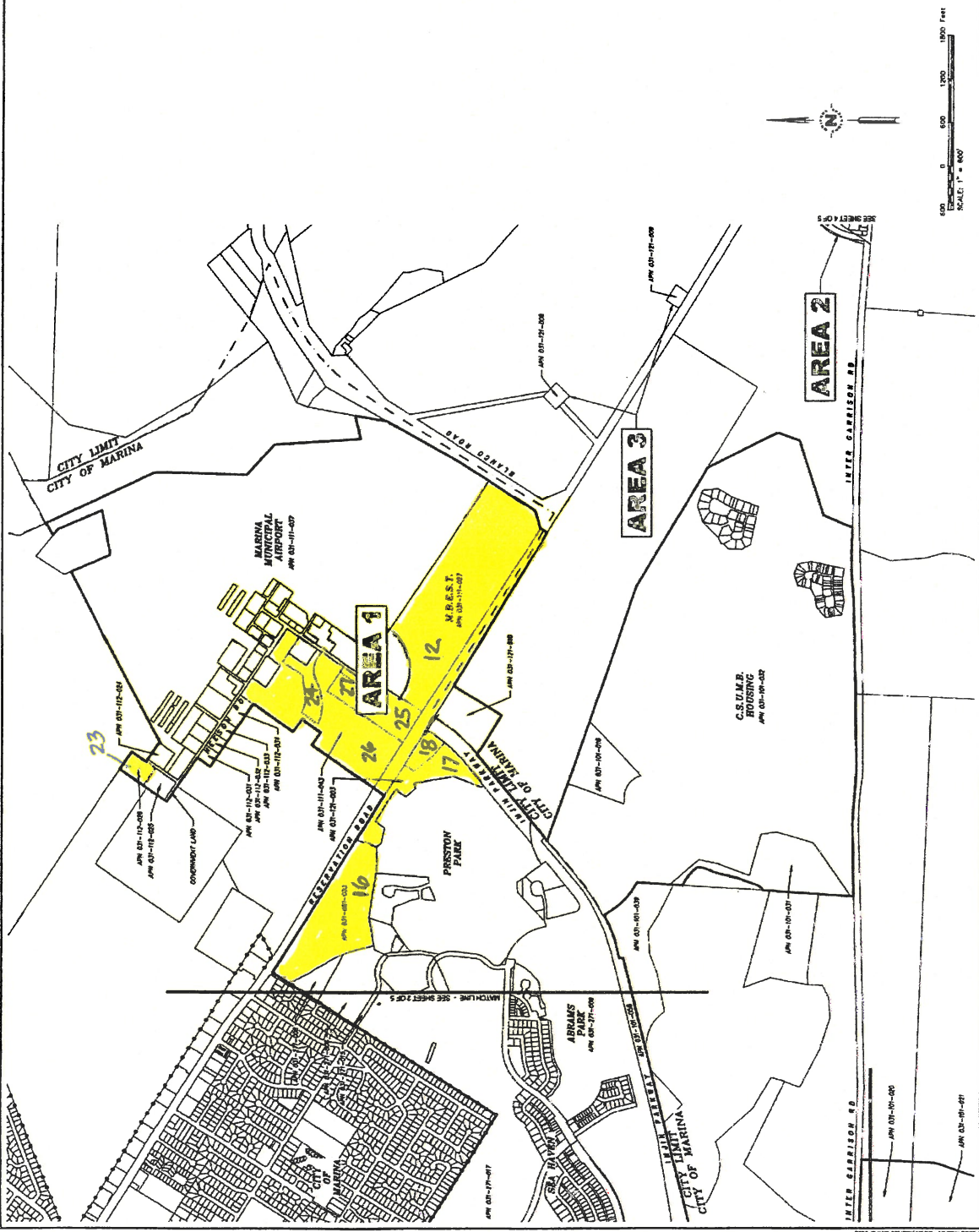
NOTE
 THIS MAP IS BASED ON ECONOMIC INFORMATION SYSTEM (EIS) DATA AND IS FOR INFORMATIONAL PURPOSES ONLY. THIS MAP IS NOT TO BE USED AS A BASIS FOR ANY LEGAL PROCEEDINGS OR INVESTMENT DECISIONS. FOR MORE INFORMATION, CONTACT THE PROJECT MANAGER.



**MARINA COAST WATER DISTRICT
 2018 ANNEXATION**

WHITSON ENGINEERS
 8 Harris Court
 Monterey, CA 93940
 831.648.8225 Fax 831.375.5885
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 12, 2018 UC JOB NO. 2017 SHEET 3 OF 5



- **Limit delivery vehicle idling to 3 minutes:** As noted, with the mitigation already required, the Project result in net zero GHG emissions. Furthermore, as noted above, the state already limits commercial idling times, and the City finds if infeasible from a policy perspective to second guess such decisions which are already regulated by the state.

Response 10.4

The commenter questions the unit count for dwelling units within the former Fort Ord area referenced in the Draft EIR. The commenter provides numbers based on their data and requests clarification on how the City will assure consistency with the 6,160-unit cap and whether the Project will take priority over new residential development at the Main Gate Specific Plan (MGSP).

FORA’s Development Resource Management Plan includes a Residential Development Program and New Residential Unit Limit that generally limit total new residential development at the former Fort Ord. The Residential Development Program projects 10,816 residential units, of which 6,160 are projected to be new units. The New Residential Unit Limit generally restricts total new residential units within the former Fort Ord to 6,160 units. The FORA Capital Improvement Program (CIP) for Fiscal Year 2019-20 through 2028-29 indicates that there are 4,665 new residential units entitled, leaving a remaining capacity of 1,495 new residential units (FORA 2019a). The Draft EIR provides the correct buildout numbers per the FORA 2019 CIP. Table 3-1 below lists the entitled and constructed buildout numbers for these projects based on the FORA 2019 CIP.

One of the Projects referenced in the comment is not included in this list, i.e., Marina’s Permanent supportive Housing for Veterans at Hayes Circle. This project is already operational, and is an existing barracks which was converted into replacement housing.

Table 3-1 FORA Residential Development (Including Seaside Notes)

Project Title	Entitled Residential Units	Built Residential Units
New Residential		
Sea Haven	1,050	201
Dunes of Monterey Bay	1,237	410
<i>Cypress Knolls</i> ¹	712	0
Veterans Transition Center	84	13
Seaside Resort	125	3
<i>Nurses Barracks</i> ²	0	0
East Garrison	1,470	869
Sub-total	4,665	1,282
Existing/Replacement Residential		
Preston Park	352	352
Abrams B	192	192
MOCO Housing Authority Project	56	56
Shelter Outreach Plus Project	39	39
Interim Inc.	11	11
Sunbay	297	297

Project Title	Entitled Residential Units	Built Residential Units
Bayview	225	225
Seaside Highlands	380	380
<i>Seaside Senior Living</i> ³	0	0
Sub-total	1,565	1,766
Total New + Existing/Replacement	6,230	3,048

Source: FORA 2019, Table 6.

¹ While the Cypress Knolls project is still listed in FORA’s table, it is no longer reasonably foreseeable, as the vesting tentative map has expired; the project requires new discretionary approvals, and no application for such approvals has been filed.

² The Nurses Barracks would replace existing housing units and is not entitled.

³ While Seaside Senior Living would provide approximately 88 units, is not considered a residential use, rather it is a Business and Professional Service use (SMC §§ 17.12.020 and 17.98.020).

FORA’s Development and Resource Management Plan also includes an Industrial and Commercial Job Creation Program, which provides that, when the estimated jobs within the former Fort Ord reach 18,000, the Residential Development Program shall be eliminated. Accordingly, the FORA CIP for Fiscal Year 2019-20 through 2028-29 provides that the new residential unit limit is 6,160 until 18,000 new jobs are created on Fort Ord lands. This 6,160-unit limit does not include existing and replacement residences, which total 1,813 units, for a total of 7,973 units allowed in Fort Ord (not including the POM Annex or CSUMB Housing) (FORA 2019a). Therefore, there is a remaining capacity of 1,495 new residential units as of May 3, 2019 (6,160-unit limit minus 4,665 new units entitled equals 1,495 units remaining; this calculation conservatively includes buildout of the Cypress Knolls project, despite that it is no longer reasonably foreseeable). This is adequate to accommodate the Project, which proposes 1,485 new residential units within the Plan Area. Please also see Government Code Section 66300(b)(1)(D), SB 330 (2019).

The Main Gate Specific Plan (MGSP) was approved in August 2010, and includes a retail center, hotel/spa, and conference center, but no residential (City of Seaside 2010). While the developer had informally discussed potential revisions related to making residential a permissible use, there is no current active application for such an amendment.

Response 10.5

The commenter suggests several additions to the cumulative project list (Table 4-1), including East Garrison, Sea Haven, the Dunes at Monterey Bay, Seaside Resort, Seaside Senior Living Center, Housing for Hayes Circle, and South of Tioga.

Table 4-1 of the Draft EIR already includes the South of Tioga project, and the Housing for Hayes Circle is listed as “Veterans Transition Center Housing.” The remaining suggested cumulative projects have been added to Table 4-1 (revisions are shown below) and are considered in the cumulative analysis subsections throughout Section 4. The Cypress Knolls project is no longer reasonably foreseeable, as the vesting tentative map has expired and the project would require new discretionary approvals in order to proceed; no application for such approvals has been submitted. The following revisions have been made in Table 4-1 on Pages 4-3 through 4-5.

**The Former Fort Ord
Base Realignment and Closure Office**

**Draft Final Remedial
Design/Remedial Action Work Plan**

Del Rey Oaks Munitions Response Area
Former Fort Ord
Del Rey Oaks, California

July 28, 2010

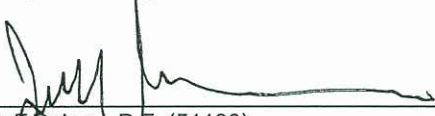
ARCADIS



Daniel Dawson
City Manager, City of Del Rey Oaks



Kristie Reimer
Program Manager, ARCADIS



Jeff Raines, P.E. (51120)
Technical Project Manager, ARCADIS

**Final Remedial
Design/Remedial Action Work
Plan**

Del Rey Oaks Munitions
Response Area
Former Fort Ord
Del Rey Oaks, California

Prepared for:
The City of Del Rey Oaks
City Hall
650 Canyon Del Rey Road
Del Rey Oaks, CA 93940

Prepared by:
ARCADIS U.S., Inc.
1900 Powell Street
12th Floor
Emeryville
California 94608
Tel 510.652.4500
Fax 510.652.2246

Our Ref.:
EM101009.0001

Date:
July 28, 2010

This document is intended only for the use of the individual or entity for which it was prepared and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this document is strictly prohibited.

1.	Introduction	1
1.1	Area of Remedy Implementation	1
1.2	Description of Selected Remedy	2
1.3	Proposed Reuse	3
2.	Site Description	4
3.	Land Use Control Performance Objectives	6
4.	Remedy Implementation Actions	7
4.1	Survey Plat	7
4.2	Annual LUC Inspections	7
4.3	Annual LUC Monitoring Reports	7
4.4	CERCLA Five-Year Reviews	8
4.5	Notice of Planned Property Conveyances	8
4.6	Responsibilities of the New Property Owner with Respect to LUC Inspections, Reporting, and Enforcement	8
4.7	Army Responsibilities with Respect to Future LUC Inspections, Reporting, and Enforcement	9
4.8	City of Del Rey Oaks Responsibilities with Respect to Construction Support	9
4.9	Notification Should Any Action(s) Interfere with LUC Effectiveness	9
4.10	Notification of Discovery of MEC During Ground-Disturbing and/or Intrusive Activities	10
4.11	Future Residential Development	10
5.	Remedial Action Sequence	11
6.	References	13

Tables

1	Contact Information
---	---------------------

Figures

- 1 Site Vicinity Map
- 2 Site Plan
- 3 Areas of Residential Reuse Restrictions
- 4 Photographic Documentation Locations

Appendices

- A Legal Description of the 11-Grid Area
- B Covenant to Restrict Use of Property
- C USACE Guidance on MEC Support During Construction
- D 2008 MOA
- E Response to Comments

Acronyms and Abbreviations

- Army United States Department of the Army
- bgs below ground surface
- CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
- CRUP Covenant to Restrict Use of Property
- DRO Del Rey Oaks
- DTSC Department of Toxic Substances Control
- EOD Explosive Ordnance Disposal
- EP Engineer Pamphlet
- EPA Environmental Protection Agency
- FFA Federal Facility Agreement
- FORA Fort Ord Reuse Authority
- FOSET Finding of Suitability for Early Transfer
- LUC land use control

MEC	munitions and explosives of concern
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MR	Munitions Response
MRA	Munitions Response Area
MRS	Munitions Response Site
RD/RAWP	Remedial Design/Remedial Action Work Plan
ROD	Record of Decision
RI/FS	Remedial Investigation/Feasibility Study
USACE	United States Army Corps of Engineers
UXO	unexploded ordnance
yd ³	cubic yard

1. Introduction

This Draft Final Remedial Design/Remedial Action Work Plan (RD/RAWP) was prepared for the Del Rey Oaks Munitions Response Area (MRA) located within the former Fort Ord in Monterey County, California (Figure 1). The purpose of this RD/RAWP is to provide information on how the remedy selected in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Record of Decision (ROD) dated October 6, 2008, for the Del Rey Oaks Munitions Response Area Track 2 Munitions Response Site (United States Department of the Army [Army] 2008) will be implemented and maintained. The ROD stipulates that the following actions will be undertaken at the Del Rey Oaks MRA:

- Place restrictions on certain future reuses of property at the Del Rey Oaks MRA without further evaluation by the regulatory agencies;
- To require munitions and explosives of concern (MEC) training for local residents and other interested parties and construction support prior to beginning ground-disturbing or intrusive activities that disturb 10 cubic yards (yd³) or more of soil within the Del Rey Oaks MRA outside of the 11-Grid Area (Figure 2);
- To require that written notice be given to future purchasers, lessees or sublessees of property within the Del Rey Oaks MRA that there is a potential for the presence of MEC on the property, and
- To require Army-provided construction support for soil-disturbing activities that occurs at depths exceeding 4 feet below ground surface (bgs) within the 11-Grid Area of the Del Rey Oaks MRA (Figure 2).

These LUCs are intended to limit the risk associated with MEC that may remain at the Del Rey Oaks MRA.

1.1 Area of Remedy Implementation

The Del Rey Oaks MRA comprises approximately 324 acres of land in the southwestern corner of the former Fort Ord located in the City of Del Rey Oaks, Monterey County, California. As shown on Figure 2, the Del Rey Oaks MRA is comprised of portions (or all of) three Munitions Response Sites (MRSs) identified as MRS-15 DRO 01, MRS-15 DRO 02, and a portion of MRS-43. Originally, MRS-15 DRO 01 and MRS-15 DRO 02 were part of the larger MRS-15. MRS-15 was later

subdivided into smaller sites to facilitate land transfer and MRS-15 DRO 01 and MRS-15 DRO 02 were established at that time. For the basis of property transfer and legal description, the Del Rey Oaks MRA land was further divided into six individual transfer parcels. Transfer parcels E29a and E29b.1 are comprised of MRS-15 DRO 01 and MRS-15 DRO 02, respectively. The portion of MRS-43 that is included in the Del Rey Oaks MRA is subdivided into four transfer parcels: E31a, E31b, E31c, and E36. The transfer parcels are presented on Figure 2.

In addition to the transfer parcels, portions of E29a and E29b.1 of the Del Rey Oaks MRA, referred to as the 11-Grid Area, are identified as requiring additional construction support by the Army. The 11-Grid Area is delineated on Figure 2. A legal description of the area is included in Appendix A.

1.2 Description of Selected Remedy

The LUCs that will be implemented at the Del Rey Oaks MRA are described in the Del Rey Oaks MRA Track 2 Munitions Response Site ROD (Army 2008). The ROD selected the remedy of “Conditions on Soil Disturbance Activities to Minimize MEC Exposure and Residential Use Restriction Including Contingency to Address Proposed Change in Site Reuse.” The specific components of the selected remedy include:

- MEC Recognition and Safety Training – Reasonable and prudent precautions should be taken when conducting ground disturbing or intrusive operations. The Army will provide MEC recognition and safety training, upon request, for any person who will be conducting such activities in the Del Rey Oaks MRA. MEC recognition and safety training is required for people conducting ground disturbing or intrusive soil disturbance activities within the 11-Grid Area at depths exceeding 4 feet bgs.
- Construction Support in the 11-Grid Area – The Army will provide construction support within the 11-Grid Area during soil excavation or movement at depths exceeding 4 feet bgs.
- Site-Wide Construction Support – the City of Del Rey Oaks (the landowner) will provide site-wide construction support by unexploded ordnance (UXO) qualified personnel in compliance with the Excavation Ordinance throughout the remainder of the MRA as defined in the 2004 Agreement between the City of Del Rey Oaks and the Department of Toxic Substances Control (DTSC; “the Del Rey Oaks – DTSC Agreement”). Under the Del Rey Oaks – DTSC

Agreement, construction support is required for activities that disturb more than 10 yd³ of soil.

- Use Restrictions – A residential use restriction will be modified as follows: the residential use restriction for the central portion of the Del Rey Oaks MRA is no longer required; and the residential use restriction for the remainder (northern and southern portions) of the MRA will be modified to allow for residential use, as appropriate, once DTSC has verified that Residential Protocol has been successfully implemented. Any proposal for residential development in the Del Rey Oaks MRA where this restriction applies will be subject to regulatory review. For the purpose of the ROD and this document, residential use includes, but is not limited to, residences, day care facilities that do not have measures to prevent contact with soil, schools for persons under 21 years of age, and hospitals (other than veterinary hospitals). Areas at the Del Rey Oaks MRA where the residential restriction is required are shown on Figure 3.

1.3 Proposed Reuse

The planned future land uses are primarily based upon the FORA *Fort Ord Base Reuse Plan* (FORA, 1997) and the *Installation-Wide Multispecies Habitat Management Plan for Fort Ord* (USACE, 1997). The Reuse Plan for the Del Rey Oaks MRA, which was put forth when the area was identified for early transfer, includes a visitor serving area, an office park, a business park, and a light industrial area, although the specific development plan was not presented.

In 2005, the Army transferred the Del Rey Oaks MRA property to the Fort Ord Reuse Authority (FORA) in an early transfer, prior to the completion of the CERCLA process. The Finding of Suitability for Early Transfer (FOSET) which supported the transfer of the property found the property suitable for early transfer for the use of a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure. As part of this early transfer, the Army entered into a State Covenant to Restrict Use of Property with DTSC, with which the City of Del Rey Oaks agreed, preventing the following types of use for the entire Del Rey Oaks MRA: residential use, day care facilities that do not have measures to prevent contact with soil, schools for persons under 21 years of age, and hospitals (other than veterinary hospitals).

Residential use of portions of the Del Rey Oaks MRA came into consideration by the City of Del Rey Oaks after the land had been transferred to the city. As part of the environmental review process, the City of Del Rey Oaks issued the *Draft Initial Study*

and Mitigated Negative Declaration for the City of Del Rey Oaks Housing Element and Amendments to the General Plan, Redevelopment Plan, and Zoning Ordinance in 2006 (Duffy & Associates, 2006); however, the City of Del Rey Oaks is preparing additional environmental documentation for the project. Possible residential use was evaluated in the Munitions Response RI/FS for the Del Rey Oaks MRA (Mactec, 2007), and the residential use restriction for the central portion of the Del Rey Oaks MRA was deemed to be no longer required (Army, 2008). Portions of the Del Rey Oaks MRA where residential restriction is no longer required is shown on Figure 3. If residential development is planned for the portions of the Del Rey Oaks MRA where a LUC prohibiting residential development exists, the plans will be subjected to regulatory review. Residential use for specified areas will be prohibited until the landowner (currently the City of Del Rey Oaks) provides advance notification to the Army, EPA, and DTSC of its intent to change a designated area's use to residential, and until DTSC concurs that residential use is appropriate. DTSC's evaluation may consider the Residential Protocol or further site evaluation incorporating new information (e.g., geophysical mapping, site development).

2. Site Description

The former Fort Ord is located approximately 100 miles south of San Francisco and occupies approximately 28,000 acres adjacent to Monterey Bay and the cities of Marina, Seaside, Sand City, Del Rey Oaks, and Monterey (Figure 1). The Del Rey Oaks MRA is located in southwestern corner of the former Fort Ord in the City of Del Rey Oaks and is approximately 324 acres in size.

The former Fort Ord was placed on the National Priorities List in 1990. To oversee the cleanup of the base, the Army, the DTSC, the Central Coast Regional Water Quality Control Board, and the United States Environmental Protection Agency (EPA) entered into a Federal Facility Agreement (FFA). The FFA established schedules for performing remedial investigations and feasibility studies and requires that remedial actions be completed as expeditiously as possible. In November 1998, the Army agreed to evaluate MEC at the former Fort Ord and perform a basewide Munitions Response (MR) Remedial Investigation/Feasibility Study (RI/FS) consistent with CERCLA. The basewide MR RI/FS program addressed MEC hazards on the former Fort Ord and evaluated past removal actions as well as recommended future remedial actions deemed necessary to protect human health and the environment under future uses. In April 2000, an agreement was signed between the Army, EPA, and DTSC to evaluate MEC at the former Fort Ord subject to the provisions of the FFA. The

signatories agreed that the FFA provided the appropriate framework and process to address the Army's munitions response activities.

In 2005, the Army transferred the Del Rey Oaks MRA property to the Fort Ord Reuse Authority (FORA) in an early transfer, prior to the completion of the CERCLA process. The Finding of Suitability for Early Transfer (FOSET) which supported the transfer of the property found that Del Rey Oaks MRA had been cleared of all dangerous and/or explosive material reasonably possible to detect and that no further munitions response actions were recommended within the Del Rey Oaks MRA (Army 2004). The FOSET provided that future use of the property did not present a current or future risk to human health or the environment, subject to inclusion and compliance with the appropriate notices, disclosures, and restrictions. The FOSET found the property suitable for early transfer for the use of a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure.

At the time of the early transfer, the Army entered into a Covenant to Restrict Use of Property (CRUP) with the DTSC, with which the City of Del Rey Oaks agreed. The CRUP places restrictions on the allowable uses of the Del Rey Oaks MRA. A copy of the CRUP for the Del Rey Oaks MRA is provided in Appendix B of this RD/RAWP. The CRUP restrictions forbid use of the Del Rey Oaks MRA for residential use, day care centers that do not prevent contact with soil, schools for persons under 21 years of age, and hospitals for humans. In addition, portions of E29a and E29b.1 of the Del Rey Oaks MRA (identified as the 11-Grid Area, Figure 2 and Appendix A) have been transferred with restrictions and require additional construction support to be provided by the Army for intrusive activities that penetrate to depths greater than 4 feet bgs. The City of Del Rey Oaks has adopted a city ordinance ("the Excavation Ordinance") that regulates soil disturbance activities within the Del Rey Oaks MRA. The Excavation Ordinance is Exhibit D of the Covenant to Restrict Use of Property which is appended to this work plan as Appendix B.

The DTSC and the entities owning property on the former Fort Ord have entered into a Memorandum of Agreement (MOA) entitled "Concerning Monitoring and Reporting on Environmental Restrictions on the Former Fort Ord, Monterey County," which is between FORA, Monterey County, the Cities of Seaside, Monterey, Del Rey Oaks, and Marina, California State University Monterey Bay, University of California Santa Cruz, Monterey Peninsula College, and the DTSC. The MOA was finalized on February 27, 2008. The MOA lists the requirements for reporting of the implementation of the land use controls placed on the various parcels at the former Fort Ord. The MOA is appended to this work plan as Appendix D.

In 2007, the Army completed a Track 2 MR RI/FS for the Del Rey Oaks MRA (MACTEC 2007). The RI/FS evaluated the risks related to any potentially remaining MEC within the Del Rey Oaks MRA based upon the intended future uses. On October 6, 2008, the Army and the EPA, in consultation with the DTSC, recorded the final decision in the ROD documenting the selected remedy of “Conditions on Soil Disturbance Activities to Minimize MEC Exposure and Residential Use Restriction Including Contingency to Address Proposed Change in Site Reuse” for managing the risk to future land users from MEC that potentially remain in the Del Rey Oaks MRA.

This RD/RAWP was prepared as a result of the selection of LUCs as a component of the remedy in accordance with the ROD for the Del Rey Oaks MRA.

3. Land Use Control Performance Objectives

The performance objectives for the LUCs that were selected as part of the remedy are the following:

- MEC recognition and safety training: (1) to ensure that current land users conducting ground-disturbing or intrusive activities are educated about the possibility of encountering MEC, and (2) to ensure that land users involved in ground-disturbing or intrusive activities stop the activity when encountering MEC and report the encounter to the appropriate authority. It should be noted that, pursuant to the Del Rey Oaks - DTSC Agreement, activities that disturb more than 10 yd³ of soil may not begin until the Army safety training, or equivalent, has been provided to all construction workers involved in soil disturbance.
- Construction support: to ensure that projects where ground-disturbing or intrusive activities that disturb more than 10 yd³ of soil are coordinated with UXO-qualified personnel so that discoveries of potential MEC are handled appropriately.
- Restrictions against residential use: to prevent residential development on the Del Rey Oaks MRA until modifications to residential restrictions are approved by DTSC with an opportunity to comment by EPA and the Army. For the purpose of this ROD, residential use includes, but is not limited to, residences, day care facilities that do not have measures to prevent contact with soil, schools for persons under 21 years of age, and hospitals (other than veterinary hospitals).

4. Remedy Implementation Actions

The following sections describe implementation actions to be performed in accordance with the FFA and ROD to ensure that the LUC objectives are met.

4.1 Survey Plat

A survey plat was provided as part of the property transfer documentation. The legal description of the 11-Grid Area is provided in Appendix A.

4.2 Annual LUC Inspections

Pursuant to the MOA, the City of Del Rey Oaks will inspect the areas subject to the LUCs on an annual basis until such a time as the use restrictions are removed from the property. The site inspection will consist of a walk-through and visual examination of the areas of the Del Rey Oaks MRA subject to the LUCs. The areas currently subject to the residential land use restriction are identified on Figure 3. Photographs will be taken on an annual basis to document site conditions from the locations shown on Figure 4. Written documentation of the annual inspection will be maintained and presented in an annual report prepared by the City of Del Rey Oaks and submitted using the form provided as Attachment 4 of the MOA to the Army, EPA, and DTSC.

4.3 Annual LUC Monitoring Reports

Pursuant to the 2008 MOA, the City of Del Rey Oaks will report to FORA (and to Monterey County once FORA ceases to exist) on the effectiveness of the institutional controls specified in the ROD on an annual basis. The reporting procedures in the 2008 MOA are compatible with the Del Rey Oaks agreement with DTSC (DTSC 2004). The 2004 agreement was referenced in the ROD for the Del Rey Oaks parcel. FORA (and subsequently Monterey County) will compile the Del Rey Oaks report with reports from other jurisdictions at the former Fort Ord and forward them to DTSC. The Del Rey Oaks annual report will be issued on or before September 1 of each calendar year and will cover activities that took place during the period from July 1 of the previous year through June 30 of the current year. The annual reports will include brief summaries of the following activities conducted during the previous calendar year:

- A summary of new construction, grading, or excavation activities requiring grading permits issued by the City of Del Rey Oaks and a summary of After-Action Reports for projects completed (provided by the City of Del Rey Oaks);

- A description of modifications made to the Excavation Ordinance, as approved by the EPA and DTSC (provided by the City of Del Rey Oaks);
- A description of MEC or MEC-related items found and verification that the proper notification/handling procedures have been followed (provided by the City of Del Rey Oaks);
- Photographic documentation of development on the property; and
- A summary of training efforts and public outreach conducted by the Army/City of Del Rey Oaks.

4.4 CERCLA Five-Year Reviews

Because the potential to encounter undiscovered MEC will remain at the Del Rey Oaks MRA, the Army shall conduct five-year reviews of the Del Rey Oaks MRA remedy within a period of five years from the time the remedy was implemented (or from the time of the previous five-year review) as part of the installation-wide review required by CERCLA and the National Contingency Plan. The methods, findings, and conclusions of the five-year review will be documented in a Five-Year Review Report. The Five-Year Review Report will consider the annual reports prepared for the Del Rey Oaks MRA. As part of the five-year review, if experience indicates that MEC has not been encountered during development, redevelopment, or reuse of an area, any of the conditions on soil disturbance activities may be modified or terminated with regulatory agency approval. The next five-year review for the Fort Ord site will occur in 2012.

4.5 Notice of Planned Property Conveyances

At least 60 days prior to conveyance of Del Rey Oaks MRA property to any other agency, person, or entity, the City of Del Rey Oaks shall provide notice to the Army, EPA, and DTSC of such intended conveyance. The notice shall describe the mechanism by which LUCs will continue to be implemented, maintained, inspected, reported, and enforced.

4.6 Responsibilities of the New Property Owner with Respect to LUC Inspections, Reporting, and Enforcement

Any new property owner(s) will be notified regarding the restrictions associated with the property via the deed. The new property owner(s) is responsible for complying with

those LUCs associated with the property as recorded in the deed. If any action is required of the new property owner, it will be identified by the current property owner at the time of property transfer.

4.7 Army Responsibilities with Respect to Future LUC Inspections, Reporting, and Enforcement

Although the Army transferred some of the procedural responsibilities to the City of Del Rey Oaks, the Army shall retain ultimate responsibility for remedy integrity. The Army has agreed to provide MEC Recognition and Safety Training for any persons that will be conducting ground-disturbing or intrusive activities within the Del Rey Oaks MRA and will maintain relevant training records as described in the Munitions Response Site Security Program. The Army has also agreed to provide construction support in the 11-Grid Area if soil disturbance activities at a depth greater than 4 feet are conducted. The Army will also be responsible for the five-year reviews of the effectiveness of the selected remedial alternative. The Army retains ownership of any MEC discovered at the Del Rey Oaks MRA.

4.8 City of Del Rey Oaks Responsibilities with Respect to Construction Support

The City of Del Rey Oaks (the current land owner) will provide site-wide construction support in compliance with the Excavation Ordinance throughout the remainder of the MRA as defined in the agreement between the City of Del Rey Oaks and DTSC at the time of early transfer of the property. Although the Army does not believe construction support throughout the entire MRA is necessary based on the results of the Del Rey Oaks MRA Remedial Investigation and Risk Assessment, pursuant to the Del Rey Oaks – DTSC Agreement, the City of Del Rey Oaks agreed to implement this requirement, at its expense, through establishment and maintenance of a city ordinance.

4.9 Notification Should Any Action(s) Interfere with LUC Effectiveness

The City of Del Rey Oaks shall notify EPA, DTSC, and the Army within 72 hours of discovery of any activity on the property that interferes with LUC effectiveness. Within 45 days, the City of Del Rey Oaks shall identify the cause of the problem with the LUC process, evaluate how to correct the problem to avoid future noncompliance, and implement any necessary changes. This reporting requirement does not preclude the Army from taking immediate action to prevent exposure.

4.10 Notification of Discovery of MEC During Ground-Disturbing and/or Intrusive Activities

Per the Excavation Ordinance, the City of Del Rey Oaks and/or the subsequent property owner shall stop work and notify the local law enforcement agency immediately (as well as notifying the Army, DTSC, and EPA within 24 hours) if any known or suspected MEC are encountered during ground-disturbing and/or intrusive activities. The standard procedure for reporting any encounter with a known or suspected MEC item in the transferred former Fort Ord property is to report the encounter immediately to 911, which will transfer the call to the appropriate local law enforcement agency. The local law enforcement agency will promptly request Department of Defense support for response (e.g., an Explosive Ordnance Disposal [EOD] Unit). If the response involves a MEC item the Army will reassess the probability of encountering MEC and notify EPA and DTSC. If Army and EPA, in consultation with DTSC, determine that the probability of encountering MEC remains low, construction may resume with construction monitoring. If Army and EPA, in consultation with DTSC, determine that the probability is moderate or high, then a MEC removal will be conducted in the construction footprint before construction can resume. Pursuant to the Del Rey Oaks – DTSC Agreement, the City of Del Rey Oaks will immediately notify the Army, EPA and DTSC if any MEC or MEC-like item is found at the site. The Army will also conduct five-year reviews, and will review and consider this information during the five-year reviews. If, upon such review, any additional evaluation or work, or modification of the remedy is proposed, the Army will submit the proposal to EPA and DTSC for consultation, consistent with the Fort Ord FFA.

4.11 Future Residential Development

Proposals for residential development in the Del Rey Oaks MRA where the restriction on residential development applies will be prohibited until: (1) the City of Del Rey Oaks (the current landowner) notifies the Army, EPA, and DTSC in writing of its intent to change the designated site use from recreational/commercial to residential, in advance; and (2) DTSC concurs that residential use is appropriate based on successful implementation of the Residential Protocol or further site evaluation incorporating new information (e.g. geophysical mapping, site development).

Proposals for residential development in the Del Rey Oaks MRA will be provided to the Army, EPA and DTSC; the City will demonstrate that the proposed residential development is appropriate; and the City will apply to DTSC to modify the CRUP to remove the residential restriction in the proposed area of residential development. The

City or its agent will conduct a property survey to support the CRUP modification and the recording of the modified CRUP.

As specified in the Record of Decision the CRUP will be modified to remove the residential restriction from the central portion of the Del Rey Oaks property. Therefore, after the modification of the CRUP, the process described herein will apply only to the northern and southern portions of the property.

5. Remedial Action Sequence

To achieve the LUC performance objectives identified in Section 3.0 and to assure that proper Operation and Maintenance of this remedy is achieved, the following actions shall be conducted:

- Within 45 days of the RD/RAWP being finalized, the City of Del Rey Oaks shall place a copy of the RD/RAWP into the Army-maintained Information Repositories and Administrative Record.
- The City of Del Rey Oaks provided a letter to the DTSC on July 9, 2010 formally requesting DTSC to initiate the variance process in order to modify the CRUP to remove the residential restriction on the central portion of the site, as described in the ROD. The City of Del Rey Oaks will delineate the central portion of the site in a manner that meets the requirements of the Monterey County Recorder for the purposes of recording.
- The Federal deed will be amended to provide the warranty under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), after receiving the EPA letter that certifies the completion of all remedial actions.
- The City of Del Rey Oaks has adopted the Excavation Ordinance, City Ordinance 259, Chapter 15.48, related to soil-disturbing activities that may occur on the portions of the former Fort Ord that fall within their jurisdiction. The City of Del Rey Oaks will not make substantive changes to the Excavation Ordinance without prior notice to and approval by the EPA and DTSC.
- Prior to ground-disturbing or intrusive activities that will disturb more than 10 yd³ of soil, an owner or user of the property within the former Fort Ord wishing to conduct

intrusive activities must first go through a notification and permitting process per the City of Del Rey Oaks Excavation Ordinance. Once an application for a permit is received by the City, the City shall review the permit to verify the location of the proposed excavation and to determine if any sites with known LUCs will be affected. If the work involved is located within the Del Rey Oaks MRA, the City shall contact the Army, EPA, and DTSC by email or written correspondence prior to granting the permit application. If the permit application indicates soil disturbance activities will be conducted within the 11-Grid Area at a depth greater than 4 feet bgs, the City of Del Rey Oaks will notify the Army and the Army will provide the appropriate construction support for the portions of the work to take place in the 11-Grid Area below 4 feet bgs. Intrusive operations in the 11-Grid Area (exceeding a 4-foot depth) will be conducted in accordance with the procedures contained within Engineer Pamphlet (EP) 75-1-2 (USACE 2004). As described in the Excavation Ordinance, the permit applicant may not move or disturb any soil unless the applicant is in compliance with the requirements placed on the property by an agreement executed between the city, the city redevelopment agency, FORA, and DTSC. At a minimum, the agreement shall include construction support and shall be attached to and become a part of any permit issued. This process will be reviewed during the five-year review for the former Fort Ord site under CERCLA, prepared by the Army, to determine if any changes need to be implemented.

- LUC inspections and reporting will be conducted in accordance with procedures identified in Sections 4.1, 4.2, and 4.3 of this RD/RAWP and the MOA.
- When it is determined, with the Army, EPA, and DTSC concurrence, that one or more of the LUCs at the Del Rey Oaks MRA is no longer needed on all or a portion of the MRA, the City of Del Rey Oaks shall obtain from the Army and DTSC an appropriate release for recordation with the deed and the CRUP pertaining to the site.
- New property owners will be notified of any deed restrictions as described in Section 4.6.

The remedy inspections and reporting described in this RD/RAWP will be effective immediately upon approval by the Army, EPA, and DTSC. The RD/RAWP will be applicable to the Del Rey Oaks MRA until it is determined by the Army, with EPA and DTSC concurrence, that the LUCs at the Del Rey Oaks MRA are no longer needed. Table 1 provides a list of contacts.

6. References

Dahlin Group. 2007. Land Use Plan, The Resort at Del Rey Oaks. August 7.

Department of Toxic Substances Control. 2004. AGREEMENT Del Rey Oaks Former Fort Ord Resort Property Del Rey Oaks, CALIFORNIA between the Department of Toxic Substances Control and the City of Del Rey Oaks. July 22.

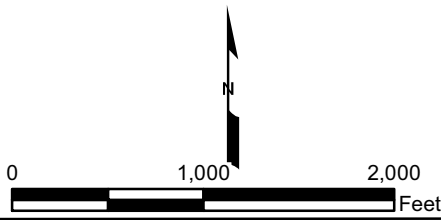
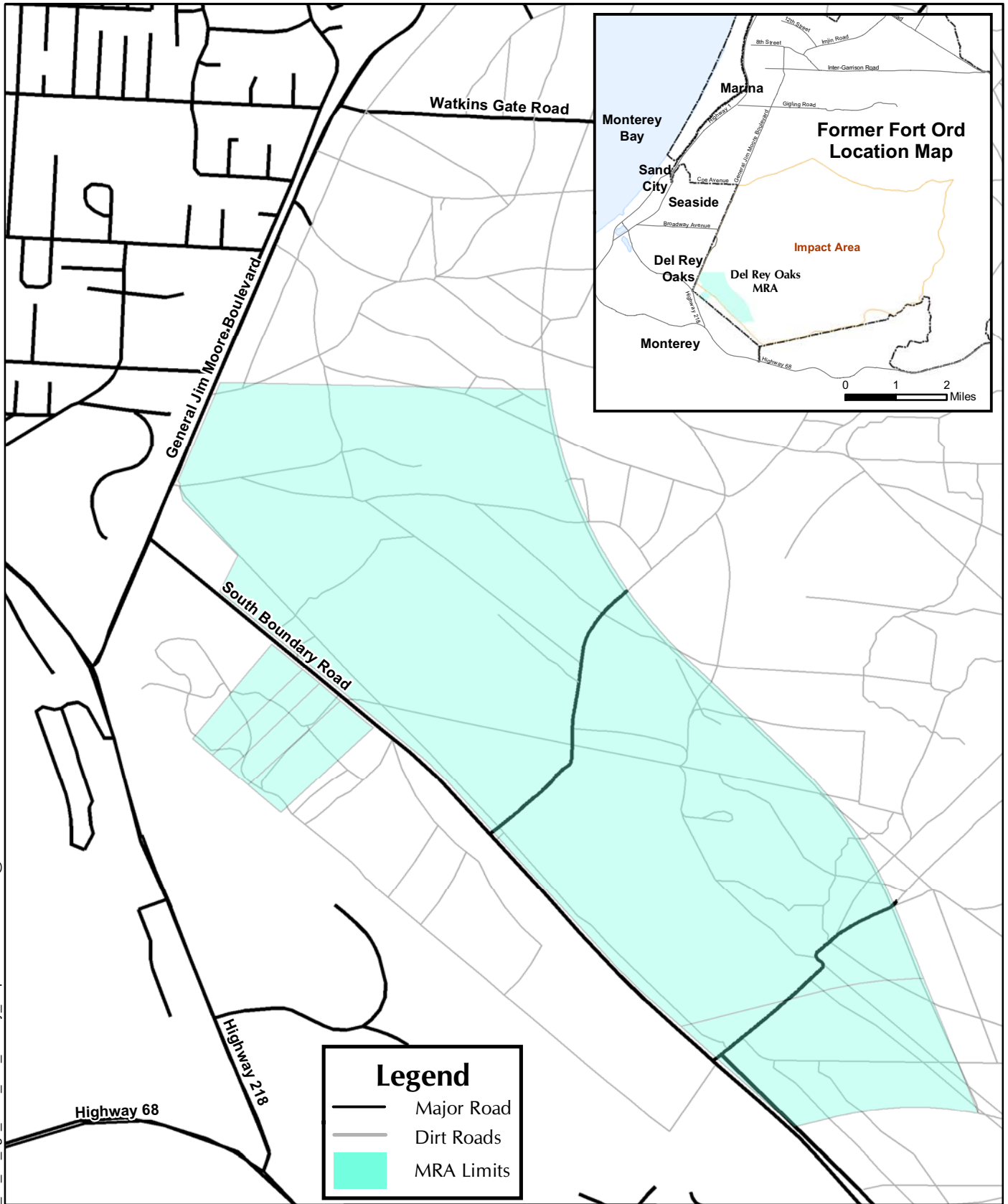
_____. 2008. Memorandum titled, "Concerning Monitoring and Reporting on Environmental Restrictions on the Former Fort Ord, Monterey County."

Duffy & Associates. 2006. Draft Initial Study and Mitigated Negative Declaration for the City of Del Rey Oaks Housing Element and Amendments to the General Plan, Redevelopment Plan, and Zoning Ordinance.

Fort Ord Reuse Authority (FORA). 1997. Fort Ord

_____. 2004. Munitions and Explosives of Concern (MEC) Support During Hazardous, Toxic, and Radioactive Waste (HTRW) and Construction Activities, EP 75-1-2. August 1.

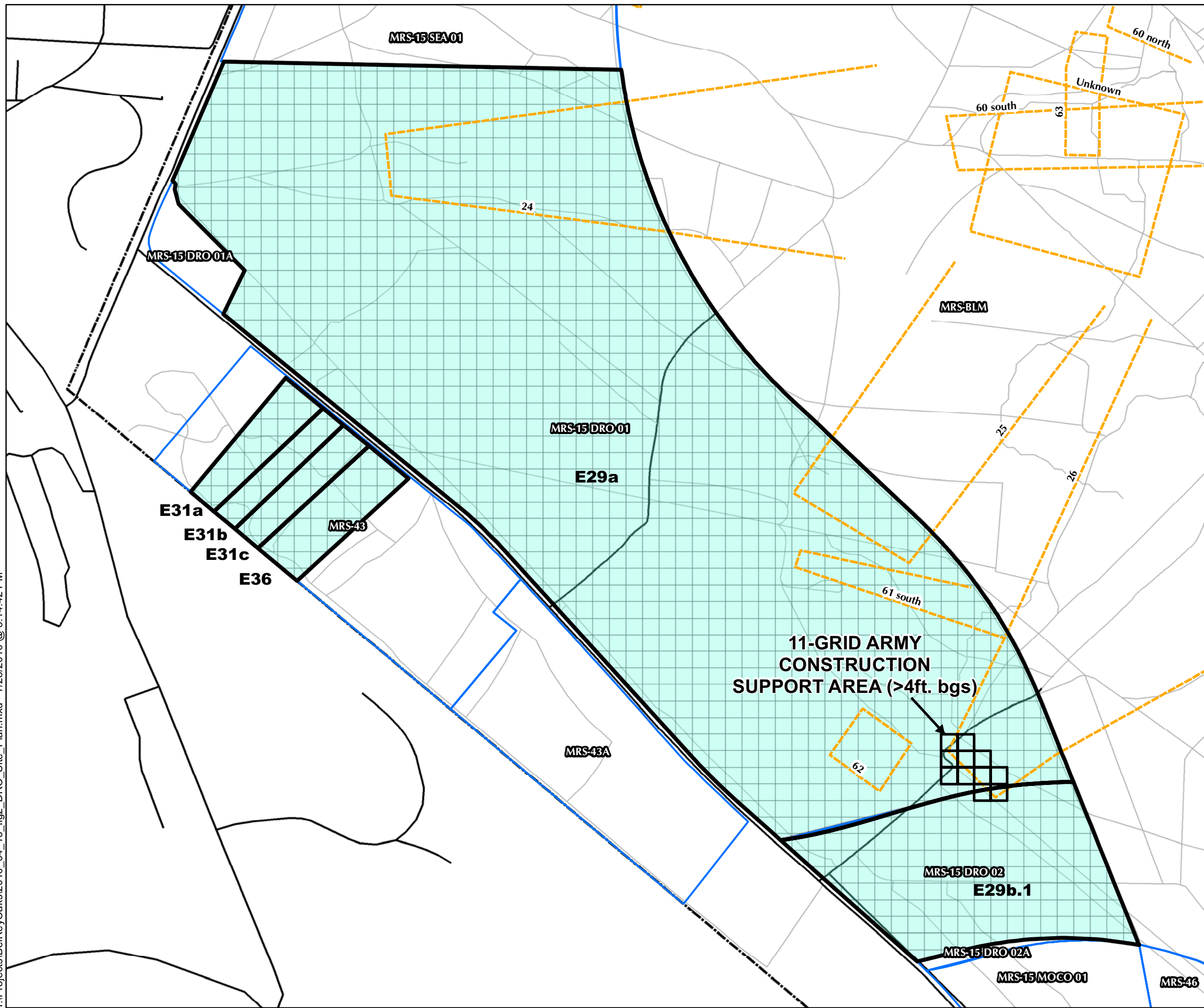
T:\Projects\DelReyOaks2010_04_15_fig1_DRO_Site_Vicinity_Map.mxd - 7/28/2010 @ 3:05:08 PM



Site Vicinity Map
Del Rey Oaks MRA, Del Rey Oaks, California

Figure 1

T:\Projects\DelReyOaks\2010_04_15_fig2_DRO_Site_Plan.mxd - 7/28/2010 @ 3:14:42 PM



Legend

- Del Rey Oaks MRA
- Major Road
- Minor Roads and Trails
- Road Clearance Grids / Fuel Breaks
- Munitions Response Site
- Historical Range Fans
- Former Fort Ord Boundary
- USACE Parcel Boundary

Former Fort Ord Location Map

Impact Area

0 1 2 Miles

0 600 1,200 Feet

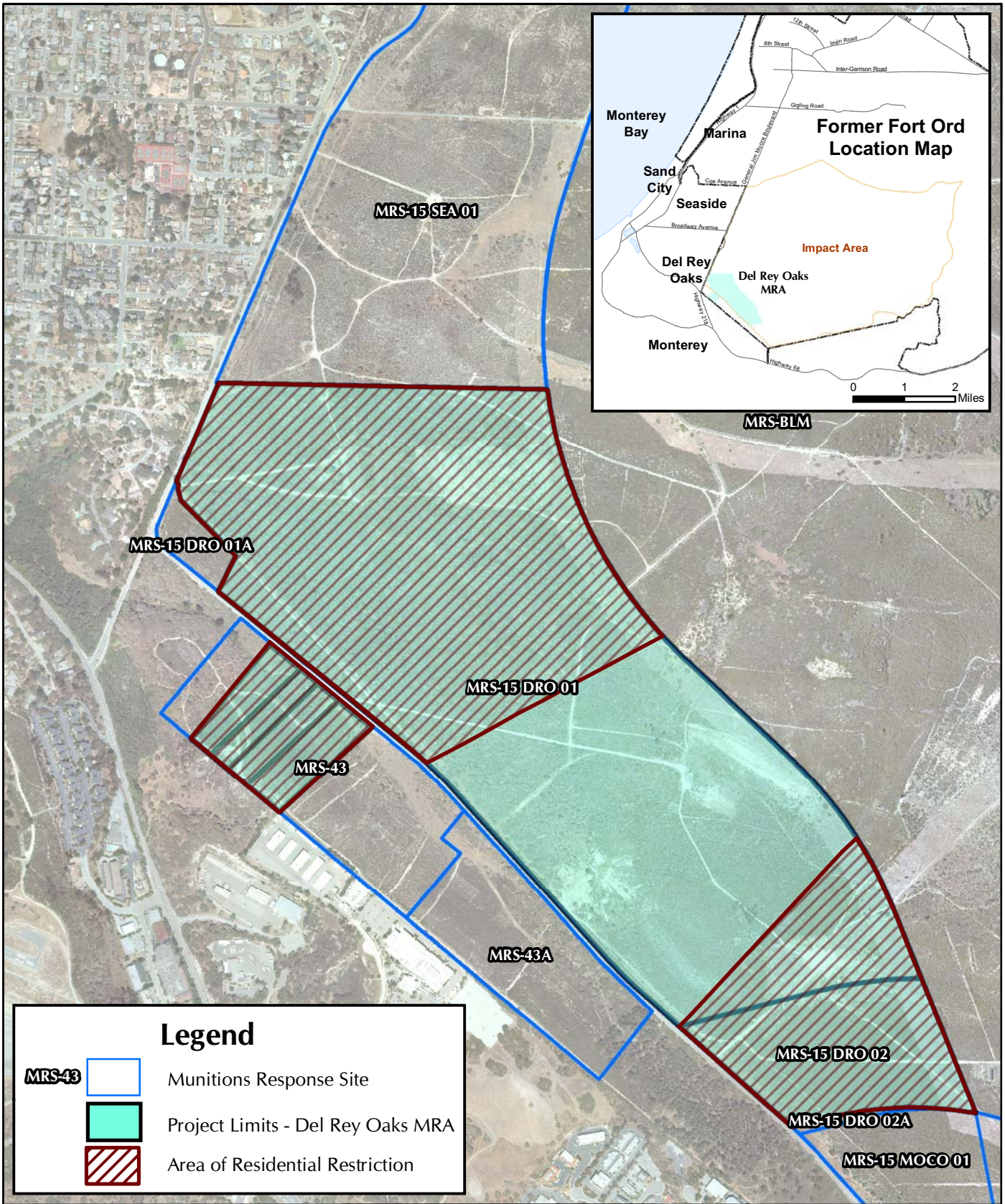
ARCADIS
Infrastructure, environment, facilities




Site Plan

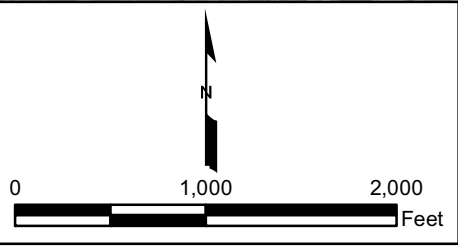
Del Rey Oaks MRA,
Del Rey Oaks, California

Figure 2

T:\Projects\DelReyOaks\2010_06_24_fig3_DRO_Areas_of_Residential_Restriction.mxd - 7/28/2010 @ 3:07:46 PM



Legend	
MRS-43 	Munitions Response Site
	Project Limits - Del Rey Oaks MRA
	Area of Residential Restriction

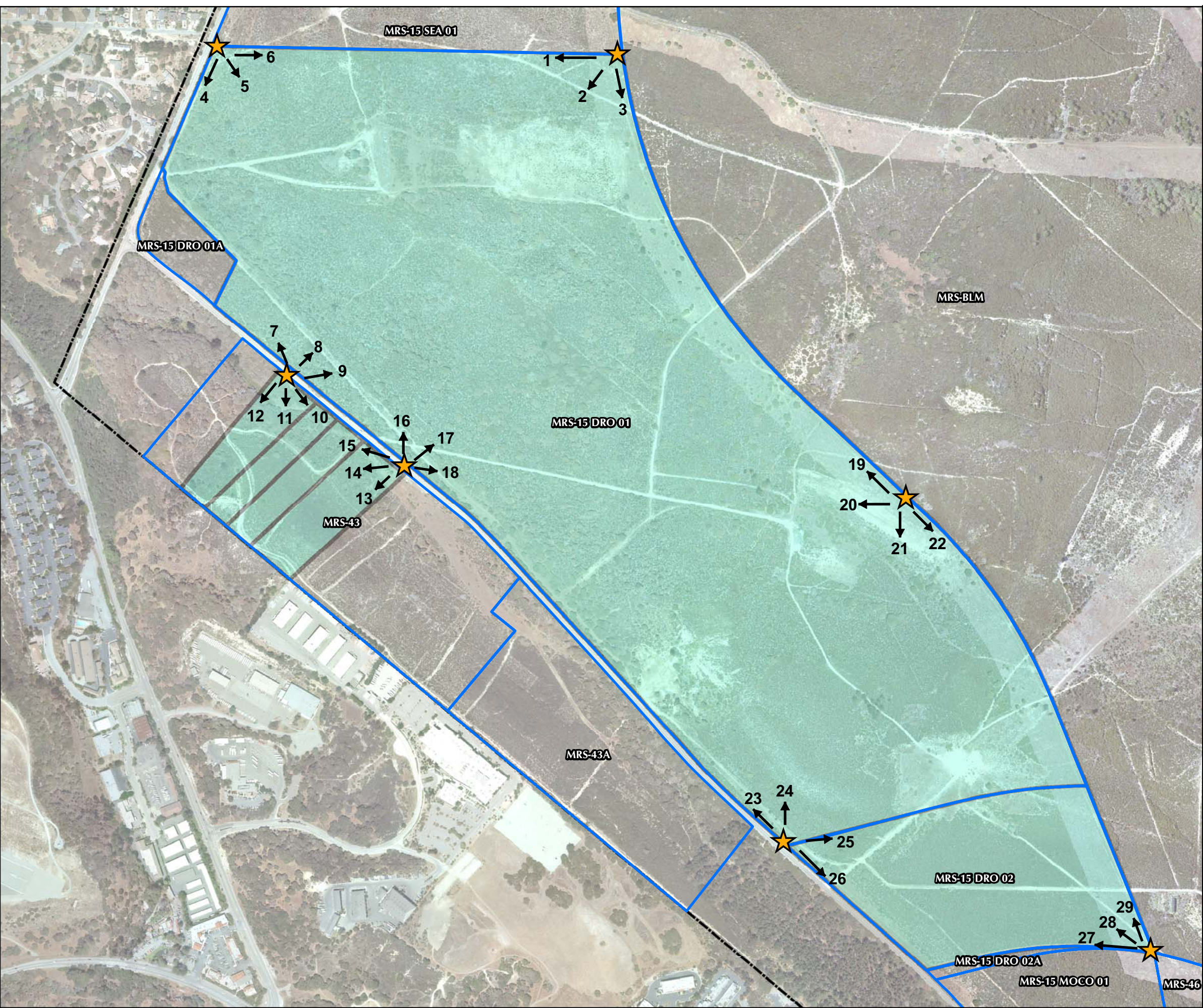



Areas of Residential Restriction

Del Rey Oaks MRA, Del Rey Oaks, California

Figure 3

T:\Projects\DelReyOaks\2010_04_15_fig4_DRO_PhotosDocumentation_Locations.mxd - 7/28/2010 @ 3:16:36 PM



Legend

- Del Rey Oaks MRA
- Munitions Response Site
- Former Fort Ord Boundary
- Photographic Monitoring Point and Direction of Photographs

Former Fort Ord Location Map

Map showing the location of the Del Rey Oaks MRA (Impact Area) relative to Monterey Bay, Sand City, Seaside, Del Rey Oaks, and Monterey. Key roads include 15th Street, 8th Street, Imjin Road, Inter-Garrison Road, Gigling Road, Broadway Avenue, and Highway 68. A scale bar indicates 0 to 2 miles.

North arrow and scale bar (0 to 1,200 Feet).

ARCADIS
Infrastructure, environment, facilities

Photographic Documentation Locations
Del Rey Oaks MRA, Del Rey Oaks, California

Figure 4

**Table 1
Contact Information
Del Rey Oaks Munitions Response Area
Del Rey Oaks, California**

<p>BRAC Environmental Coordinator Fort Ord Base Realignment and Closure Office P.O. Box 5008 Monterey, CA 93944-5008</p>
<p>Former Fort Ord Remedial Project Manager California Environmental Protection Agency Department of Toxic Substances Control 8800 Cal Center Drive Sacramento, California 95826</p>
<p>Former Fort Ord Remedial Project Manager United States Environmental Protection Agency 75 Hawthorne St., Mail Code SFD-8-3 San Francisco, CA 94105</p>
<p>Office of the Mayor Del Rey Oaks 650 Canyon Del Rey Road</p>

ARCADIS

Appendix A

Legal Description of the 11-Grid Area

LEGAL DESCRIPTION

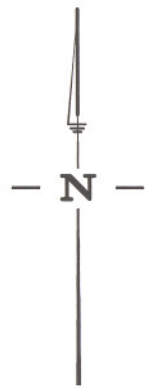
AREA REQUIRING ARMY CONSTRUCTION SUPPORT ELEVEN GRIDS IN THE RANGE 26 BERM AREA

Commencing at a point on the northeasterly parcel boundary, said point being a monument described as a 1/2" rebar tagged, "LS 3304" shown between courses "C8" and "L7", as said monument and courses are shown on that certain map entitled, "Ordnance & Explosives Removal Limits", filed for record on October 23, 2003, in Volume 27 of Surveys at Page 14, Records of Monterey County; thence from said Point of Commencement, departing said northeasterly parcel boundary, South 59°37'32" West, 452.98 feet to the True Point of Beginning, said point having State Plane Coordinates: Northing 2,108,500, Easting 5,735,700; thence

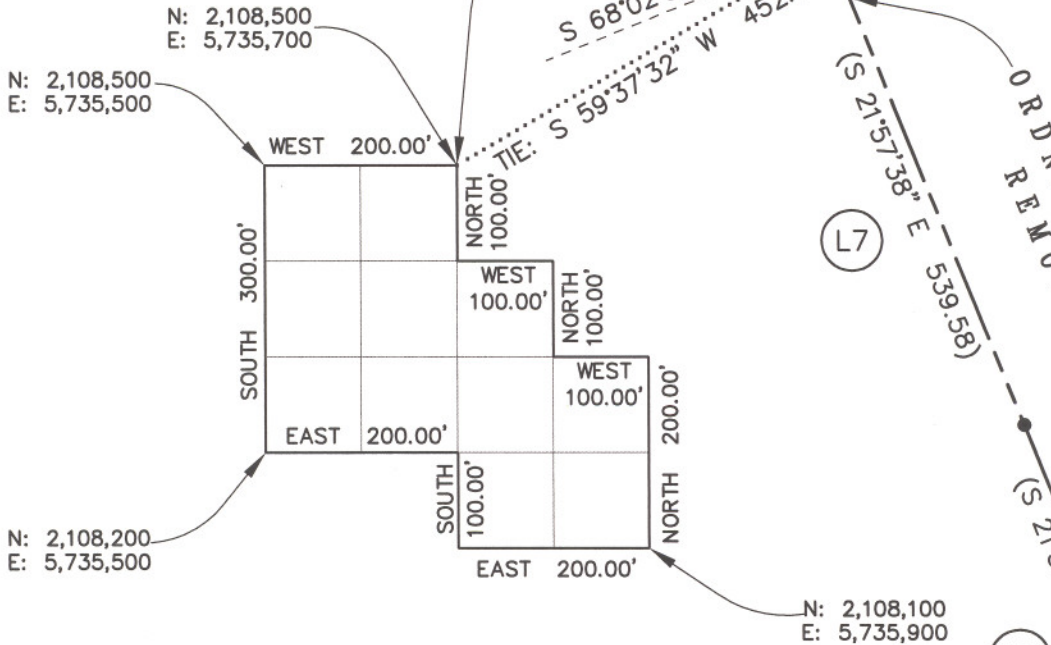
- 1) West, 200.00 feet to a point having State Plane Coordinates (Northing: 2,108,500, Easting: 5,735,500); thence
- 2) South, 300.00 feet to a point having State Plane Coordinates (Northing: 2,108,200, Easting: 5,735,500); thence
- 3) East, 200.00 feet; thence
- 4) South, 100.00 feet; thence
- 5) East, 200.00 feet to a point having State Plane Coordinates (Northing: 2,108,100, Easting: 5,735,900); thence
- 6) North, 200.00 feet; thence
- 7) West, 100.00 feet; thence
- 8) North, 100.00 feet; thence
- 9) West, 100.00 feet; thence
- 10) North, 100.00 feet to the True Point of Beginning.



$$\left(\begin{array}{l} \Delta = 08^{\circ}15'01'' \\ R = 3060.00 \\ L = 440.62 \end{array} \right)$$



SCALE: 1" = 200'



KEY:

COORDINATES, STATE PLANE (TYP.) = N: 2,108,200
E: 5,735,500

ALL COORDINATES SHOWN ARE STATE PLANE,
CALIFORNIA ZONE 4



EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

**AREA REQUIRING ARMY CONSTRUCTION SUPPORT
ELEVEN GRIDS IN THE RANGE 26 BERM AREA
BEING A PORTION OF THE PARCEL SHOWN ON
VOLUME 27, SURVEYS, PAGE 14**

COUNTY OF MONTEREY

STATE OF CALIFORNIA

PREPARED FOR

The United States Army Corps of Engineers

BY

CENTRAL COAST SURVEYORS

5 HARRIS CT., SUITE N-11 MONTEREY, CALIFORNIA 93940

PHONE: 394-4930

SCALE
1" = 200'

DATE
MARCH 2004

ARCADIS

Appendix B

Covenant to Restrict Use of Property

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Stewart Title

CRMARIA
12/28/2005
8:00:00

RECORDING REQUESTED BY:
U. S. Army Corps of Engineers
Real Estate Division, ATTN: CESP-K-RE-MC
1325 J Street
Sacramento, California 95814-2922

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California Region
Office of Military Facilities
ATTN: Anthony J. Landis, Chief
8800 Cal Center Drive
Sacramento, California 95826

DOCUMENT: **2005135588**



Titles: 1/ Pages: 50

Fees.....
Taxes.....
Other.....
AMT PAID _____

(Space Above This Line For Recorder's Use Only)

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

Re: A portion of the former Fort Ord known as Parcels E29a, E29b.1, E31a, E31b, E31c and E36 (also known as MRS-DRO.1, MRS-DRO.2, and a portion of MRS-43).

This Covenant and Agreement (hereinafter "Covenant") is made by and between the United States of America acting by and through the Department of the Army (also referred to herein as the "Covenantor"), the current owner of the herein described real Property located in the City of Del Rey Oaks, County of Monterey, State of California, shown on Exhibit A and described in Exhibit B, attached hereto and incorporated herein by this reference (the "Property"), and the State of California acting by and through the California Department of Toxic Substances Control ("Department").

The United States Environmental Protection Agency (U.S. EPA) placed Fort Ord on the National Priorities List (Superfund) in 1990. All of the former Fort Ord facility is subject to the requirements of the Federal Comprehensive Environmental Compensation and Liability Act ("CERCLA"). The entire Property is undergoing the CERCLA remediation process, which will not be completed prior to transfer of the Property. Because the Covenantor intends to transfer this Property to the Fort Ord Reuse Authority ("FORA") prior to the end of the CERCLA remediation process and FORA has agreed to receive the Property under those conditions, such transfer must be pursuant to the CERCLA Section 120(h)(3) "early transfer process". The Department and the Covenantor also wish to expedite the transfer of this Property to FORA for transfer to the City of Del Rey Oaks (Del Rey Oaks) pursuant to the "early transfer" process.

As part of the "early transfer," the Covenantor has prepared a Finding of Suitability for Early Transfer ("FOSET"), which specifically provides that the Property is suitable for early transfer for the intended use of a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure.

el...

Pursuant to California Civil Code section 1471(c), the Department has determined this Covenant is reasonably necessary to protect present or future human health, safety or the environment as a result of the presence of hazardous materials, as defined in the California Health and Safety Code ("H&SC") section 25260(d).

The Covenantor intends to transfer the Property to FORA and recognizes that FORA will transfer the Property to Del Rey Oaks. As a part of the transfer to FORA, the Covenantor will impose deed restrictions on the Property, which will be similar to the restrictions contained in this Covenant.

The Covenantor and the Department, collectively referred to as the "Parties," hereby agree the use of the Property will be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 The Property, totaling approximately 324 acres, is more particularly depicted in Exhibit A and described in Exhibit B. The Property is located on the former Fort Ord, California. Fort Ord was selected for closure in 1991, and property disposal actions are governed by provisions of Public Law 101-510, the Base Realignment and Closure Act of 1990, as amended.

1.02 The U.S. Army Corps of Engineers' Engineering Evaluation/Cost Analysis Phase I, Former Fort Ord, Monterey County, California, September 1997, includes additional details of the identification of the range and actions taken to date to detect and render safe munitions and explosives of concern ("MEC") (previously known as ordnance and explosives ("OE") and unexploded ordnance ("UXO")) found on the Property. (Note: MEC are specific categories of military munitions that may pose unique explosive safety risks. This definition includes UXO but does not include small arms ammunition.)

1.03 Portions of parcels E29a and E29b.1 were part of the Impact Area (previously known as the Multi-Range Area ("MRA")). Parcels E29a and E29b.1 include portions of former Ranges 24, 25 and 26, which were used for antitank training, small arms training and machine gun training, respectively. Parcels E31a, E31b, E31c and E36 were reportedly used as a backstop for rifle grenades and shoulder launched projectiles in the early 1940's.

The Covenantor has completed munitions response (MR) actions on the Property. The Army performed a series of MR actions on the Property from 1998 through 2003. The clearance effort has been completed to the level of appropriate technology and the Army's standard, except for portions of parcels E29a and E29b.1 (within an "11 grid area" in the Range 26 berm area). The 11 grid area is shown and described in Exhibit C. Within the 11 grid area, the Army will provide construction support during intrusive work operations that exceed a depth of 4 feet. There remains a potential that remnant

MEC still exists on the Property. The Covenantor is conducting a munitions response remedial investigation and feasibility study ("MR RI/FS") at the former Fort Ord. The MR RI/FS is not yet complete; however, early transfer is essential to moving forward with reuse of the Property.

1.04 Portions of former Ranges 24, 25 and 26 are within Parcel E29a as shown on Plate 2-Attachment 3 of the FOSET. Based on the results of sampling and characterization activities conducted at these ranges for chemical contamination in soil, it was determined that remediation was warranted at Ranges 24 and 25 only. Remedial action was not required at Range 26. The Army has performed excavation and removal of soil containing accumulated spent ammunition and residual lead at Ranges 24 and 25. This cleanup achieved an average lead level of less than 35 parts per million, which is below the State of California's approved level appropriate for unrestricted use.

1.05 Some portions of the surface and subsurface soils of the Property may contain MEC. The Department considers MEC to be a hazardous material as defined in Health and Safety Code section 25260.

1.06 On December 2, 2003, Del Rey Oaks adopted an ordinance entitled "Digging and Excavation on the Former Fort Ord" (hereinafter "Excavation Ordinance") that addresses the potential MEC risk by requiring permits for certain excavation activities. The Excavation Ordinance requires that the Safety Alert – Ordnance and Explosives at Former Fort Ord ("Safety Alert"), attached as Exhibit A thereto, be distributed to those persons who may be disturbing the soil at the Property. A copy of the ordinance is attached to this Covenant as Exhibit D.

1.07 The Covenantor has issued a FOSET dated April 2004, as required to permit transfer of the Property prior to: a) the Army making the covenant that all remedial action has been completed, b) completion of the MR RI/FS and c) a final assessment of the adequacy of any interim response action. This type of transfer is subject to the requirements of Section 120(h) (3) (C) of CERCLA and requires a determination by the Administrator of the U.S. EPA, with the concurrence of the state Governor, that the Property is suitable for transfer. The FOSET indicates the intended reuse of the Property is for a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure.

1.08 CERCLA Section 120(h)(3)(A)(ii)(I) requires a separate deed covenant from the Covenantor warranting all remedial action necessary to protect human health and the environment, with respect to any substances remaining on the Property, has been taken before the date of the transfer. The required covenant may be deferred when the deed or other agreements contain response action assurances, as specified in CERCLA Section 120(h)(3)(C)(ii)(I-IV), that: 1) ensure the Property is suitable for the use intended by the transferee, 2) use restrictions are in place to ensure the protection of human health and the environment, 3) use restrictions will also ensure that transfer will not disrupt remedial activities, and 4) the deed or other agreements also contain an assurance from the Army that it will request adequate funds to address schedules for

investigation and completion of all actions necessary to support the subsequent issuance of the required CERCLA 120(h)(3)(A)(ii)(I) covenant.

1.09 The Department, Del Rey Oaks and FORA have entered into an Agreement, Del Rey Oaks Former Fort Ord Resort Property (Exhibit C), dated September 9, 2004, 2004 ("Department – Del Rey Oaks Agreement"). The Department – Del Rey Oaks Agreement specifies construction support and OE education and safety measures that must occur at the Property. Generally, the Department – Del Rey Oaks Agreement prohibits disturbance of more than 10 cubic yards of soil at the Property unless specified measures are taken.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the State of California by and through the California Department of Toxic Substances Control and includes any successor agencies.

2.02 U.S. EPA. "US EPA" means the United States Environmental Protection Agency.

2.03 Covenantor. "Covenantor" shall mean the United States of America acting through the Department of the Army.

2.04 Owner. "Owner" means the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.05 Occupant. "Occupant" shall mean Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property after the Covenantor has conveyed the Property.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code section 25222.1 and 25355.5(a) (1) (c), and Civil Code section 1471, (b) inures to the benefit of the Department and passes with each and every portion of the Property, (c) is for the benefit of and is enforceable by, the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners and Occupants. Pursuant to Health and Safety Code section 25222.1 and 25355.5(a) (1) (C) and Civil Code section 1471, this Covenant binds all Owners and Occupants of the land, their heirs, successors, and assignees, and their agents, employees, and lessees. Pursuant to Civil Code section 1471(b), all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notice of Presence of MEC. Prior to the sale, lease, or sublease of the Property, or any portion thereof; or the execution of a license or easement on the Property, the owner, lessor, or sub-lessor shall give the buyer, lessee, or sub-lessee written notice that there is potential for the presence of MEC in the soil of the Property. This written notice shall include the Safety Alert. Written notice is not required for hotel guests, short term rentals and leases, liens and other non-possessory encumbrances for those who will have minimal potential for disturbing the soil. Such notice shall include a statement summarizing the MR action performed on the Property.

3.04 Accompaniment to Deeds and Leases. This Covenant shall accompany all deeds and leases for any portion of the Property, except those short-term rentals and leases, liens and other non-possessory encumbrances for those who will have minimal potential for disturbing the soil.

3.05 Conveyance of Property. The immediate past Owner shall notify the Department no later than thirty (30) days after executing any document conveying any ownership interest in the Property (excluding short-term rentals and leases, liens, and other non-possessory encumbrances for those who will have minimal potential for disturbing the soil). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance; except as otherwise provided by law, by administrative order or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01 Prohibited Uses. As set forth above, the FOSET has found the Property is suitable for early transfer for the intended use of a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure.

(A) Based on the above and continuing until this Covenant is terminated or modified pursuant to paragraph (B) below or paragraphs 6.01 or 6.02 herein, the Property shall not be used for any of the following purposes:

(1) A residence, including any condominium, mobile home or factory built housing, constructed or installed for residential habitation. Not included in the term "residence" are a hotel and related facilities that are typically ancillary to a

hotel, and timeshares or similar units with limited duration occupancy, provided they do not include landscaping maintained by the occupants thereof;

(2) A hospital (other than a veterinary hospital);

(3) A public or private school for persons under the age of 21; and

(4) A day care center for children. The Property may be used for a daycare center for children if such daycare center meets the following requirements:

(a) No bare soil.

(b) No gardens.

(c) Ground surfaces are covered with continuous lawn or hard surfaces such as concrete.

(d) The daycare center is located within the area of resort buildings.

(e) Landscaping is maintained by personnel who have had the MEC recognition training described in Section 2.1.1 of the Department - Del Rey Oaks Agreement.

(B) Notwithstanding paragraph (A) above, once the warranty required by CERCLA 120(h)(3)(C)(iii) and referenced in paragraph 1.08 above is issued, the Owner may apply pursuant to Paragraph 6.02 to have the above-described prohibitions of use terminated if the Department, with an opportunity to comment by U.S. EPA and the Covenantor, determines the Property, or if only a portion of the Property is affected, has been cleared pursuant to the Department's then accepted standards for clearance for residential use. The Department shall, under the appropriate circumstances, review and consider the application request for said termination. Upon such termination, this Covenant shall be appropriately modified.

(C) At any time, the Owner may apply to the Department, pursuant to paragraph 6.01, for a variance to change the allowed land use on all or part of the Property to include residential. This application, subject to acceptance by the Department, with an opportunity to comment by US EPA and the Covenantor, shall be accompanied by a description detailing the work to be performed to assure all or part of the property is suitable for residential use.

4.02 Soil Management Requirements. The following activities are prohibited on the Property without the prior written approval of the Department.

(A) Soil disturbance, except as allowed pursuant to the Department – Del Rey Oaks Agreement (Exhibit C) and the Excavation Ordinance (Exhibit D).

(B) Activities in violation of the Department – Del Rey Oaks Agreement, which contains restrictions and requirements.

(C) Activities in violation of the Del Rey Oaks Excavation Ordinance, including any modifications.

4.03 Access. The Department, its contractors and agents, shall have reasonable right-of-entry and access to the Property for inspection, monitoring, testing, sampling and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety or the environment and oversee any required activities, provided such access does not unreasonably interfere with either construction activities or the Owner's use of the Property.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require the Owner or Occupant modify or remove any improvements ("Improvements" herein shall include, but are not limited to, all buildings, roads, driveways, and paved parking areas, etc.) constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions including nuisance or abatement against the Owner or Occupant as provided by law.

ARTICLE VI

VARIANCE, TERMINATION AND TERM

6.01 Variance. Any Owner or with the Owner's written consent, any Occupant of the Property may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Any Owner and/or any Occupant, with the Owner's written consent of the Property, or any portion thereof, may apply to the Department for a termination of the restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in exercising its discretion, this Covenant shall continue in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication of the Property or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.02 State of California References. All references to the State of California and the Department include successor agencies/departments or other successor entity(ies) and delegated agencies.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Monterey within ten (10) days of the Covenantor's receipt of a fully executed original and prior to transfer of the Property from the Department of the Army to another Owner.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor:

Director, Fort Ord Office, Army Base Realignment and Closure
P.O. Box 5008
Presidio of Monterey, California 93944-5008

To Department:

Chief, Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

To U.S. EPA:

Chief, Federal Facility and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, Mail Code: SFD-8-3
San Francisco, California 94105-3901

To Fort Ord Reuse Authority:

Executive Officer
Fort Ord Reuse Authority
100 12th Street, Bldg. 2880
Marina, California 93933

To Del Rey Oaks:

City Manager
City of Del Rey Oaks
650 Canyon Del Rey
Del Rey Oaks, California 93940

And to current owners and/or property manager, at addresses as provided by Del Rey Oaks.

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

7.09 Representative Authority. The undersigned representative of each party to this Covenant certifies he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

IN WITNESS WHEREOF, the COVENANTOR has caused this Covenant to be executed in its name by the Deputy Assistant Secretary of the Army for Installations and Housing and the Seal of the Department of the Army to be hereunto affixed this 2nd day of December, ~~2004~~ 2005

DEPARTMENT OF THE ARMY

Joseph W. Whitaker

Joseph W. Whitaker

Deputy Assistant Secretary of the Army for Installations and Housing

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)
)ss
COUNTY OF ARLINGTON)



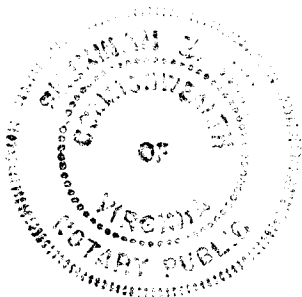
I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, whose commission as such expires on the 30th day of September, 2008, do hereby certify that on this day personally appeared before me in the said Commonwealth of Virginia, County of Arlington, Joseph W. Whitaker, Deputy Assistant Secretary of the Army for Installations and Housing, whose name is signed to the foregoing instrument and acknowledged the foregoing instrument to be his free act and deed, dated the 2nd day of December, 2005 and acknowledges the same for and on behalf of the UNITED STATES OF AMERICA.

Given under my hand this 2nd day of December, ~~2004~~ 2005

Shekinah Z. Hill

NOTARY PUBLIC

Embossed Hereon Is My
Commonwealth of Virginia Notary Public Seal
My Commission Expires September 30, 2008
SHEKINAH Z. HILL



IN WITNESS WHEREOF, the DEPARTMENT OF TOXIC SUBSTANCES CONTROL,
STATE OF CALIFORNIA has caused these presents to be executed on this 9th day
of September, 2004.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Anthony J. Landis
Anthony J. Landis

Chief of Northern California Operations, Office of Military Facilities

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF SACRAMENTO)

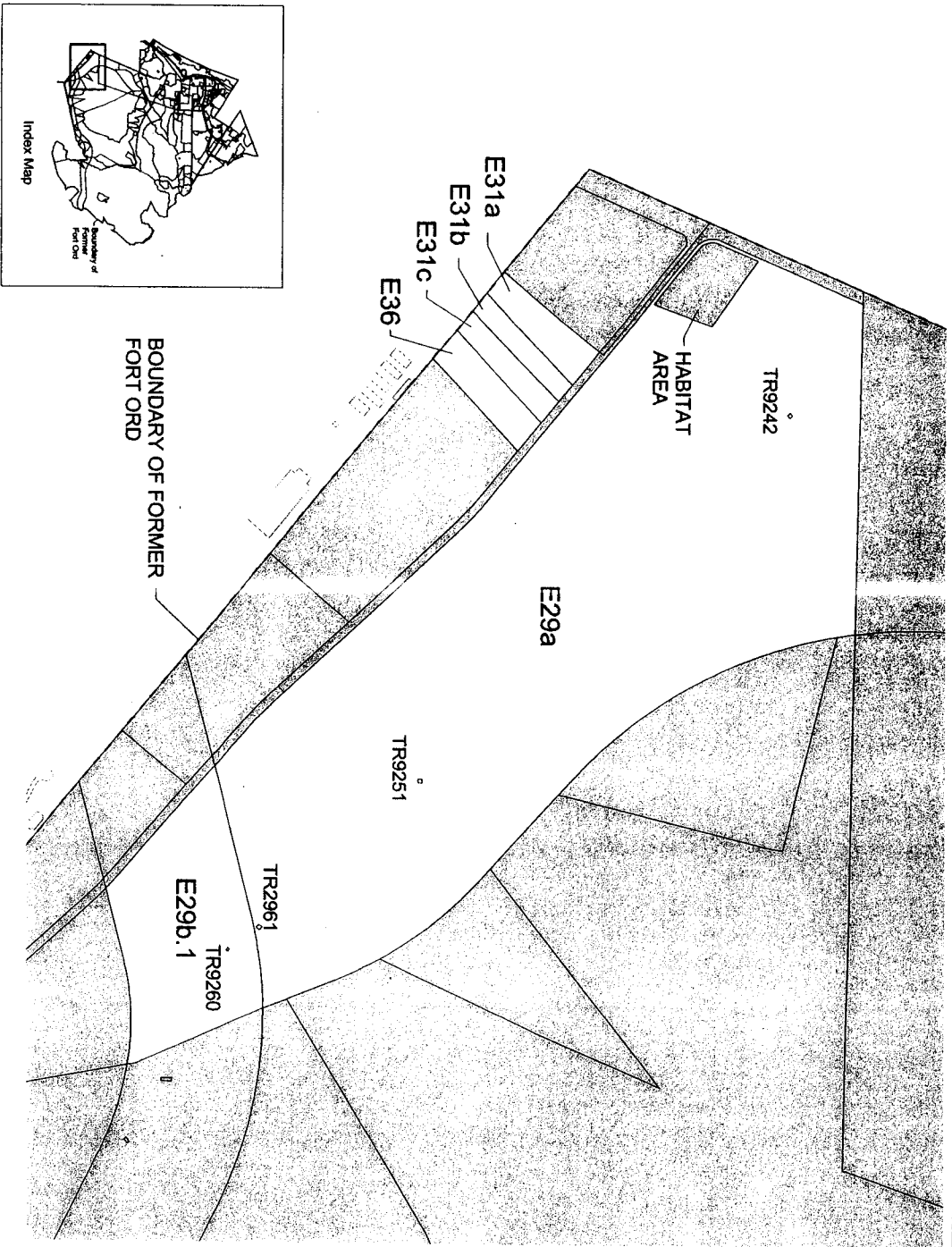
I, the undersigned, a Notary Public in and for the State of California, County of Sacramento, whose commission as such expires on the 26th day of October, 2005, do hereby certify that on this day personally appeared before me in the said State of California, County of Sacramento, Anthony J. Landis, Chief of Northern California Operations, Office of Military Facilities, whose name is signed to the foregoing document dated the 9th day of September, 2004, and acknowledges the same for and on behalf of the Department of Toxic Substances Control.

Given under my hand this 9th day of September, 2004.

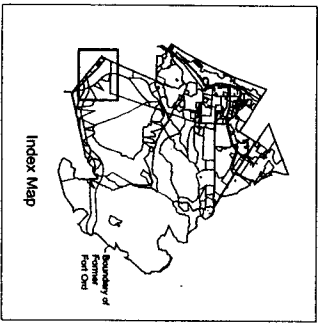
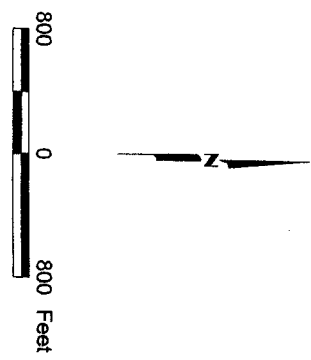
Kathleen Duncan
NOTARY PUBLIC



EXHIBIT A



- EXPLANATION**
- E36 Transfer Parcel with Number
 - E31a Not Part of this Transfer
 - 9251 Building with ID Number



Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property

MACTEC

Location Map
 Del Rey Oaks FOSFT
 Former Fort Ord
 Monterey, California

DATE: 10/00
 JOB NUMBER: 52703 00134
 DRAWN BY: JCF
 APPROVED BY: [Signature]
 REVISION DATE: 6/03

EXHIBIT B
H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

LEGAL DESCRIPTION

**341.87 ACRE PARCEL OF LAND FOR ECONOMIC DEVELOPMENT
CONVEYANCE - "DEL REY OAKS"**

PARCEL 1

All that real property situate in the City of Del Rey Oaks, County of Monterey, State of California described as follows:

All that land shown and designated as "Parcel 1" on that certain map entitled "Record of survey showing the boundary of a 341.87 acre parcel of land for economic development conveyance, Del Rey Oaks" filed for record in Volume 23 of "Surveys" at Page 103, on June 23, 2000, Records of Monterey County, California, said parcel being more particularly described as follows:

Beginning at the southwesterly corner of the Fort Ord Military Reservation, as said corner is shown on Page 5 of 31 of map filed for record in Volume 19 of "Surveys" at Page 1, Records of said county, being also in the northwesterly line of General Jim Moore Boulevard (North South Road) at the most westerly corner of Parcel 18 as said Parcel is shown and so designated upon map filed for record in Volume 20 of "Surveys" at Page 110, said point being herein designated as Point "A" for the purpose of further description; thence

South 50° 05' 20" East, 109.60 feet to the southeasterly line of General Jim Moore Boulevard; thence along said southeasterly line and boundaries of said Parcel 18,

North 23° 14' 55" East, 842.90 feet; thence

Easterly along the arc of a tangent circular curve, concave to the south, having a radius of 60 feet, through a central angle of 106° 04' 01", for an arc distance of 111.07 feet to the southwesterly line of South Boundary Road; thence tangentially along said southwesterly line,

South 50° 41' 04" East, 1041.25 feet; thence leaving said line and boundary of said Parcel 18,

South 39° 54' 40" West, 895.53 feet to boundary of said Fort Ord Military Reservation; thence along said boundary

South 50° 05' 20" East, 838.25 feet; thence leaving said Fort Ord Military Reservation boundary line

North 47° 26' 06" East, 913.35 feet to said southwesterly line of South Boundary Road and boundary of Parcel 18; thence along said southwesterly line, the following (6) courses

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

South 50° 41' 04" East, 342.61 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2370.00 feet, through a central angle of 8° 24' 15", for an arc distance of 347.63 feet; thence tangentially

South 42° 16' 49" East, 1710.55 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the northeast, having a radius of 3630.00 feet, through a central angle of 6° 02' 20", for an arc distance of 382.60 feet; thence tangentially

South 48° 19' 09" East, 1403.10 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2870.00 feet, through a central angle of 1° 04' 31", for an arc distance of 53.86 feet; thence non-tangentially leaving said southwesterly line of South Boundary Road and boundary of said Parcel 18,

North 42° 45' 22" East, 60.00 feet to a point on the northeasterly line of said South Boundary Road, said point also being the most westerly corner of Parcel "C", as said parcel is shown and so designated on the map filed for record in Volume 23 of "Surveys", at Page 26, Records of Monterey County, California, thence along the northwesterly boundaries ~~line~~ of said Parcel "C" with the following (2) courses,

North 76° 00' 33 East, 279.77 feet; thence

Easterly along the arc of a tangent circular curve, concave to the south, having a radius of 2518.61 feet, through a central angle of 24° 30' 21", for an arc distance of 1077.23 feet to the northeasterly corner of said Parcel "C"; thence non-tangentially leaving the boundary of said Parcel "C"

North 21° 57' 19" West, 1618.78 feet; thence

Northwesterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 3060.00 feet, through a central angle of 24° 44' 56", for an arc distance of 1321.77 feet; thence tangentially

North 46° 42' 15" West, 1055.75 feet; thence

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

Northerly along the arc of a tangent circular curve, concave to the east, having a radius of 3310.00 feet, through a central angle of $39^{\circ} 08' 26''$, for an arc distance of 2261.17 feet; thence non-tangentially

North $88^{\circ} 47' 40''$ West, 2490.65 feet to a point on said boundary line of said Fort Ord Military Reservation being the most northerly corner of the before mentioned Parcel 18; thence along said line,

South $23^{\circ} 14' 55''$ West, 2153.41 feet to the point of beginning.

Containing a gross area of 341.87 acres of land, more or less.

Exception Parcel "A"

Excepting therefrom the following described parcel of land for roadway and utilities purposes, being a portion of "Parcel 18" as said parcel is shown and so designated upon map filed for record in Volume 20 of "Surveys", at Page 110, Records of said county, said portion being particularly described as follows:

Beginning at the hereinbefore described "Point A"; thence along the boundaries of said "Parcel 18" with the following (9) courses,

South $50^{\circ} 05' 20''$ East, 109.60 feet to the southeasterly line of General Jim Moore Boulevard (North South Road); thence along said southeasterly line

North $23^{\circ} 14' 55''$ East, 842.90 feet; thence

Easterly along the arc of a tangent circular curve, concave to the south, having a radius of 60 feet, through a central angle of $106^{\circ} 04' 01''$, for an arc distance of 111.07 feet to the southwesterly line of South Boundary Road; thence tangentially along said southwesterly line,

South $50^{\circ} 41' 04''$ East, 2341.75 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2370.00 feet, through a central angle of $8^{\circ} 24' 15''$, for an arc distance of 347.63 feet; thence tangentially

South $42^{\circ} 16' 49''$ East, 1710.55 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the northeast, having a radius of 3630.00 feet, through a central angle of $6^{\circ} 02' 20''$, for an arc distance of 382.60 feet; thence tangentially

South $48^{\circ} 19' 09''$ East, 1403.10 feet; thence

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2870.00 feet, through a central angle of $1^{\circ} 04' 31''$, for an arc distance of 53.86 feet; thence non-tangentially leaving said southwesterly line of said South Boundary Road and boundary of said "Parcel 18",

North $42^{\circ} 45' 22''$ East, 60 feet to a point on the northeasterly line of said South Boundary Road and boundaries of said Parcel 18; thence along the northeasterly line of South Boundary Road and boundaries of Parcel 18 with the following (7) courses,

Northwesterly along the arc of a non-tangent circular curve whose center of circle bears South $42^{\circ} 45' 22''$ West, 2930.00 feet distant, for an arc distance of 54.99 feet through a central angle of $1^{\circ} 04' 31''$; thence tangentially

North $48^{\circ} 19' 09''$ West, 1403.10 feet; thence

Northwesterly along the arc of a tangent circular curve, concave to the northeast, having a radius of 3570.00 feet, through a central angle of $6^{\circ} 02' 20''$, for an arc distance of 376.27 feet; thence tangentially

North $42^{\circ} 16' 49''$ West, 1710.55 feet; thence

Northwesterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2430.00 feet, through a central angle of $8^{\circ} 24' 15''$, for an arc distance of 356.44 feet; thence tangentially

North $50^{\circ} 41' 04''$ West, 1835.51 feet to a point on said northeasterly line of South Boundary Road, said point being designated as Point "B" for the purpose of further description; thence continuing along said line,

North $50^{\circ} 41' 04''$ West, 551.18 feet; thence leaving said line,

Northerly along the arc of a tangent circular curve, concave to the east, having a radius of 150 feet, through a central angle of $73^{\circ} 55' 59''$, for an arc distance of 193.56 feet to the southeasterly line of General Jim Moore Boulevard; thence tangentially along said line and boundaries of Parcel 18,

North $23^{\circ} 14' 55''$ East, 1115.53 feet; thence leaving said line of road and run across the northerly boundary of Parcel 18,

North $88^{\circ} 47' 40''$ West, 91.70 feet to the northwesterly boundary line of said Fort Ord Military Reservation and said Parcel 18; thence along said line,

South $23^{\circ} 14' 55''$ West, 2153.41 feet to the point of beginning.

Exception Parcel "A" contains 13.52 acres more or less

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

Exception Parcel "B"

Excepting also therefrom the following described parcel of land for habitat preserve purposes:

Beginning at the hereinbefore described "Point B"; thence

North 26° 00' 01" East, 293.93 feet; thence

North 45° 00' 00" West, 565.69 feet; thence

North 14° 52' 39" West, 90.78 feet, thence

South 84° 50' 03" West, 36.80 feet to the southeasterly line of General Jim Moore Boulevard;
thence along said line,

South 23° 14' 55" West, 271.56 feet; thence leaving said line,

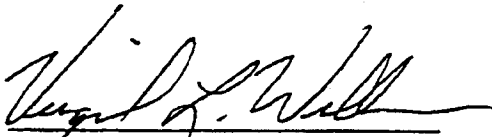
Southerly along the arc of a tangent circular curve, concave to the east, having a radius of
150 feet, through a central angle of 73° 55' 59", for an arc distance of 193.56 feet to the
northerly line of South Boundary Road; thence tangentially along said line,

South 50° 41' 04" East, 551.18 feet to the Point of Beginning

Exception Parcel "B" contains 4.63 acres more or less

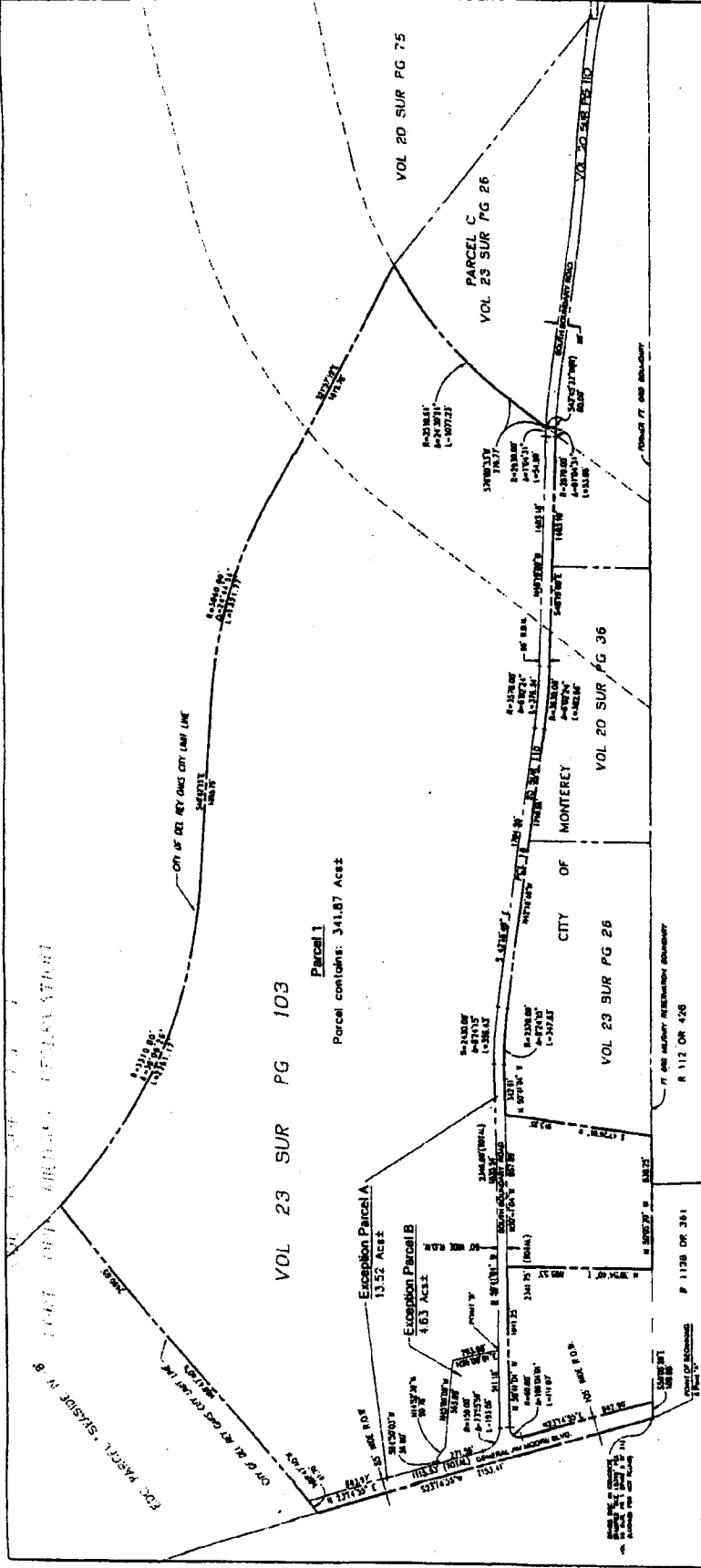
Leaving the before described Parcel 1 a net area of 323.72 acres, more or less

Prepared by:



Virgil L. Williams, L.S. 3304





**MAP TO ACCOMPANY
LEGAL DESCRIPTION**
OF THE
BOUNDARY OF A 341.87 ACRE PARCEL OF LAND
FOR
ECONOMIC DEVELOPMENT CONVEYANCE
"DEL REY OAKS"
RESERVATION OF
THE FORT ORD MILITARY RESERVATION
(AS SHOWN ON VOL. 19 OF SURVEYS, PAGE 1)
MONTEREY CITY LANDS TRACT No. 1
CITY OF DEL REY OAKS
MONTEREY COUNTY, CALIFORNIA
by



JANUARY 2004
SCALE: 1" = 400'
Sheet 1 of 1

EXHIBIT C

AGREEMENT

Del Rey Oaks Former Fort Ord Resort Property

Del Rey Oaks, California

This Agreement is made and entered into, by and between the State Department of Toxic Substances Control ("Department"), the Fort Ord Reuse Authority ("FORA") and the City of Del Rey Oaks and the Redevelopment Agency of the City of Del Rey Oaks (collectively "Del Rey Oaks") pursuant to Health and Safety Code section 25355.5 (a)(1)(c).

1.0 Background

- 1.1 The former Fort Ord was selected for closure in 1991 in accordance with procedures of Public Law 101-510, the Base Realignment and Closure Act of 1990. The property is currently owned by the United States Army ("Army"), was part of the former Fort Ord, and is located in Del Rey Oaks, California, and consists of approximately 324 acres in six parcels identified by the Army as parcels: E29a, E29b.1, E31a, E31b, E31c, and E36 ("the Property"). The Property is also known as MRS-DRO.1, MRS-DRO.2, and a portion of MRS-43. A detailed map of the Property, including a site location map, is attached as Attachment 1.
- 1.2 Fort Ord was listed on the National Priorities List (Superfund) in 1990. The Fort Ord Federal Facility Agreement was signed by the Army, the United States Environmental Protection Agency, the Department and the California Regional Water Quality Control Board, Central Coast Region, in 1990. The entire Property is undergoing the federal Comprehensive Environmental Compensation and Liability Act ("CERCLA") remediation process, which will not be finished for some time. Because the Army intends to transfer this Property to FORA prior to the end of the CERCLA remediation process, and FORA and Del Rey Oaks have agreed to receive the Property under those conditions, such transfer must be pursuant to the CERCLA Section 120(h) (3) "early transfer process".
- 1.3 The Property was used extensively as a practice range area for training involving military munitions. From 1998 to 2003, the Army performed munitions response (MR) actions at the Property and munitions debris and munitions and explosives of concern (MEC, previously known as ordnance and explosives (OE)) items were found. The Property has now been "cleared" of MEC by the Army to its standard except for portions of parcels E29a and E29b.1 (within an "11 grid area" in the Range 26 berm area). The Army and the Department agree the potential exists that additional MEC items remain.

- 1.4 The Department understands that, while the Army believes it has completed MR actions on the property to be conveyed to Del Rey Oaks through FORA, the use of current technology does not assure that all MEC has been detected and removed. Additional remedial actions may remain to be performed on the Property. Due to residual uncertainty about any remaining MEC, the Army has committed that it will provide on-site construction support within the 11 grid Range 26 Berm Area, as described in section 2.2 below.
- 1.5 The Department, FORA and Del Rey Oaks understand at a future date, the Army, under the existing Federal Facilities Agreement, will prepare a Record of Decision (ROD) document to address any remaining remedial actions for the Property.
- 1.6 The Department, FORA, and Del Rey Oaks understand the Army, pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan, will continue to provide recurring Military Munitions Response Program reviews on the Property no less frequently than every 5 years.
- 1.7 The former Fort Ord is a Resource Conservation and Recovery Act (RCRA) 42 USC section 6901 et. seq. "Interim Status" facility.
- 1.8 FORA has been designated by the Army, pursuant to the Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California, dated the 20th day of June 2000, ("MOA") and MOA Amendment No. 1, dated the 23rd day of October 2001; which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California, pursuant to provisions of Federal law, as the recipient of the Property with the Property to be re-conveyed from FORA to Del Rey Oaks or directly to a developer designated by Del Rey Oaks under the provisions of an Implementation Agreement dated May 31, 2000 ("IA").
- 1.9 The Army and DTSC will enter into a Covenant to Restrict Use of Property (hereinafter "Covenant") prior to transfer of the Property to prohibit certain land uses on the Property, and require compliance with this Agreement.
- 1.10 Del Rey Oaks and FORA intend the Property will be conveyed to and developed by one or more developers in conformance with the Fort Ord Reuse Plan, as adopted by FORA on June 13, 1997. As part of the development process, Del Rey Oaks intends to require any developer, through a written agreement, to comply with the provisions of this Agreement as applicable. Notwithstanding any such agreement, Del Rey Oaks will be responsible to the Department for compliance with and enforcement of this Agreement.

- 1.11 This Agreement contemplates the Property will be transferred to FORA, and that FORA will transfer the Property to either Del Rey Oaks or a developer designated by Del Rey Oaks. As such, this Agreement specifically refers to Del Rey Oaks as the responsible party for compliance and enforcement of this Agreement. The Parties agree that if the transfer to Del Rey Oaks or a developer designated by Del Rey Oaks does not occur, FORA, DTSC and the new prospective property owner will enter into an agreement similar to this Agreement prior to land transfer. FORA remains bound to this Agreement until the new agreement is signed.

The parties agree as follows:

2.0 Implementation of This Agreement

- 2.0.1 Del Rey Oaks will implement this Agreement consisting of the following:

2.1 Construction Support and Military Munitions Education and Awareness

For soil disturbances (defined for the purposes of this paragraph 2.1 as any digging, site preparation, grading, drilling, rototilling, soil preparation, or similar activities), the following shall apply:

- 2.1.1 Del Rey Oaks, FORA and the Department understand the Army has committed to conduct, at its expense, construction worker military munitions recognition training, which is part of the Fort Ord Site Security Program dated April 2003 (Site Security Program). (See Attachment 2, Site Security Program, section 3.3.1.5). This training will include the warning to all workers performing soil disturbance that MEC items may be present and, because of this fact, appropriate care must be taken. The Army, pursuant to the Site Security Program, will also provide all new workers this training. This training is not required for hotel and resort employees, delivery persons, etc., who will have minimal potential for soil contact. If at any time the Army ceases to provide this training, Del Rey Oaks will provide equivalent training, as approved by the Department.
- 2.1.2 No soil disturbance or construction activity on the Property shall begin until the Army has provided the training described in section 2.1.1 above to all construction workers involved in soil disturbance and all other construction workers who will be working on the Property.
- 2.1.3 No soil will be removed from the Property without prior approval from the Department.
- 2.1.4 Any munitions debris found will be stockpiled and secured in one designated area. Upon notification to the Army by the Unexploded Ordnance (UXO) technician or Del Rey Oaks, the Army has agreed to dispose of this debris appropriately.

- 2.1.5 In the event any person finds an item suspected to be a potential MEC item during soil disturbance activity, Del Rey Oaks or its successor will stop work and evacuate all non-essential personnel within an appropriate area. Del Rey Oaks or its successor will immediately notify the Army, Del Rey Oaks Police Department, the Directorate of Law Enforcement at the Presidio of Monterey, the Department, and other personnel/agencies deemed appropriate. For found items, refer to Additional Activities and Reporting, section 2.4.
- 2.1.6 Federal law requires the Army will continue to be responsible for potential live OE items. In the event that an OE item is encountered on the Property which is suspected to be live, the Army will return to the Property, make the determination as to whether the item is live, and will render such items inert, treat them, or transport them to an appropriate location.
- 2.1.7 In the event the number or type of MEC items found on the Property indicates that additional MEC items may remain on the Property, the Department and/or Del Rey Oaks may request the Army return to perform an appropriate additional MR action.
- 2.1.8 In addition, for soil disturbance projects of 10 cubic yards or greater, Sections 2.1.8 - 2.1.8.7 shall apply (see note).

Note: Soil yardage is calculated for an entire project. Examples of projects that may be 10 cubic yards or greater include the initial golf course construction, as well as re-routing a pipeline or re-contouring a green. It is not the intent of this Agreement to require UXO construction support for routine, small, one-time soil disturbance events such as replacing broken sprinkler lines or planting shrubs. Sections 2.1.1 – 2.1.7 do apply to these small one-time soil disturbance events.

- 2.1.8.1 Construction Support will be provided as described herein. For this Agreement, "Construction Support" is generally defined as UXO expert(s) being on site, observing soil disturbance and using approved geophysical equipment to scan soil whenever possible, depending on safety considerations, grading and construction activity.
- 2.1.8.2 The objectives of Construction Support are to achieve a safe development, safe use of the property and to find any MEC or MEC related items that may remain on the property. These items are most likely to exist in the top three feet of existing soil.
- 2.1.8.3 The UXO expert(s) shall comply with Department of Defense (DoD) Explosive Safety Board Standard 6055.9, "DoD Ammunition and Explosive Safety Standards", July 1999 (DoD 6055.9), DoD 6055.9-STD, DoD Ammunition and Explosives Safety Standards and other appropriate rules.

- 2.1.8.4 The UXO expert(s) shall keep detailed records, including daily logs, of the grading, their work, and any MEC or MEC-like items found.
- 2.1.8.5 Del Rey Oaks shall submit a work plan or technical memorandum (Work Plan) as agreed by the Department, to the Department at least 30 days prior to the intended start of clearing and grading, in satisfaction of the requirements of Sections 2.1.1 through 2.1.8.4 inclusive, above. This Work Plan will include the grading plans for the project and a contractual and enforceable obligation by which developer will be required to comply with the Work Plan. DTSC will use its best efforts to review, accept with modification or reject the Work Plan within sixty (60) days of receipt.
- 2.1.8.6 Del Rey Oaks will implement the approved Work Plan.
- 2.1.8.7 Del Rey Oaks will give notice to the Army and the Department fourteen days prior to commencing soil disturbance activities on any portion of the Property. The notice to the Department will include the grading plan with a map designating areas for grading.

2.2 Soil Disturbance Activities in the Range 26 Berm Area

- 2.2.1 If Del Rey Oaks conducts any soil disturbance activities in the 11 grid Range 26 Berm Area identified in the OE-15DRO1-2 After Action Report dated August 2003, as shown on Attachment 3 and described in Attachment 4 ("Berm Area"), Del Rey Oaks will comply with 2.1.1 through 2.1.8.7 above, including the submission of a Work Plan, except as modified by this section 2.2.
- 2.2.2 Del Rey Oaks will provide construction support in compliance with Sections 2.1.8 through 2.1.8.7 from existing ground surface to four feet in depth below existing ground surface.
- 2.2.3 The Army has committed it will provide on-site construction support in the Berm Area. This construction support will be provided only during activities that disturb soil in the 11-grid Berm Area at depths greater than four feet below the current ground surface, down to either (1) original grade as determined by the Army, or (2) proposed new final grade and additional four feet. DTSC and Del Rey Oaks understand the construction support that the Army will provide will be consistent with the Final OE-15DRO.1-2 Site Specific Work Plan (sections 2.3.4 through 2.3.9).

2.3 Del Rey Oaks Ordinance Regarding Digging and Excavating on the Parcel

- 2.3.1 Del Rey Oaks adopted, on December 2, 2003, Ordinance No. 259, "An Ordinance Amending the Municipal Code to Add Chapter 15.48 Relating to Excavation on the Former Fort Ord" entitled "Digging and Excavation on the Former Fort Ord," to control and restrict excavation and movement of soil.

2.3.2 Del Rey Oaks will not make any substantive change to the Ordinance without prior notice to and approval by the Department. The Department will not unreasonably withhold approval. The City Council may, following 30 days' prior written notice to the Department and following a public hearing, revise the Ordinance upon a finding based on substantial evidence that the revision is required for the preservation of the public peace, health, safety or welfare. Notwithstanding the foregoing, Del Rey Oaks may not revise the Ordinance to change the requirement that it provide the Safety Alert to all Property Owners, nor will Del Rey Oaks revise the Ordinance to change the requirement that the permittee prepare and file an After Action Report in accordance with Exhibit B of the Ordinance.

2.4 Additional Activities and Reporting

2.4.1 Del Rey Oaks, its developers, or its successor will immediately notify the Army, Del Rey Oaks Police Department, the Directorate of Law Enforcement at the Presidio of Monterey and the Department if any MEC items or MEC-like items are found at any time. (See Attachment 5, Army MEC Incident Reporting Form). Within seven days of finding the MEC item, Del Rey Oaks will submit a completed Army MEC Incident Reporting Form to the Department.

2.4.2 Del Rey Oaks will give notice to the Army and the Department of any future grading or construction activities during the planning stages of these grading or construction activities.

2.4.3 The Department, Del Rey Oaks and FORA agree that additional fencing, which provides the same degree of protection as the existing fencing the Army has constructed surrounding the Former Fort Ord Impact Area ("Impact Area", formerly known as the Multi-Range Area or MRA), is required in order to protect workers, resort staff and guests. Del Rey Oaks will install the fencing between the Property and the Impact Area before construction is commenced and will continue to maintain the fence after the construction is completed. Del Rey Oaks will notify the Department upon completion of the fence. Del Rey Oaks may apply for a variance to this paragraph after the adjacent property in the Impact Area has been cleared.

2.4.4 Within 30 days after completion of activities involving 10 cubic yards or more of soil disturbance, Del Rey Oaks will submit an after action report to DTSC covering activities undertaken during the project. The after action report will include descriptions of grading and construction activities (including start and finish dates for these activities), any MEC or MEC related items discovered, the location and depth of MEC items discovered, and the specific compliance with each of the provisions of this Agreement. The final as-built drawings, including final grade elevations, will be included in the completion report. The daily logs kept by the MEC technicians, pursuant to Section 2.1.8.4 above, and submitted Army MEC Notification forms will also be submitted with these reports.

To Department: Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

To FORA: Executive Officer
Fort Ord Reuse Authority
100 12th Street
Marina, California 93933

- 3.2 Nothing herein shall prevent Del Rey Oaks, and it is specifically understood that Del Rey Oaks may; through a written agreement, assign some of the responsibilities (except reporting responsibilities, defined in Section 2.4) to the developer of the Property. Del Rey Oaks remains responsible for ensuring compliance with this Agreement.
- 3.3 Five-Year Review: Pursuant to the National Contingency Plan and the Federal Facilities Agreement ("FFA"), the Army will be performing all appropriate five-year reviews.
- 3.4 Obligations of the Department: The Department agrees to review and oversee the measures to be performed by Del Rey Oaks pursuant to this Agreement.
- 3.5 Project Coordinator: The Del Rey Oaks' Project Coordinator will be the Del Rey Oaks City Manager, who will be responsible for receiving and submitting all notices, comments, approvals, and other communications from and to the Department.

- 3.6 Submittals: All submittals, reports and notifications from Del Rey Oaks that are required by this Agreement will be sent to:

Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

- 3.7 Communications: No informal advice, guidance, suggestions or comments by the Department regarding reports, plans, specifications, schedules or any other writings by Del Rey Oaks, will be construed to relieve Del Rey Oaks of the obligations to obtain such formal approvals as may be required.
- 3.8 Department Review and Approval: If the Department determines that any report, plan, schedule or other document submitted to the Department for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, the Department may: (1) modify the document as deemed necessary and approve the document as modified; or (2) return comments to Del Rey Oaks with recommended changes and a date by which Del Rey Oaks must submit to the Department a revised document incorporating the recommended changes. Any noncompliance with these directives shall be deemed a failure or refusal to comply with this Agreement.
- 3.9 Stop Work Order. In the event the Department determines that any activity during construction (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area, or to the environment, the Department may order Del Rey Oaks to stop further construction on the appropriate portion of the site for such period of time needed to abate the endangerment. A copy of any such order will be provided to Del Rey Oaks and the current owners and/or property manager at addresses as provided by Del Rey Oaks.
- 3.10 Compliance with Applicable Laws: Del Rey Oaks will carry out this Agreement in compliance with all applicable local, state, and federal requirements, including; but not limited to, requirements to obtain permits and assure worker safety.
- 3.11 Liabilities: Nothing in this Agreement will constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of current or future operations of Del Rey Oaks. Nothing in this Agreement is intended or will be construed to limit or preclude the Department from taking any action authorized by law to protect public health and safety or the environment, and recovering the cost thereof. Notwithstanding compliance with the terms of this Agreement, Del Rey Oaks may be required to take further actions as are necessary to protect public health and safety, and the environment.

- 3.12 Site Access: The Department will have reasonable right-of-entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Agreement as deemed necessary by the Department in order to protect the public health and safety or the environment, and oversee any required activities, provided such access does not unreasonably interfere with either construction activities or the Owner's use of the Property.
- 3.13 Record Retention: All data, reports and other documents required by this Agreement, will be preserved by Del Rey Oaks for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If the Department requests some or all of these documents be preserved for a longer period of time, Del Rey Oaks will either comply with that request, or deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Del Rey Oaks will notify the Department in writing at least six (6) months prior to destroying any documents prepared pursuant to this Agreement.
- 3.14 State Liabilities: The State of California will not be liable for any injuries or damages to persons or property resulting from acts or omissions by Del Rey Oaks in carrying out activities pursuant to this Agreement, nor will the State of California be held as a party to any contract entered into by Del Rey Oaks or its agents in carrying out activities pursuant to this Agreement.
- 3.15 Severability: The requirements of this Agreement are severable, and Del Rey Oaks will comply with each and every provision hereof notwithstanding the effectiveness of any other provision.
- 3.16 Modification and Termination: Del Rey Oaks may, upon written request, seek modification or termination of this Agreement or the Covenant at any time. The Department will, under the appropriate circumstances, review and consider such request. In addition to modification as provided elsewhere in this Agreement, this Agreement may be modified or terminated by mutual written agreement of the parties at any time. The Department understands Del Rey Oaks may request that changes be made to this Agreement or the Covenant, based on the wishes of developers or lenders. The Department's intent is to work and cooperate with Del Rey Oaks to make such changes, when such changes are necessary and appropriate to implement the proposed development, and will continue to protect human health and the environment.
- 3.17 Parties Bound: This Agreement applies to and is binding upon Del Rey Oaks and its officers, directors, agents, employees, successors and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. Del Rey Oaks will provide a copy of this Agreement to any successor or assignee. If the transfer to Del Rey Oaks does not occur, FORA is the Party Bound, as set forth in paragraph 1.11.

- 3.18 Cost Recovery: Del Rey Oaks will be liable for all the Department's direct costs, as defined in H&SC Section 25269.1(b) and indirect costs, calculated pursuant to H&S 25269.3 and H&S 25269.4, for activities specifically attributable to Del Rey Oak's compliance with this Agreement. The Department will determine costs and bill Del Rey Oaks pursuant to the Department of Toxic Substances Control Summary of Cost Recovery Policies, August 7, 2003. If Del Rey Oaks causes additional contamination, cost recovery may also be pursued by the Department under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law. The Department will invoice Del Rey Oaks for the Department's costs on a quarterly basis. Attached as Attachment 6, is an estimate of the Department's costs to be incurred under this Agreement. Note this is an estimate only and will likely not be the amount billed.
- 3.19 Effective Date: The effective date of this Agreement is the date of signature by the Department's authorized representative.
- 3.20 Representative Authority: Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement, and to execute and legally bind the parties to this Agreement.
- 3.21 Enforcement of Covenant: The Department and the Army will enter into a Covenant for the Property prior to transfer. The Covenant prohibits certain uses of the Property. Section 5.01 of the land use covenant provides the Department may require the land owner to remove certain improvements if made in violation of the covenant. The Department will give Del Rey Oaks a reasonable opportunity to cure any such violations prior to requiring modification or removal of improvements.

IN WITNESS WHEREOF, the Department, Del Rey Oaks and FORA, by their duly authorized representatives, have executed this Agreement on the dates set forth below at Del Rey Oaks, California.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Anthony J. Landis
Anthony J. Landis, P.E., Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control

9-9-04
Date

CITY OF DEL REY OAKS

Jack D. Barlich
Jack D. Barlich, Mayor

Date: August 23, 2004

REDEVELOPMENT AGENCY OF
THE CITY OF DEL REY OAKS

Jack D. Barlich
Jack D. Barlich, Chair

Date: August 23, 2004

FORT ORD REUSE AUTHORITY

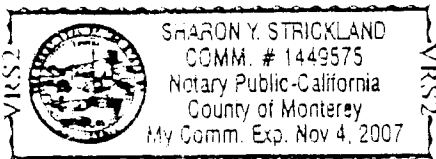
Michael A. Houlemard
Michael A. Houlemard, Jr., Executive Officer

Date: August 23, 2004

STATE OF CALIFORNIA)
) ss
COUNTY OF MONTEREY)

On August 23rd, 2004 before me, a Notary Public in and for said state, personally appeared **Michael A. Houlemard, Jr. and Jack D. Barlich**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument are the entities upon behalf of which the persons acted, executed the instrument.




WITNESS my hand and official seal.



Sharon Y. Strickland
Notary Public, State of California

ATTACHMENT 1

EXPLANATION

-  Transfer Parcel with Number
-  Not Part of this Transfer
-  Building with ID Number

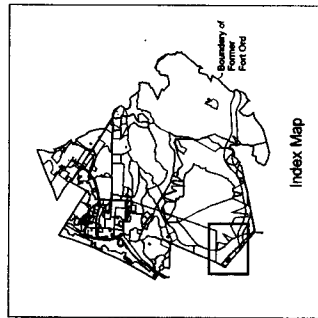
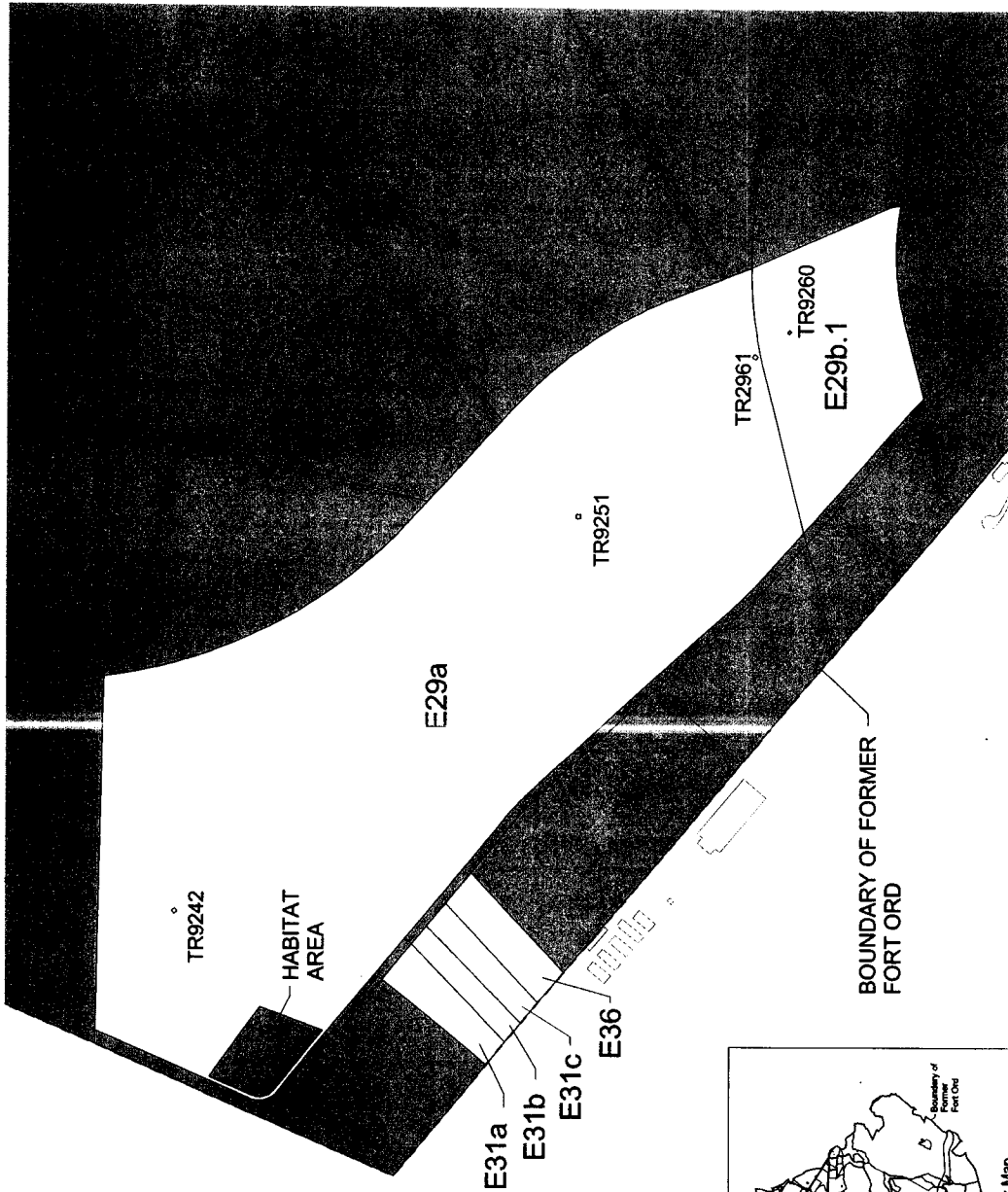


PLATE **1**

Location Map
 Del Rey Oaks FOSET
 Former Fort Ord
 Monterey, California



DRAWN JCF
 JOB NUMBER 52703 00134
 APPROVED *[Signature]*

DATE 10/00

REVISED DATE 6/03

Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property

Attachment 2

Excerpt from the Army's Site Security Program, April 2003 Regarding MEC Community Awareness and Training

3.3.1 Management Controls Management controls include education and community relations programs. Education/community relations programs are important in minimizing activities that might lead to an OE incident in two key ways:

- They inform the public of the danger of accessing OE sites, and therefore lessens OE exposures;
- They educate those who might encounter OE to not touch or otherwise disturb it, thereby reducing the possibility of accidental detonation.

3.3.2.1 Brochures, Pamphlets and Fact Sheets The most widely distributed brochure is entitled "Safety Alert". The Army's Community Relations Project Manager annually distributes this brochure to the following organizations:

- California State University Monterey Bay
- Department of Defense Center
- Rental managers of Bayview and Sunbay Properties
- Contractors
- Seaside and Marina Fire Departments
- Fort Ord Reuse Authority
- Housing Welcome Center (military families)
- Monterey County Office of Emergency Response and Preparedness Information
- Pacific Gas and Electric
- California Department of Parks and Recreation
- Marina Coast Water District
- Bureau of Land Management

In addition, the "Fort Ord News" is a quarterly publication that is mailed to 22,600 residents. Fifteen hundred copies are also hand delivered to schools and other institutions. This publication includes descriptions of ongoing cleanup activities and ordnance and explosive issues.

3.3.2.2 School Safety Program Since 1997, the former Fort Ord has had an Ordnance and Explosives School Safety Program. The objective of this program is to provide school age children with the ability to:

- Recognize the visible attributes of various OE items likely to exist on the former Fort Ord.

- Associate danger with OE items and Fort Ord OE areas.
- Understand the actions to be taken when a possible OE item is observed.

This program has a three-tiered approach that includes distribution of the “Safety Alert” to organizations and agencies who provide information to the local community, a one hour OE safety presentation for local elementary and middle schools for 5th, 6th and 7th grade students, and distribution of the “Safety Alert” to parents of children in the local schools and high school students. Coloring books are also available for the younger grades. The Army conducts the one-hour OE safety presentation. The presentation includes a 12-minute video entitled, “What’s Going on Behind the Signs? Unexploded Ordnance Safety at Former Fort Ord.” Table 2 displays the number of children that have been reached since 1997. Schools are sent letters in the fall (August/September) at the beginning of the school year, at the beginning of the calendar (January) year and then are contacted in April by telephone as a follow up.

Year	# Schools Invited	# Schools Participating	# Children Participating
1997-98	11	5	970
1998-99	11	4	1,023
1999-00	18	5	709
2000-2001	19	5	1,086
2001-2002	20	5	1,102

Table 2. School Safety Program

In addition, occasionally the Community Relations Project Manager is requested by various community groups to conduct presentations about the cleanup process. These presentations are utilized as opportunities to make the public aware of the ordnance and explosives risks. There are over 30 local organizations with addresses that are annually offered Ordnance and Explosives presentations.

3.3.2.3 Public Meetings “Safety Alert” brochures and the current publication of the “Fort Ord News” are made available at the Community Involvement Workshops. In addition, the Directorate of Environmental and Natural Resources Management has had an exhibit at the Monterey County Fair since 1994. “Safety Alert” brochures and displays on the cleanup are exhibited. From August 2000 to the present, refrigerator magnets have been distributed that have the phone number to call in the event of a discovery of OE. Exhibits are also displayed at the Bureau of Land Management Appreciation Day, California State University at Monterey Bay events, and Presidio of Monterey Safety Day and other events.

Town hall meetings (a forum similar to homeowner's association meetings) are conducted quarterly for the residents in military housing at the Ord Military Community. "Safety Alert" brochures are also distributed at town hall meetings.

Open Houses are conducted at least annually. Open Houses provide an opportunity for community members to talk to cleanup staff one on one about cleanup and to take tours of the areas where cleanup activities are ongoing or have been completed. The OE education board is on display and "Safety Alert" brochures and copies of the current publication of the "Fort Ord News" are also made available.

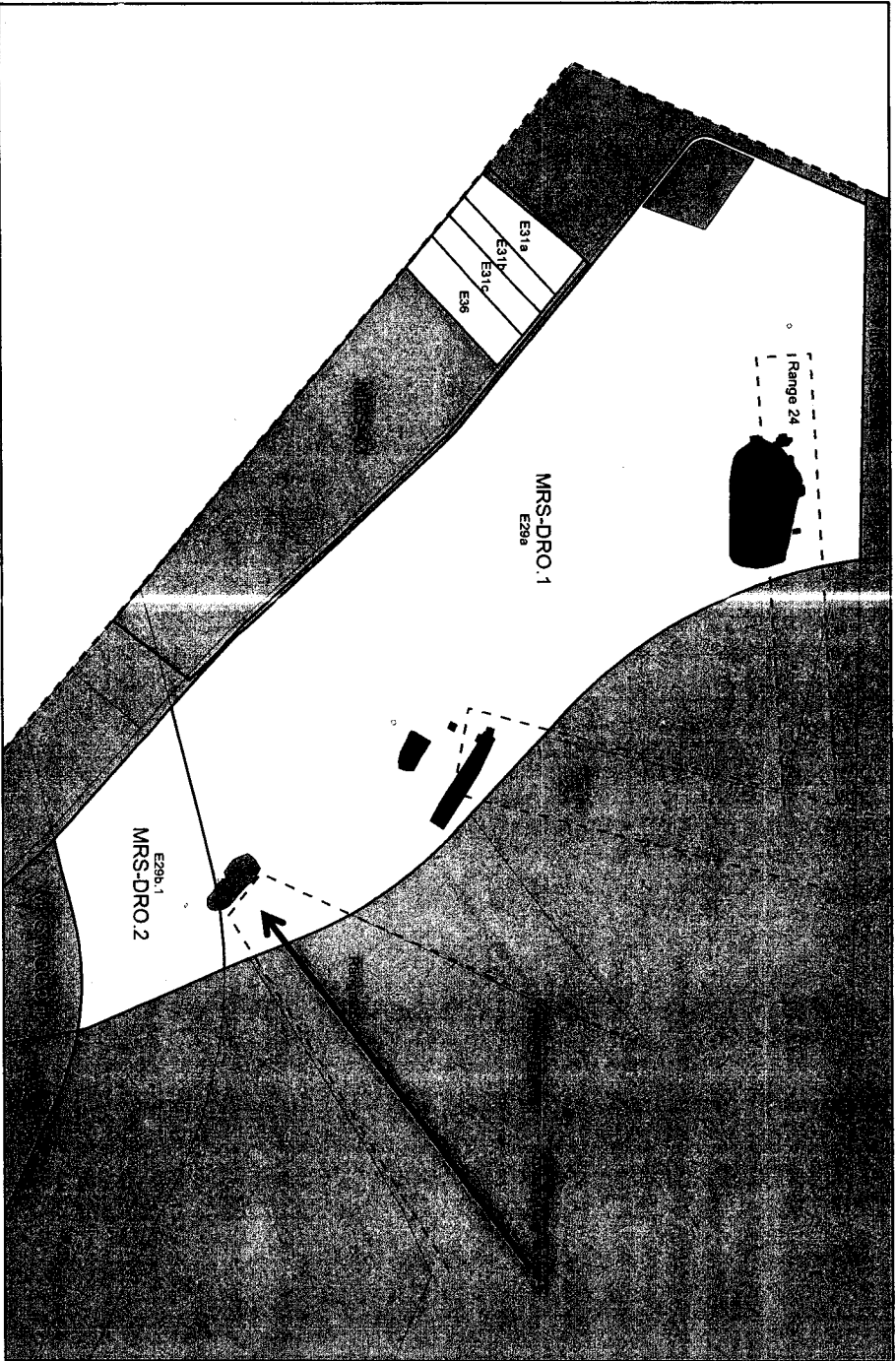
3.3.2.4 Display Boards The Bureau of Land Management (BLM) has kiosks and information boards that also display the "Safety Alert." Plate 1 provides a location map for kiosks and information boards. Information boards contain the same types of information. However, they are not enclosed like the kiosks and the information has been laminated to protect it from the weather. In addition, trail maps contain notification procedures if OE is found and information brochures which are distributed to visitors along with BLM trail maps.

3.3.2.5 OE Familiarization Training. The Army offers OE familiarization training to anyone digging holes or disturbing soil at the former Fort Ord and currently on property that has been transferred. The OE Safety Specialist conducts a thirty-minute training session. This training session includes a lecture on what OE might be found, the procedure to follow if something is found and "Safety Alert" brochures are also distributed. Staff from the following organizations have received familiarization training:

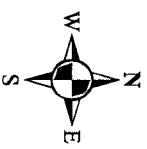
- CSUMB
- USACE Contractors
- Pacific Gas & Electric
- Pacific Bell
- BLM

To schedule this training, Mr. Lyle Shurtleff may be contacted at (831) 242-7924.

ATTACHMENT 3



- EXPLANATION**
- MRS Boundary
 - Transfer Parcel With Number E36
 - Not Part Of This Transfer
 - Location Of Former Filing Range
 - Limits Of Lead Removal Excavation
 - Limits Of Range 26 Beam Excavation
 - Boundary Of Former Fort Ord



Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property



MRS Locations
 Del Rey Oaks FOSET
 Former Fort Ord
 Monterey, California

APPROVED
 DATE

DATE

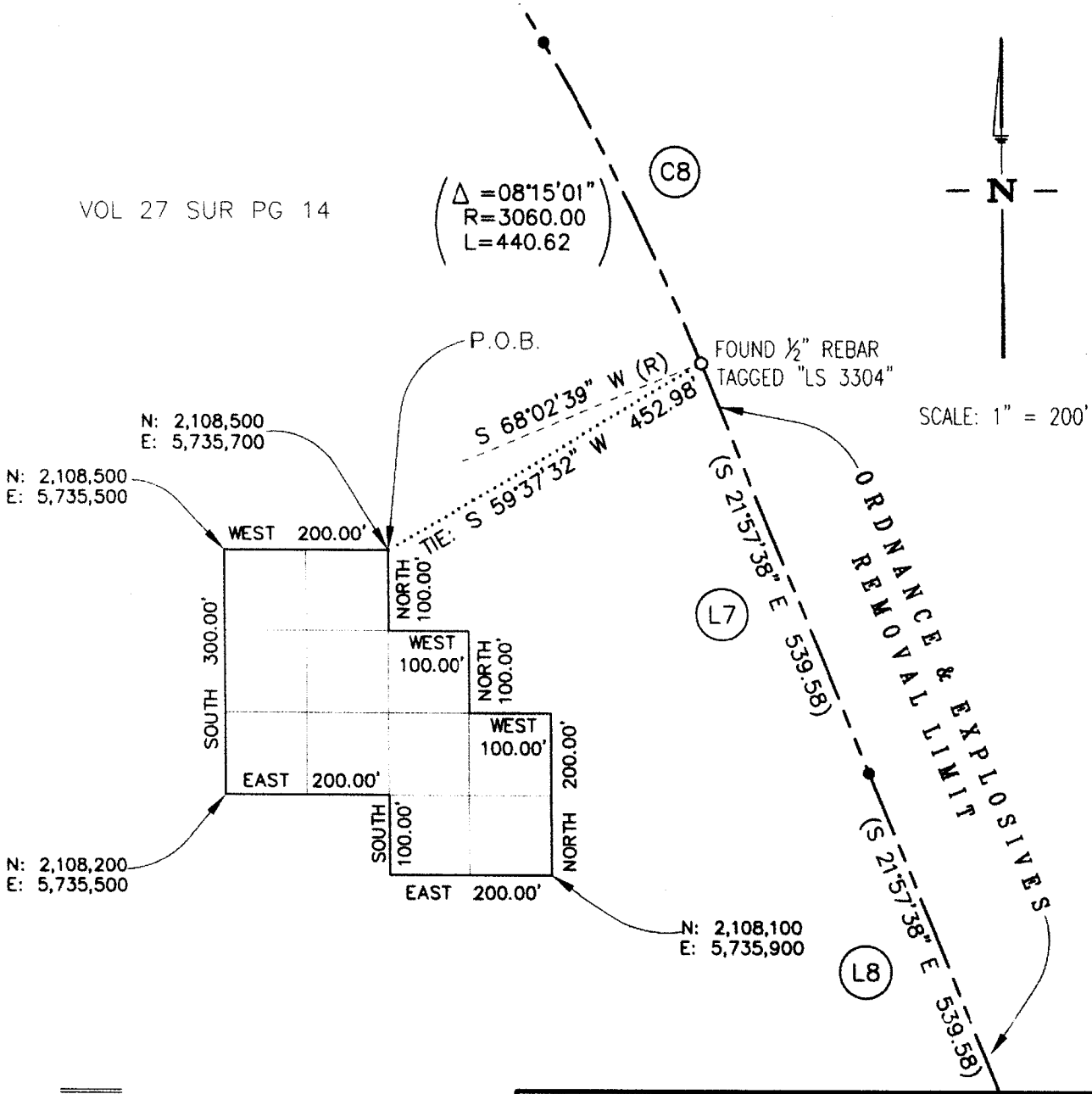
PLATE
2

**AREA REQUIRING ARMY CONSTRUCTION SUPPORT
ELEVEN GRIDS IN THE RANGE 26 BERM AREA**

Commencing at a point on the northeasterly parcel boundary, said point being a monument described as a ½" rebar tagged, "LS 3304" shown between courses "C8" and "L7", as said monument and courses are shown on that certain map entitled, "Ordnance & Explosives Removal Limits", filed for record on October 23, 2003, in Volume 27 of Surveys at Page 14, Records of Monterey County; thence from said Point of Commencement, departing said northeasterly parcel boundary, South 59°37'32" West, 452.98 feet to the True Point of Beginning, said point having State Plane Coordinates: Northing 2,108,500, Easting 5,735,700; thence

- 1) West, 200.00 feet to a point having State Plane Coordinates (Northing: 2,108,500, Easting: 5,735,500); thence
- 2) South, 300.00 feet to a point having State Plane Coordinates (Northing: 2,108,200, Easting: 5,735,500); thence
- 3) East, 200.00 feet; thence
- 4) South, 100.00 feet; thence
- 5) East, 200.00 feet to a point having State Plane Coordinates (Northing: 2,108,100, Easting: 5,735,900); thence
- 6) North, 200.00 feet; thence
- 7) West, 100.00 feet; thence
- 8) North, 100.00 feet; thence
- 9) West, 100.00 feet; thence
- 10) North, 100.00 feet to the True Point of Beginning.

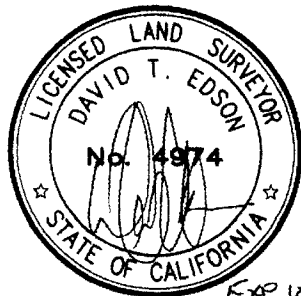




KEY:

COORDINATES, STATE PLANE (TYP.) = N: 2,108,200
E: 5,735,500

ALL COORDINATES SHOWN ARE STATE PLANE,
CALIFORNIA ZONE 4



EXP 12/31/05

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION	
AREA REQUIRING ARMY CONSTRUCTION SUPPORT ELEVEN GRIDS IN THE RANGE 26 BERM AREA BEING A PORTION OF THE PARCEL SHOWN ON VOLUME 27, SURVEYS, PAGE 14	
COUNTY OF MONTEREY	STATE OF CALIFORNIA
PREPARED FOR The United States Army Corps of Engineers	
BY CENTRAL COAST SURVEYORS	
5 HARRIS CT., SUITE N-11 MONTEREY, CALIFORNIA 93940	PHONE: 394-4930
SCALE 1" = 200'	DATE MARCH 2004

MUNITIONS AND EXPLOSIVES OF CONCERN (MEC) INCIDENT REPORTING FORM

If you discover any object that resembles munitions or explosives, **report it immediately** to US Army Corps of Engineers (USACE) and Fort Ord Base Realignment and Closure Office, Munitions Response Program Manager.

A. PROVIDE THE FOLLOWING INFORMATION:

Name of Person Reporting:	Telephone:
Agency:	Fax:
Date & Time of Incident/Discovery: Item has been in place for a long time	
Description of Item Found (refer to the "Safety Alert pamphlet):	
Location (direction from nearest road/building, attach map):	
GPS Coordinate Location: (Type of Instrument, NAD83 California State Plan Coordinates Zone IV, feet)	
Describe how the item was found:	

CONTACT THE APPROPRIATE AGENCIES IMMEDIATELY:

Initial when completed	Action	Contact Number	Date & Time Called
	Monday – Thursday Fax this form to USACE OE Safety Specialist	Fax: (831) 884-9030 Phone: (831) 884-9925 ext.226/231 (Mon-Thu 0600 - 1600)	
	Friday – Sunday call 787 th EOD Company IMMEDIATELY	Phone: (650) 603-8301/02 (24 hours)	
	Note: If 787th EOD Company is notified, Contact Fort Ord BRAC, Munitions Response Manager Lyle Shurtleff (831) 242-7919, Cell (831) 760-2575.		

B. To be completed by USACE when applicable (Mon – Thu)

Form Received By:	Date & Time:
Identification of Item Found:	
Extent of Area Surveyed:	Name of digital file for picture (date):
Disposition of Item:	
Fax completed form to Lyle Shurtleff Bldg 4463 Gigling Rd, POM (Fort Ord) within 8 business hours	Fax: (831) 394-6816 Phone: (831) 242-7919 Cell: (831) 760-2575
	Date & Time:

C. To be completed by POM DENR:

Completed Form Received By:	Date & Time:
Regulatory Agencies Notified (Date):	

Department of Toxic Substances Control

COST ESTIMATE:

Del Rey Oaks

*Includes Direct and Indirect Cost Rates **

TITLE	Project Manager	Legal	Toxicology	HQ CEQA	Industrial Hygiene	Public Participation	Supervisor	Clerical
CLASSIFICATION	EG	Staff Counsel	Staff Toxicologist	AEP	AIH	PPS	SHSE	WPT
TASKS								
For Initial Construction of Golf Course and Hotel, or Other Large Soil Disturbance Projects:								
Work Plan Review	40						8	2
Site Visits	32							
After Action Report (AAR) Review	40						8	2
TOTAL HOURS/CLASS	112						16	4
Hourly Rate/Class	\$123	\$153	\$150	\$109	\$116	\$104	\$135	\$58
Total Estimated Costs/Class	\$13,776						\$2,160	\$232
DTSC Travel and Per Diem	\$360							
Consultant Work Plan Review/Comments	\$496							
Consultant Site Visit	\$7,137							
Consultant AAR Review/Comment	\$496							
Grand Total Costs for Initial Construction of Golf Course and Hotel, or Other Large Soil Disturbance Projects:	\$24,657							
For Smaller Soil Disturbances of More Than 10 Cubic Yards:								
Work Plan Review	8						4	1
Site Visit	16							
After Action Report Review	8						2	1
TOTAL HOURS/CLASS	32						6	2
Hourly Rate/Class	\$123	\$153	\$150	\$109	\$116	\$104	\$135	\$58
Total Estimated Costs/Class	\$3,936						\$610	\$116
Grand Total Costs for Smaller Soil Disturbances of More Than 10 Cubic Yards:	\$4,862							
Ongoing, Recurring Activities:								
Annual Letter Report Review	8						2	1
TOTAL HOURS/CLASS	8						2	1
Hourly Rate/Class	\$123	\$153	\$150	\$109	\$116	\$104	\$135	\$58
Total Estimated Costs/Class	\$984						\$270	\$58
Grand Total Annual Costs for Ongoing, Recurring Activities:	\$1,312							

* Indirect rate used for calculations = 174.75%

Exhibit D

ORDINANCE NO. 259

AN ORDINANCE AMENDING THE MUNICIPAL CODE TO ADD CHAPTER 15.48 RELATING TO EXCAVATION ON THE FORMER FORT ORD

-o0o-

THE CITY COUNCIL OF THE CITY OF DEL REY OAKS DOES ORDAIN AS FOLLOWS:

1. Chapter 15.48 added. Chapter 15.48, entitled "Digging and Excavation on the Former Fort Ord" is hereby added to the Municipal Code to read in its entirety as set forth on the attached six (6) pages, marked Exhibit "A" and incorporated herein by this reference thereto.

2. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its final passage.

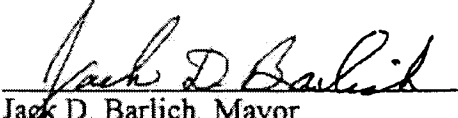
3. Posting of Ordinance. Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause it to be posted in the three (3) public places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Del Rey Oaks duly held on November 18, 2003, and was passed and adopted at an adjourned regular meeting duly held on December 2, 2003, by the following vote:

AYES:	COUNCIL MEMBERS:	Russell, Buckley Smith, Edelen, Clark and Barlich
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS	None

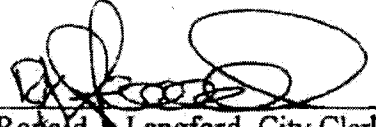
WELLINGTON LAW OFFICES 157 Cass Street Suite D Menlo Park, CA 94025 Telephone: (831) 373-8733

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Jack D. Barlich, Mayor

ATTEST:



Ronald A. Langford, City Clerk

STATE OF CALIFORNIA }
COUNTY OF MONTEREY } ss.
CITY OF DEL REY OAKS }

I, Stacy Tomasello, duly appointed City Clerk
of Del Rey Oaks, do hereby certify that the foregoing is a true and correct copy
of the original thereof on file in my office.



Deputy CITY CLERK

Chapter 15.48

Digging and Excavation on the Former Fort Ord

Sections:

15.48.010	Purpose and Intent
15.48.020	General.
15.48.030	Designation and Applicability.
15.48.040	Excavation and Digging Restrictions.
15.48.050	Permit Requirements.
15.48.060	Permit Procedure.
15.48.070	Term of Permit
15.48.080	Exceptions to Permit Conditions
15.48.090	Performance Bond.
15.48.100	Amendment to Permits.
15.48.110	Appeals.
15.48.120	Notification to Property Owners and Other Land Users
15.48.130	Revision of Chapter

15.48.010 Purpose and Intent. The United States Army ("Army") is in the process of transferring approximately 360 acres of the former Fort Ord military installation ("Fort Ord") to the City. Some parcels of the former Fort Ord were contaminated with ordnance and explosives ("OE"), which is a hazardous waste. The Army will not transfer those parcels until it has cleared those parcels of OE to its standard. Even following the Army's completion of OE response actions, it is possible that some OE materials may remain on those parcels. The California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") has statutory responsibility to oversee cleanup of releases of hazardous substances, which includes hazardous waste. DTSC cannot certify that all OE has been cleared and it requires a land use covenant to be recorded with the Monterey County Recorder on these parcels to provide additional controls and restrictions to protect the public health and safety and an agreement between the City and DTSC to provide additional safety measures, reporting, etc.

15.48.020 General. The City Council hereby finds and determines that those properties formerly included within the Fort Ord military installation which are suspected of containing OE require special standards and procedures for digging and excavation in addition to those contained in the Building Code, to ensure that:

- A. Neither digging or excavation nor development of such properties occurs until ordnance or explosive remediation thereon is completed;
- B. Potential purchasers or developers of sites which may contain OE and those persons whose work at such sites includes disturbing soil, are aware of the potential that OE may be located on these properties and are aware of the requirements for OE precautions prior to any digging, excavation or ground disturbance thereon; and
- C. DTSC should be continuously involved in the establishment of

controls for those properties because it has statutory oversight responsibility with respect to hazardous substance response actions.

15.48.030 Designation and Applicability.

A. The City Council shall by resolution, and with the concurrence of DTSC, designate all real property within the City's land use jurisdiction which was formerly part of Fort Ord and which have been identified in the Archives Search Report and Supplement, dated 1997, or are otherwise identified, as the possible location of unexploded ordnance or explosives as an "Ordnance Remediation District" ("District"). All such Districts shall be depicted on a Grading District Map by an "ORD" suffix to indicate the existence of ordnance precaution remediation obligations on such property. The City shall notify DTSC of any change in the permitted land uses in any District within thirty (30) days after it adopts any change.

B. The regulations in this Chapter shall apply in all "ORD" districts and shall be in addition and subject to all provisions of the Municipal Code including Title 17 and the Building Code.

15.48.040 Excavation and Digging Restrictions. It shall be unlawful for any person, including utilities, to engage in any of the following activities on any property located within a District unless that person is acting pursuant to a valid permit issued pursuant to this Chapter: excavation, digging, development or ground disturbance of any type involving the displacement of 10 cubic yards or more of soil.

15.48.050 Permit Requirements. An owner or user of real property located within a District who desires to conduct the activities described in section 15.48.040 shall apply to the City Manager for a permit. The application shall be on a form approved by the City, shall be signed by the permit applicant, and shall contain the following information:

A. A description of any previous OE excavation or removal activity conducted other than by the Army on the property whose soil is proposed to be excavated, moved or graded.

B. A description of the property, whose soil is proposed to be excavated, moved or graded. The description shall include a drawing with dimensions to a scale which sets forth the size and details of all proposed excavation activity, including any proposed cut and fill, trenching, well drilling, mineral excavation, post hole drilling, or other activity of any sort whenever the applicant proposes to disturb 10 cubic yards or more of soil.

C. A statement that the person submitting the application acknowledges liability if the person removes any detected unexploded ordnance or otherwise violates this Chapter and/or the Permit. The Army will continue to have the liability to remove any ordnance items found. The person submitting the application is responsible to follow the procedures for notification of DTSC and the Army upon finding an ordnance item set out in section 15.48.060 below.

D. A statement by the person submitting the application that s/he has, within the preceding twelve months, delivered a copy of the Safety Alert required by section 15.48.120 to everyone whose work at the Property described in "B" above includes disturbing soil.

E. Any other information which the City Manager may require as pertinent to the determination of the adequacy of the proposed plan.

F. Payment of the Permit fee, as established by the City Council, at the time of filing the application for the Permit.

15.48.060 Permit Procedure.

The City Manager shall review the permit application and shall approve the permit unless evidence is available which indicates that the proposed grading or excavation will create an undue risk to the health and safety of the public at large. Prior to acting on any such application, the City Manager, in his/her sole discretion, may set and conduct a public hearing for the purpose of receiving comments on the proposed grading and excavation. Any permit issued hereunder shall be subject to the following conditions:

A. All excavation and grading shall be performed solely in accordance with the permit approved by the City and in accordance with the Permit as issued by the City.

B. Prior to movement of any soil on any property located within a District, the Permittee or designee shall personally deliver to each person who intends to work on the property described in the permit the Safety Alert, and explain to each such person the information set forth in that Notice.

C. The Permittee may not move or disturb unless the Permittee is in compliance with the requirements placed on the property by the Agreement, Del Rey Oaks Former Fort Ord Resort Property executed between the City and DTSC, dated ____, 2003 ("DTSC Agreement"). Said requirements shall be attached to and become a part of any permit issued pursuant to this Chapter.

D. The Permittee shall cease soil disturbance activities upon discovery of any suspected unexploded ordnance. The Permittee shall notify the Del Rey Oaks Police Department, the Directorate of Law Enforcement at the Presidio of Monterey, the Army and DTSC of any suspected unexploded ordnance discovered during any excavation or soil removal immediately upon discovery. The Permittee shall coordinate appropriate response actions with the Army and DTSC.

E. No later than thirty (30) days following the completion of the permitted soil disturbance activity, the Permittee shall prepare and file with the City Manager, the Army and DTSC an After Action Report that shall state whether and where OE was detected and the extent and depth of OE response actions undertaken and completed on the property that is the subject of the permit. (See Exhibit B). The After Action Report shall include site maps to illustrate the information contained in the report. All After Action reports prepared and filed in accordance with this Chapter shall be deemed public records.

F. The Permittee agrees as a condition of issuance of a permit to defend at its sole expense, indemnify and hold harmless from any liability the City, and reimburse the City for any expenses incurred resulting from or in connection with the approval of the project including any claim, suit or legal proceeding. The City may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the Permittee of its obligations under this paragraph.

15.48.070. Term of permit. The permit shall be valid for one year from the date it is issued.

15.48.080 Exceptions to Permit Conditions. Following consultation with and approval by DTSC, the City Council may, upon a finding that the requirements of section 15.48.060.C are no longer necessary, designate by resolution any District as a "Limited Control District." The holder of any permit issued for any Limited Control District shall not be subject to section 15.48.060.C.

15.48.090 Performance Bond.

Upon a finding by the City Manager that a permit should issue for excavation or grading on the proposed site, the City Manager may require that a surety bond, lien or other security guarantee conditioned upon the faithful performance and completion of the permitted excavation activity be filed with the City. Such surety shall be executed in favor of the City and shall be maintained in an amount prescribed by the City Manager sufficient to ensure the completion of the excavation of the site as prescribed in the approved permit.

15.48.100 Amendment to Permits.

Request for amendments to an approved excavation permit may be submitted to the City Manager at any time, detailing proposed changes from the original permit. Deviations from the original permit shall not be undertaken until such amendment has been approved by the City in writing. Amendments to an approved permit shall be approved by the same procedure as prescribed for the approval of the original excavation permit.

15.48.110 Appeals.

Any person aggrieved by any determination of the City Manager in exercise of the authority granted herein shall have the right to appeal to the City Council. Any appeal setting forth the contested decision and the reasons for contesting same must be filed within ten (10) working days after the posting of the City Manager's decision at the three places designated by the City Council. The City Council shall render its decision within sixty (60) days following the filing of the notice of appeal. The Council may affirm, reverse or modify the decision of the City Manager. The Council action shall be final upon issuance of its decision.

15.48.120 Notification to Property Owners and Other Land Users.

A. The City will notify the owners of property designated as Ordinance Remediation Districts and those utilities known to be providing service within the City, of the requirements of this Chapter and provide those persons with the Safety Alert – Ordnance and explosives at Former Fort Ord ("Safety Alert"), which is attached hereto as Exhibit "A". The City shall annually notify the owners of said property as shown on the equalized tax rolls of the requirements of this Chapter and provide those persons with a copy of the Notice. Failure of any owner, occupant or user of such land to receive said notification shall not relieve that person from responsibility for compliance with this Chapter.

B. All owners, occupants or users of land subject to this Chapter, including utilities, shall notify any subsequent owners, assigns, lessees or users of such land of the requirements of this Chapter. Notification shall be made prior to transfer of the property in question. As used in this Chapter, the words "occupants" and "users" do not include customers, guests or other individuals who will have minimal potential for significantly disturbing the soil.

C. All persons identified in "A" above shall deliver, at least annually, a copy of the Safety Alert to everyone whose work at OE sites includes disturbing soil and shall explain the contents thereof to those persons.

15.48.130 Revision of Chapter. This Chapter shall not be revised without prior written notice to the DTSC and subject to the terms of the DTSC Agreement.

Exhibit B
City Of Del Rey Oaks
OE Construction Support After Action Report Form

1. Date _____
2. Date Soil Disturbance occurred _____
3. Were OE items or items suspected to be OE items found during the period of excavation?

No _____ If no, please skip to #__ below.

Yes _____ Please continue, and complete Part A of the Attached Ordnance and Explosives Incident Reporting Form and deliver to the Presidio of Monterey Police Department.

4. Describe the OE items and suspected OE items below. If necessary, attach additional sheet.

Description of item found. Include whether the item was live, or whether the item was suspected OE, and proven not to be.	Depth below original round surface at which the item was found.	GPS coordinated of the item

5. Attach a site map with GPS coordinates describing items listed in #4 above.
6. Describe the final disposition of the items found.
7. By my signature below, certify that the above information is true.

_____ (Signed and dated by the UXO technician)

ARCADIS

Appendix C

USACE Guidance on MEC Support
During Construction

DANGER

Areas where unexploded ordnance may be present are posted with DANGER signs. Do not enter areas where you see signs like the ones below. Off-road vehicular traffic is prohibited on the former Fort Ord.

PELIGRO

Las zonas donde podría estar presente material de artillería que aún no ha explotado están marcadas con letreros de PELIGRO. No entre en zonas donde vea letreros como los que se muestran abajo. El tráfico automotor fuera de la vía principal está prohibido en el antiguo Fort Ord.



If you have questions regarding the ordnance and explosives cleanup at the former Fort Ord, please contact:

Si tiene preguntas relacionadas con los armamentos y la erradicación de explosivos en el antiguo Fort Ord, por favor póngase en contacto

Directorate of Environmental and Natural Resources Management at the Presidio of Monterey **(831) 242-7924**

SAFETY ALERT

Ordnance and Explosives at former Fort Ord

If you discover any object that resembles those shown inside this brochure

DO NOT TOUCH IT!

Instead, **MARK THE LOCATION**, and **CALL THE FEDERAL POLICE**

at (831) 242-7851 or 242-7852 to report what you've found.

ALERTA DE SEGURIDAD

Material de artillería y explosivos en el antiguo Fort Ord

Si descubre cualquier objeto que se asemeje a los que se muestran en este folleto

¡NO LO TOQUE!

En su lugar, **MARQUE LA UBICACIÓN**, y **LLAME A LA POLICÍA FEDERAL**



HISTORY

As an active U.S. Army post, Fort Ord's mission was to train soldiers to protect the interests of the United States. An important part of the mission was infantry and artillery training. As a result of this training, unexploded ordnance remains on portions of the now-closed Fort Ord.

After reviewing the records of past training activities, the Army identified areas where ordnance may still remain and began conducting investigations and removing ordnance from those areas. Cleanup of all identified areas will not be completed for many years.



If you find an object (or even a piece of one) that resembles those shown in the photograph —

Don't Touch It
Mark the Location
Call the Federal Police

at (831) 242-7851 or 242-7852

Si descubre cualquier objeto que se asemeje a los que se muestran en este photographía —

¡NO LO TOQUE!
MARQUE LA UBICACIÓN
LLAME A LA POLICÍA FEDERAL

al (831) 242-7851 ó 242-7852.

CHAPTER 1

Introduction

1-1. General. This Engineer Pamphlet (EP) presents procedures for providing Munitions and Explosives of Concern (MEC) support during Hazardous, Toxic, and Radioactive Waste (HTRW) and construction activities. MEC support activities include: anomaly avoidance activities conducted during HTRW activities; standby MEC support during construction activities; and subsurface removal of MEC during construction activities.

a. During the investigative/design phase of any project on a site known or suspected to contain MEC, provisions for MEC support will be included. MEC support refers to anomaly avoidance techniques implemented to avoid any potential surface MEC and any subsurface anomalies. The U.S. Army Corps of Engineers (USACE) primarily implements anomaly avoidance procedures on HTRW sites. Intrusive anomaly investigation is not authorized during anomaly avoidance activities. Although the examples of anomaly avoidance techniques in this EP pertain to HTRW-related activities, the procedures may be modified to address other types of activities, as appropriate. For additional information on anomaly avoidance techniques, contact the Military Munitions Center of Expertise (MM CX). See Chapter 5 for a discussion on anomaly avoidance procedures to be used during HTRW activities and Chapter 6 for MEC support during construction activities.

b. MEC support during construction activities, including the remediation phase of an HTRW project, on a site with known or suspected MEC may include only MEC standby support or may require a subsurface removal response. As described in Chapter 12 of DOD 6055.9 STD, the level of MEC support required during construction activities is dependent on the probability of encountering MEC. Contact the MM CX for guidance and assistance in determining the level of support.

(1) If the probability of encountering MEC is low (e.g., current or previous land use leads to an initial determination that MEC may be present), only MEC standby support will be required. MEC standby support is discussed in paragraph 6-6 of this document.

(2) When a determination is made that the probability of encountering MEC is moderate to high (e.g., current or previous land use leads to a determination that MEC was employed or disposed of in the area of concern), Unexploded Ordnance- (UXO-) qualified personnel must conduct a subsurface removal for the known construction footprint and remove all discovered MEC.

(3) The level of effort for construction support is site/task-specific and will be determined on a case-by-case basis by the project delivery team (PDT).

c. If MEC is encountered after initiation of an HTRW or construction project where MEC support has not been instituted, the procedures published in this EP will apply.

d. The MM CX will determine procedures for sampling and cleanup of Munitions Constituents (MC) contaminated with primary explosives on a case-by-case basis. The HTRW Design District is responsible for the design and removal or remedial action to clean up soils contaminated with secondary explosives. Refer to ER 1110-1-8153 for definitions of primary and secondary explosives. Contact the MM CX for the latest procedures to be used for MC sampling.

1-2. Responsibilities.

a. All USACE personnel involved with the Military Munitions Response Program are responsible for safely executing military munitions response projects, including MEC support during HTRW and construction activities, in accordance with applicable laws, regulations, and policies. A detailed discussion of USACE organizational responsibilities for military munitions response projects is presented in ER 1110-1-8153. Safety and health requirements, responsibilities, and procedures for MEC operations (response actions and any other MEC activity) are defined in ER 385-1-95.

b. All USACE organizations will ensure that all personnel with authorized access to the site for MEC support during HTRW and construction activities are familiar with, and have access to, copies of the accepted Work Plan and Accident Prevention Plan/Site Safety and Health Plan (APP/SSHP). In addition, each organization will ensure that such personnel receive the appropriate training, medical surveillance, and personal protective equipment (PPE) required by the safety plan, contract specifications, Occupational Safety and Health Administration Standards, USACE regulations, and applicable Department of Defense (DOD) and Department of the Army (DA) regulations.

1-3. Functional Roles. The following section provides a description of the functional roles for MEC support activities. A more comprehensive description of the functional roles for the organizations discussed below is also provided in ER 1110-1-8153.

a. Headquarters, U.S. Army Corps of Engineers (HQUSACE). If an Explosives Safety Submission (ESS) is required for MEC support activities, it will be reviewed and approved by the MM CX acting for HQUSACE.

b. Major Subordinate Command (MSC). If an ESS is required for MEC support activities, it will be monitored by an MSC in accordance with ER 1110-1-8153.

c. District. A district will:

(1) Execute MEC support activities.

(2) Assign a Project Manager (PM) to lead the PDT, coordinate all project activities, serve as a liaison with other stakeholders, and review/approve project documents as required.

(3) Conduct MEC support activities with either in-house resources or by contract.

(4) Coordinate the MEC support project with the MM CX.

(5) Prepare a project-specific Statement of Work (SOW) and Independent Government Estimates (IGE) for MEC support activities.

(6) Submit plans developed for MEC support activities to the MM CX. All MEC concerns will be addressed before initiating any on-site activities.

(7) If an ESS is required, review the ESS and provide comments and written concurrence or nonconcurrence.

(8) Supervise the fieldwork. MEC operations will be supervised by UXO-qualified personnel as defined in ER 385-1-95.

(9) Conduct appropriate quality verification activities.

(10) Coordinate requests for explosives ordnance disposal (EOD) support from the 52nd Ordnance Group (EOD) with the MM CX.

(11) Coordinate with the appropriate Military Munitions Design Center (MM DC), as necessary.

d. MM DC. If an ESS is required for planned MEC support activities at a site, the appropriate MM DC will ensure its proper planning and preparation. The MM DC provides construction support/MEC support as defined by the district.

e. MM CX. The MM CX will:

EP 75-1-2
01 Aug 04

(1) Review and provide comments and written concurrence or nonconcurrence on MEC support-related products (e.g., SOW, Work Plan, and ESS) to ensure compliance with Federal, DOD, DA, and USACE MEC safety and environmental regulations.

(2) Provide MEC technical support to any USACE office conducting construction and/or HTRW operations in areas where MEC is suspected or known to exist.

(3) Develop and/or approve MEC-specific contract requirements, including military munitions response contractor personnel qualifications and work standards, for contract acquisition.

(4) Assimilate and analyze lessons learned from MEC support projects and provide them to the HTRW CX for inclusion in the USACE lessons learned database.

(5) Coordinate support with the 52nd Ordnance Group (EOD) in accordance with the Memorandum of Agreement between the U.S. Army Engineering and Support Center, Huntsville (USAESCH) and the 52nd Ordnance Group (EOD).

(6) Coordinate the review and approval of an ESS (if required) with the U.S. Army Technical Center for Explosives Safety, and the Department of Defense Explosives Safety Board (DDESB).

(7) Provide construction support/MEC avoidance to districts as requested.

f. OE Safety Specialist. If a subsurface removal response is being conducted in support of construction activities, an OE Safety Specialist will be present to provide safety oversight. Otherwise, an OE Safety Specialist is generally not required on-site. Additional information on the requirements for when an OE Safety Specialist is required on site is available in ER 385-1-95.

ARCADIS

Appendix D

2008 MOA

**MEMORANDUM OF AGREEMENT AMONG THE
FORT ORD REUSE AUTHORITY, MONTEREY COUNTY AND CITIES OF
SEASIDE, MONTEREY, DEL REY OAKS AND MARINA, CALIFORNIA STATE
UNIVERSITY MONTEREY BAY, UNIVERSITY OF CALIFORNIA SANTA CRUZ,
MONTEREY PENINSULA COLLEGE, AND THE
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
CONCERNING MONITORING AND REPORTING ON ENVIRONMENTAL
RESTRICTIONS ON
THE FORMER FORT ORD, MONTEREY COUNTY, CALIFORNIA (HEREINAFTER
REFERRED TO AS "AGREEMENT")**

This Agreement is made and entered into, by and among the State Department of Toxic Substances Control ("Department"), and the Respondents including the Fort Ord Reuse Authority ("FORA"), Monterey County ("County"), the City of Seaside ("Seaside"), the City of Monterey ("Monterey"), the City of Del Rey Oaks ("Del Rey Oaks"), the City of Marina ("Marina"), California State University Monterey Bay ("CSUMB"), University of California Santa Cruz ("UCSC"), and Monterey Peninsula College ("MPC") pursuant to Health and Safety Code section 25355.5 (a)(1)(c). The cities, County, CSUMB, UCSC, and MPC are collectively referred to as "jurisdictions." This agreement:

- Requires the jurisdictions to monitor compliance with all land use covenants ("LUCs"), including those imposed after this Agreement is executed, for all property on the former Fort Ord, except Fort Ord Dunes State Park, which will be transferred to the State of California Department of Parks and Recreation.
- Requires the jurisdictions to report to FORA or the County concerning their compliance with all recorded LUCs within their jurisdiction.
- Requires FORA or the County to compile data in the jurisdiction reports and transmit those data in a report to the Department. FORA or the County will report to the Department from the effective date of this Agreement until FORA ceases to exist. The possibility of extending FORA's existence will be explored in 2013. If the Legislature extends FORA's existence, FORA will remain the reporting agency for this agreement after June 20, 2014 or until FORA ceases to exist. When FORA ceases to exist, the County will become responsible for compiling the jurisdictions' monitoring reports and transmittal of the compiled report to the Department.
- Provides funding for the Department's review and oversight costs relating to this agreement and all covenants referred to above (see Section 1.16 below).

1.0 Background

- 1.1 Fort Ord was selected for closure in 1991 under Public Law 101-510, the Base Realignment and Closure Act of 1990. Soldiers remained on the base until

1993. Some of the former Fort Ord property is owned by the United States Army ("Army"). Some former Fort Ord property has transferred and will transfer to various cities, other entities and the County. A detailed map of the former Fort Ord with affected Parcels identified is provided as Attachment 1. This map will be updated annually by FORA/the County as part of the annual report.

- 1.2 In 1990, Fort Ord was listed on the National Priorities List ("Superfund"). In 1990, the Fort Ord Federal Facility Agreement was signed by the Army, the United States Environmental Protection Agency, the Department and the California Regional Water Quality Control Board, Central Coast Region. The entire Property is undergoing, or has undergone, the federal Comprehensive Environmental Compensation and Liability Act ("CERCLA") remediation process.
- 1.3 LUCs are required under state law for any properties having remnant hazardous materials. Covenants are placed on such properties being transferred from the federal government to a subsequent owner. Portions of Fort Ord were used as practice ranges and/or maneuver areas for military munitions training. The Army and/or private professionals have and will continue to investigate and clean up the munitions and explosives of concern ("MEC"). FORA cannot find all MEC using current technology. FORA cannot safely remove MEC until it is found. FORA's goals for the subject Environmental Services Cooperative Agreement property are to: a) locate and remove as much MEC as possible, and b) minimize MEC-related risk. FORA is committed to achieving those goals to a level established by the Department before it transfers former munitions areas to local jurisdictions for reuse. Remedies for several MEC areas and potential MEC areas have been selected in the following Records of Decision:

- Interim Action For Ordnance and Explosives at Ranges 43-48, Range 30A and MRS-16 (dated September 13, 2002, signed September 26, 1994)
- No Further Action Related to Munitions and Explosives of Concern, Track 1 Sites, No Further Remedial Action with Monitoring for Risks from Chemical Contamination at Site 3 (MRS-22) (dated March 10, 2005, signed April 6, 2005) (Track 1)

The parties to this Agreement anticipate the following Records of Decision for MEC to be signed in 2007:

- Track 2 Munitions Response Parker Flats Munitions Response Area
- Track 3 Impact Area Munitions Response Area

- 1.4 The County adopted Ordinance No. 5012¹, amending the County Code to include Chapter 16.10, titled “*Digging and Excavation on the Former Fort Ord.*” The ordinance prohibits excavation, digging, development or ground disturbance of any type that involves the displacement of ten (10) cubic yards or more of soil without a permit. Chapter 16.10 also indicates that the County will also enter into an Agreement with the Department to provide additional safety measures and reporting (Ordinance 5012 § 1 (part), 2005). This Memorandum of Agreement fulfills that reporting requirement.
- 1.5 The City of Marina adopted Ordinance No. 98-04 amending the Municipal Code to add Chapter 15.56. That Ordinance prohibits excavation, digging, development or ground disturbance of any type on the former Fort Ord that involves the displacement of ten (10) cubic feet or more of soil without a permit. The parties anticipate that the City of Marina will amend Municipal Code to add Chapter 15.56 to prohibit excavation, digging, development or ground disturbance of any type that involves the displacement of ten (10) cubic yards or more of soil without a permit to be consistent with adjacent jurisdictions’ municipal codes.
- 1.6 The City of Del Rey Oaks adopted Ordinance No. 259 amending the Municipal Code to add Chapter 15.48. The ordinance prohibits excavation, digging, development or ground disturbance of any type on the former Fort Ord that involves the displacement of ten (10) cubic yards or more of soil without a permit.
- 1.7 The City of Seaside adopted Ordinance No. 924, amending the Municipal Code to add Chapter 15.34. The ordinance prohibits excavation, digging, development or ground disturbance of any type that involves the displacement of ten (10) cubic yards or more of soil without a permit on the former Fort Ord.
- 1.8 The City of Monterey adopted Ordinance No. 3384, amending the Municipal Code to add Chapter 9 Article 8. The ordinance prohibits excavation, digging, developing or ground disturbing activities of any type that involves the displacement of ten (10) cubic feet or more of soil without a permit on the former Fort Ord.
- 1.9 FORA Resolution 98-1 contains measures that avoid/ minimize impacts from hazardous material (See Attachment 2, FORA Resolution 98-1).
- 1.10 Non-MEC hazardous waste and/or hazardous substances were disposed of in various locations throughout Fort Ord. The Army remediated many of these locations. There are, however, locations where wastes remain, such as Operable Unit 2 (“OU2”) Landfill. Measures must be taken at these locations to assure that they can be safely used. The Department requires LUCs in

¹ As the State of California acting in a higher education capacity, CSUMB, UCSC, and MPC are not bound by local regulations and specifically the ordinances and regulations discussed in Sections 1.4—1.9 and 1.12—1.14.

these cases. Remedies for these sites, which may include institutional controls including LUCs, were selected in the following Records of Decision ("ROD"):

- Interim Action ROD, Contaminated Surface Soil Remediation (dated February 23, 1994, signed March 15, 1994)
- OU2, Fort Ord Landfills (dated July 15, 1994, signed August 23, 1994)
- Remedial Investigation Sites (dated January 13, 1997, signed January 24, 1997)

1.11 Portions of Fort Ord overlie contaminated groundwater. The contaminated groundwater at OU1, OU2 and Sites 2/12 is currently being remediated by the Army via comprehensive pumping and treatment systems. Activities which may affect the groundwater monitoring, pumping and treatment systems must be prevented. To achieve that goal, authorized representatives must be allowed to enter these areas. Well drilling in contaminated areas and consumption of unsafe groundwater must also be prevented. Remedies for these sites, which include institutional controls, were selected in the following Records of Decision:

- Operable Unit 1 ("OU1") Fritzsche Army Airfield, Fire Drill Area (dated July 25, 1995, signed May 8, 1996)
- OU2, Fort Ord Landfills (dated July 15, 1994, signed August 23, 1994)
- Remedial Investigation Sites, including Sites 2/12 Groundwater Remedy (dated January 13, 1997, signed January 24, 1997)

The parties expect the following Groundwater ROD will be signed in 2007:

- Operable Unit Carbon Tetrachloride Plume ("OUCTP")

1.12 The County adopted Ordinance No. 4011. Ordinance 4011, which amends and adds to Chapter 15.08 of Title 15 of the County Code, indicates that *"in areas overlying or adjacent to the contaminant plumes on the former Fort Ord ("Prohibition Zone"), water well construction shall be prohibited and no application for a ministerial well permit shall be accepted for any real properties within the Prohibition Zone area. The Prohibition Zone area is identified on the former Fort Ord, Special Ground Water Protection Zone Map, prepared and maintained by the United States Army and on file in the County of Monterey, Department of Health."*

- 1.13 Chapter 13.12 of the City of Marina Municipal Code regulates the construction of water wells so as to protect the quality of groundwater. Section 13.12.030 of the City Code requires a written permit to construct a water well first be obtained from the County.
- 1.14 Chapter 8.24 of the City of Seaside Municipal Code regulates the construction of water wells so as to protect the quality of groundwater and requires a written permit to construct a water well to be approved by the health officer.
- 1.15 The Army and the Department have or will enter into, Covenants to Restrict Use of Property (hereinafter referred to as "Covenants") prior to transfer of the Property. The purpose of these Covenants is to prohibit certain land uses on Fort Ord. FORA and other entities may also enter into such covenants directly with the Department. After EPA has selected one or more remedies for the Property in a ROD(s), the then-current land owner, the Department and Regional Water Quality Control Board ("RWQCB") may, if appropriate, modify or remove the restrictions in the LUC to be consistent with the land and water use restrictions, if any, selected in the ROD(s). The land use covenants variously include restrictions based on MEC, lead based paint, groundwater contamination and proximity to the landfill.
- 1.16 FORA, the County and the jurisdictions enter into this agreement to monitor and report on compliance with all covenants, past, present and future, signed for all former Fort Ord property except for Fort Ord Dunes State Park. FORA will pay the Department's invoices from the effective date of this agreement until FORA ceases to exist. (See California Code of Regulations (hereinafter referred to as "CCR"), Title 22, Division 4.5, Chapter 39, section 67391.1 and Health and Safety Code section 25355.5 (a)(1)(c)). The County agrees to pay the Department's costs from and after the date FORA ceases to exist (See Section 3.14).
- 1.17 Attachment 3 (Table 3-1) contains a summary of the recorded LUCs as of the date of this agreement. The summary also lists the restrictions in the covenant and the associated monitoring requirements.
- 1.18 FORA will supplement the property descriptions as set forth in the LUCs with specific GPS coordinates. These GPS coordinates will be included in the annual report.
- 1.19 The references to "schools" in this agreement and in Attachment 4 do not include post-secondary schools.

The Parties agree as follows:

2.0 Implementation of This Agreement

- 2.1 The above recitals are incorporated into this Agreement. FORA, the County

and the jurisdictions agree that this Agreement applies to all properties on the former Fort Ord except Fort Ord Dunes State Park. The parties agree to perform the following tasks:

2.1.1 Annual Review of Compliance with LUCs

Annually (starting on July 1 and being completed by June 30 of each year), the jurisdictions shall:

- a. Inspect each property within their jurisdiction for which a covenant has been signed, to assure compliance with all restrictions, and report findings to FORA/County in the report format provided in Attachment 4. CSUMB, UCSC, and MPC will report findings directly to FORA/County. The City of Marina, the City of Seaside, the City of Del Rey Oaks, the City of Monterey, and Monterey County will not report on CSUMB, UCSC, and MPC's properties, explicitly defined in Attachment 3 "Table 3-1 Summary of Land Use Covenants." If property owners other than CSUMB, UCSC, and MPC have multiple parcels within multiple jurisdictions, each jurisdiction will be responsible to report on only those properties within their jurisdiction. The number of annual reports to be provided by the local jurisdictions will be based on the initial land conveyance parcels as described in Table 3-1, and the total number of reports will not increase over time as land is subsequently sold and subdivided (i.e. the Department does not expect one report for each subsequent Assessor's Parcel Number).
- b. Check with the applicable building departments or campus planning and development departments to ensure no structures were approved or built in violation of any covenant and report findings to FORA/County.
- c. Check with the applicable planning departments or campus planning and development departments to assure no uses were approved in violation of any covenant.
- d. All jurisdictions shall review the jurisdiction well permit applications or the institution records, in the case of CSUMB, UCSC, and MPC, to ensure no wells have been approved, dug or installed in violation of the ordinance or the covenants.

2.1.2 Annual Review of Local Ordinances²

- a. Summarize compliance with the jurisdictions' digging ordinances, including the number of permits issued.

² Section 2.1.2 does not apply to CSUMB, UCSC, and MPC.

- b. Document any changes to the jurisdictions' excavation/grading ordinances.
- c. Document any changes to the jurisdiction well permit ordinances.
- d. FORA and the County, in conjunction with the Department and in consultation with RWQCB, will annually, prior to June 30th, update and distribute copies to the other parties to this agreement:
 - 1. The map illustrating parcels with LUCs (Attachment 1)
 - 2. Table 3-1 summarizing LUCs for the Fort Ord property (Attachment 3)
 - 3. Changes to County Digging and Excavation on the former Fort Ord Ordinance No. 5012
 - 4. Changes to the County Groundwater Ordinance No. 4011

2.2 MEC Incident Reporting (*pending Department discussions with Army*)

For parcels that have been transferred and are not being regulated under the former Fort Ord Munitions Response Site (hereinafter referred to as "MRS") Site Security Plan, the Department requests FORA and the County to provide data regarding MEC found at the parcels. The Department requests to track MEC found at parcels where cleanup has been completed, although some MEC may remain in place at depth.

On an annual basis, the jurisdictions agree to report 911 call data for MEC found, including but not limited to:

- a) date and time of the call,
- b) contact name,
- c) location of MEC finding,
- d) type of munitions, if available and
- e) response of jurisdiction law enforcement agency.

2.3 Annual Report

No later than September 1 of each year, FORA agrees to submit a report to the Department describing compliance with each of the prohibited activities and uses listed in the covenants. The County agrees to submit this report when FORA ceases to exist. The letter report will summarize the annual reviews conducted under 2.1 and 2.2 above. A Draft Annual Report outline is provided in Attachment 4. This report outline provides the minimum requirements for the annual report. Other information gathered during inspections or records searches should be attached (i.e., inspection notes and photos of violations, excavation permits, applicable County well records, and other relevant data). Each jurisdiction will certify the accuracy and

validity of its annual land use monitoring report. Except for land in the County's jurisdiction, the Department does not expect FORA or the County to:

- a. verify the accuracy of the local jurisdiction reports prior to submittal to Department;
 - b. perform monitoring or testing relative to these annual reports; or
 - c. accept responsibility for enforcement of the provisions of the LUCs.
- 2.4 The Department's activities will include, but not be limited to, review and comment on annual reports, travel to the Properties, inspection of implementation and compliance with this Agreement and the covenants as outlined in Attachment 5. The Department will notify FORA and the County of the change in scope and cost if it determines that it must undertake additional work to oversee compliance with this MOA and LUCs. FORA and the County agree to pay those additional costs.
- 2.5 FORA and the County have no responsibility for enforcement of this Agreement if a local jurisdiction fails to submit its annual reports to FORA or the County on time or at all. Local jurisdictions have no responsibility for enforcement of this Agreement if FORA or the County fail to compile and submit their annual report to the Department. The Department is responsible for enforcing compliance with this Agreement.

3.0 General Provisions

- 3.1 Any Notice given under this Agreement, including any communication with respect to this Agreement must be in writing. It will be deemed effective: (1) when delivered, if personally delivered to the person being served, or (2) three business days after deposit in the United States mail, postage paid, certified, return receipt requested. Such Notices must be addressed as follows:

To Monterey County: Director of Health
Monterey County Health Department
2170 Natividad Road
Salinas, California 93901

To FORA: Executive Officer
Fort Ord Reuse Authority (FORA)
100 12th Street
Building 2880
Marina, California 93933

To City Of Monterey: City Manager
City of Monterey
City Hall
Monterey, California 93940

To City Of Marina	City Manager City of Marina 211 Hillcrest Avenue Marina, California 93933
To City Of Seaside	City Manager City of Seaside 440 Harcourt Avenue Seaside, California 93955
To City Of Del Rey Oaks	City Manager City of Del Rey Oaks 650 Canyon Del Rey Del Rey Oaks, California 93940
To University of California Santa Cruz	Chancellor University of California Santa Cruz 1156 High Street Santa Cruz, California 95064
To California State University Monterey Bay	<i>VICE</i> President <i>for ADMIN. & FINANCE</i> CSU Monterey Bay 100 Campus Center Seaside, California 93955
To Monterey Peninsula College	Superintendent/President Monterey Peninsula College 980 Fremont Street Monterey, California 93940
To Department:	Anthony Landis, Chief Northern California Operations Office of Military Facilities Department of Toxic Substances Control 8800 Cal Center Drive Sacramento, California 95826

3.2 Obligations of the Department. The Department agrees to review and oversee the measures to be performed by FORA, jurisdictions and the County under this Agreement.

3.3 Coordinator. The FORA Coordinator is the Executive Officer. The Coordinator is responsible for receiving and submitting all notices, comments, approvals, and other communications to and from the Department until FORA

ceases to exist. The County Coordinator is the Monterey County Health Department Director of Health. The County Coordinator will receive and submit all notices, comments, approvals, and other communications from and to the Department after FORA ceases to exist.

- 3.4 Submittals. All submittals, reports and notifications from FORA and the County that are required by this Agreement shall be sent to:

Anthony Landis, Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

- 3.5 Communications. FORA and the County may not be relieved of their obligation to obtain formal approvals by informal advice, guidance, suggestions or comments given by the Department regarding reports, plans, specifications, schedules or any other writings by FORA, County and jurisdictions.
- 3.6 Department Review and Approval. If the Department determines that any report, plan, schedule or other document submitted to the Department for approval under this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, the Department may return comments to FORA, the County and or jurisdictions with recommended changes and a date by which a revised document must be submitted to the Department incorporating the recommended changes.
- 3.7 Compliance with Applicable Laws. FORA, the County and jurisdictions shall carry out this Agreement in compliance with all applicable local, state, and federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety. CSUMB, UCSC, and MPC are not bound by local regulations when they act in their higher education capacity.
- 3.8 Liabilities. This Agreement does not satisfy or release FORA, the County or jurisdictions from liability for any conditions or claims arising as a result of their current or future operations. This Agreement does not limit or preclude the Department from taking any lawful act to protect public health or safety or the environment and recovering the cost thereof. Notwithstanding compliance with this Agreement, the Department may require FORA, the County and jurisdictions to take further actions necessary to protect public health and the environment.
- 3.9 Record Retention. All data, reports and other documents including email, and electronic deliverables required by this Agreement shall be transferred to the County within 90 days after the FORA agreement period ends (i.e., six years

and three months unless FORA's existence is extended). The County shall preserve the records for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If the Department requests that some or all of these documents be preserved for a longer period of time, FORA and the County shall either comply with that request or deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. FORA and the County shall notify the Department in writing at least six (6) months prior to destroying any documents prepared pursuant to this Agreement.

- 3.10 State Liabilities. The State of California is not liable for personal injuries or property damage resulting from acts or omissions by FORA, the County and/or the jurisdictions, in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by FORA, the County, the jurisdictions or its agents in carrying out this Agreement.
- 3.11 Severability. The requirements of this Agreement are severable, and FORA, the County and the jurisdictions and/or shall comply with each and every provision hereof notwithstanding the effectiveness of any other provision.
- 3.12 Modification and Termination. FORA, the County and/or the jurisdictions may, upon written request, seek modification or termination of this Agreement at any time. In addition to modification as provided elsewhere in this Agreement, this Agreement may only be modified or terminated by mutual written agreement of the parties at any time.
- 3.13 Parties Bound. This Agreement applies to and is binding upon FORA, the County and jurisdictions and its officers, directors, agents, employees, successors and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. FORA, the County and the jurisdictions shall provide a copy of this Agreement to any successor or assignee.
- 3.14 Cost Recovery. FORA and the County as FORA's successor are liable for all of the Department's costs incurred in reviewing and overseeing compliance with this MOA and all past, present and/or future LUCs. FORA will pay the Department's and its own costs for their activities under this MOA. FORA will recover these costs from each local jurisdiction through payment of the local agencies' FORA "dues." FORA "dues" are funds that FORA collects annually from agencies represented on the board in accordance with SB 899, Title 7.85 Section 67690. FORA will pay for costs incurred by the department and FORA for fiscal years 2008 and 2009 and will not seek cost recovery from the local jurisdictions for this initial two-year period. When FORA ceases to exist and the County assumes FORA's responsibilities under this Agreement, the other parties to this agreement shall pay the Department and the County costs

as determined in this Section to the County. If any party defaults on such payment, the Department shall pursue collection of the Department's costs directly from that party. FORA's and the County's cost recovery will be based on the Department's accounting of its actual costs, broken down by jurisdiction, and will include an additional 15% cost for FORA's or the County's administrative activities. The cost estimate for Department services is provided in Attachment 5. The estimate is based on the attached 2007 Department Contract Estimation Rates for the time period between July 1, 2006 and June 30, 2007 (see Attachment 5A). Actual charges will be based on each employee's salary and benefits, actual per diem, mileage rates and expenses. The Department will send quarterly "time and materials" invoices. Title 22 California Code of Regulations section 67391.1(h) provides: "The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls." Cost recovery may also be pursued by the Department under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law.

On an annual basis, the Department will compare this cost estimate with actual charges. If the invoice variance is greater than 20% from the original cost estimate for any jurisdiction, the Department will notify FORA and prepare an addendum to this cost estimate. Agreements to distribute financial liability between the jurisdictions, the County or FORA are beyond the scope of this agreement.

Invoices shall be transmitted to:

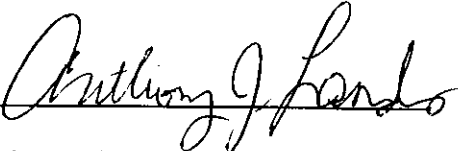
Mr. Michael Houlemard, Jr.
Executive Officer
Fort Ord Reuse Authority (FORA)
100 12th Street
Building 2880
Marina, California 93933

County of Monterey
Director of Health
Monterey County Health Department
2170 Natividad Road
Salinas, California 93901

- 3.15 Effective Date. The effective date of this Agreement is the date of signature by the Department's authorized representative.
- 3.16 Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

IN WITNESS WHEREOF, the authorized representatives below have executed this Memorandum of Agreement among FORA, the County and Cities of Seaside, Monterey, Del Rey Oaks and Marina, CSUMB, UCSC, MPC and the Department concerning monitoring and reporting on environmental restrictions on the former Fort Ord on the dates set forth below at Sacramento, California.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



Anthony J. Landis, P.E.
Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control



Date

IN WITNESS WHEREOF, the authorized representatives below have executed this Memorandum of Agreement among FORA, the County and Cities of Seaside, Monterey, Del Rey Oaks and Marina, CSUMB, UCSC, MPC and the Department concerning monitoring and reporting on environmental restrictions on the former Fort Ord on the dates set forth below at _____, California.

COUNTY OF MONTEREY

Dave Potter
Chair, Board of Supervisors
168 W. Alisal Street
Salinas, California 93901

10-16-07
Date

CITY OF MONTEREY

Felipe...
APPROVED BY City Manager
City Hall
Monterey, California 93940
Felt
City Attorney's Office

2-25-2009
Date

CITY OF MARINA

[Signature]
City Manager
211 Hillcrest Avenue
Marina, California 93933

11.29.07
Date

CITY OF SEASIDE

[Signature]
City Manager
440 Harcourt Avenue
Seaside, California 93955

2.27-08
Date

CITY OF DEL REY OAKS

[Signature]
City Manager
650 Canyon Del Rey
Del Rey Oaks, California 93940

2/27/08
Date

IN WITNESS WHEREOF, the authorized representatives below have executed this Memorandum of Agreement among FORA, the County and Cities of Seaside, Monterey, Del Rey Oaks and Marina, CSUMB, UCSC, MPC and the Department concerning monitoring and reporting on environmental restrictions on the former Fort Ord on the dates set forth below at _____, California.

University of California Santa Cruz




Chancellor
1156 High Street
Santa Cruz, California 95064

1/18/08

Date

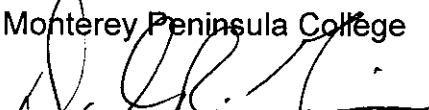
California State University Monterey Bay


VICE President *ADMIN. & FINANCE*
100 Campus Center
Seaside, California 93955

1-25-08

Date

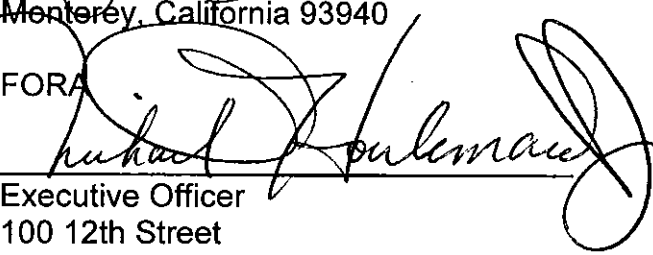
Monterey Peninsula College


Superintendent/President
980 Fremont Street
Monterey, California 93940

12-18-07

Date


FORA


Executive Officer
100 12th Street
Building 2880
Marina, California 93933

11/28/07

Date

APPROVED AS TO FORM:


Gerald D. Bowden
Authority Counsel

12/8/07

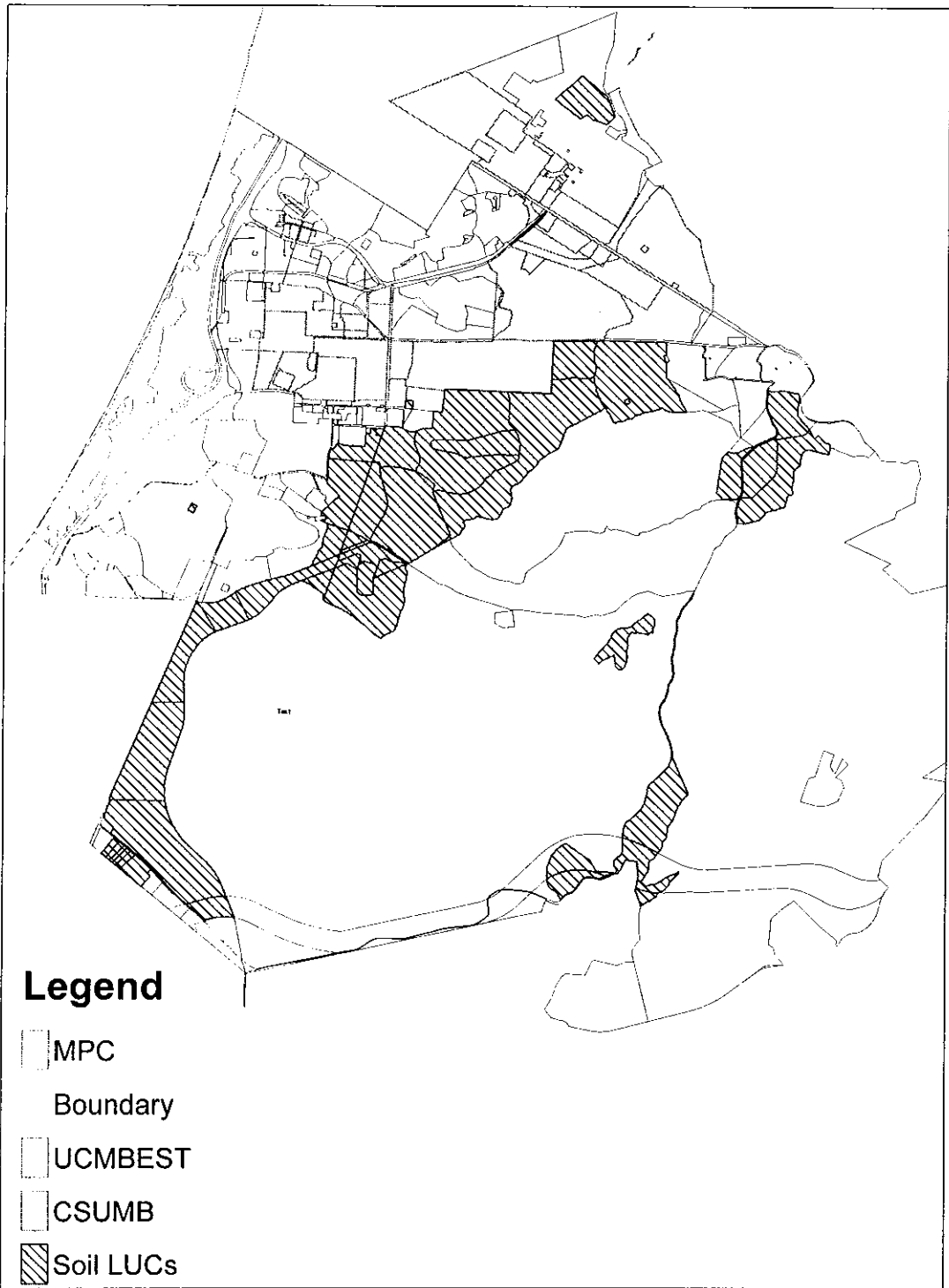
Date

ATTACHMENT "1"

LUC Parcel Maps

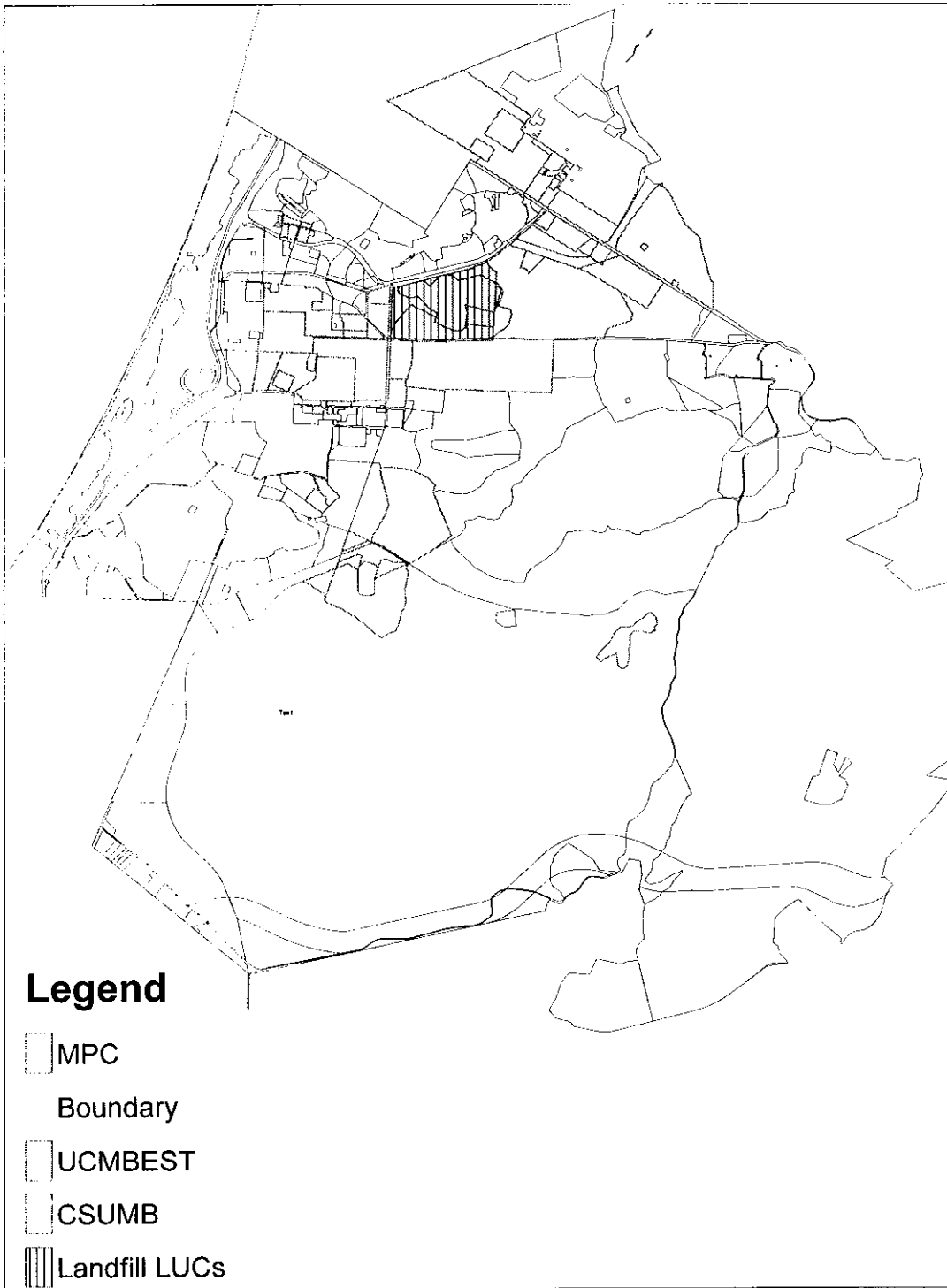
ATTACHMENT 1

Fort Ord LUCs - Soil



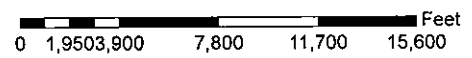
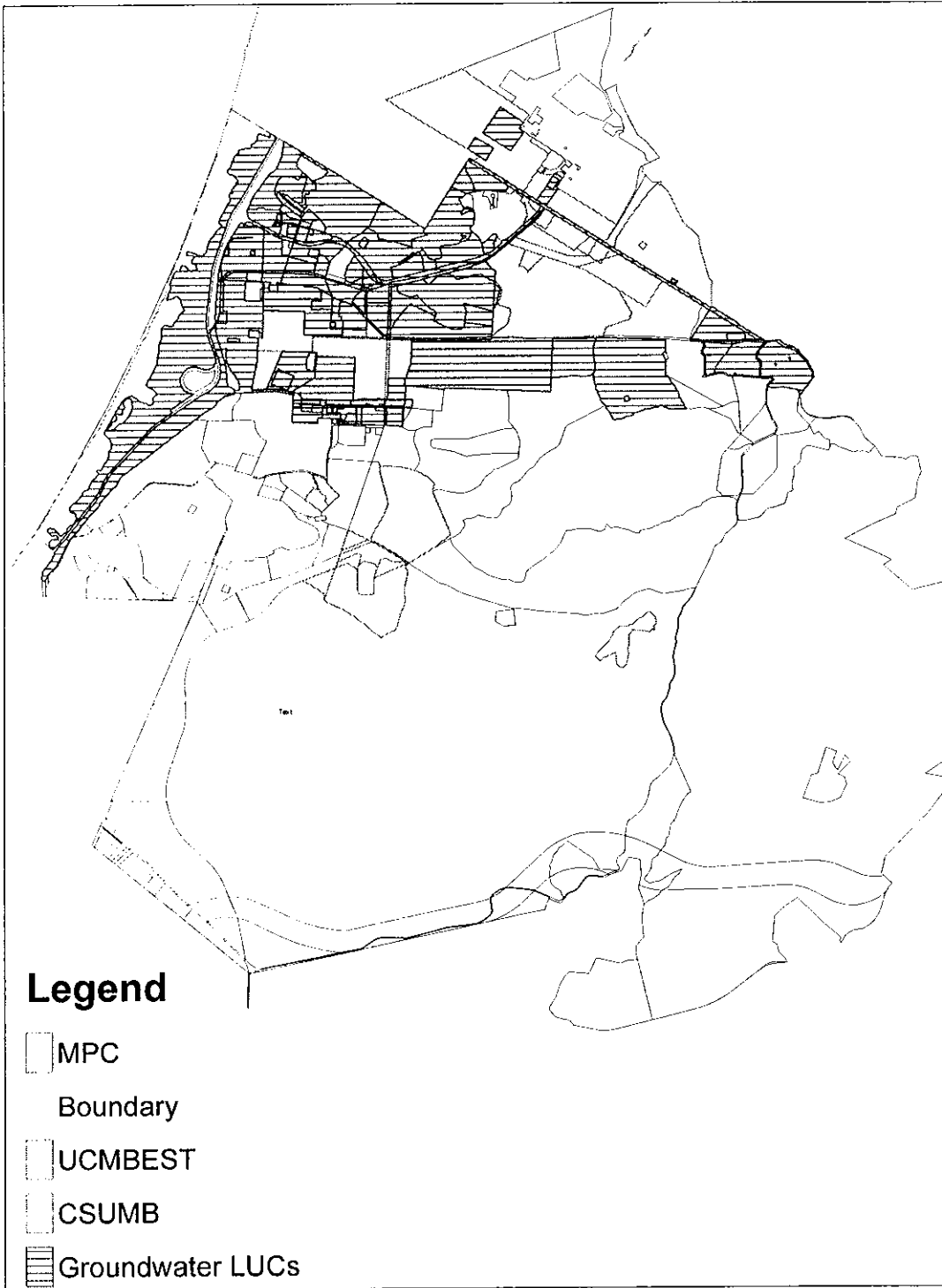
0 1,950 3,900 7,800 11,700 15,600 Feet

Fort Ord LUCs - Landfill



0 1,950 3,900 7,800 11,700 15,600 Feet

Fort Ord LUCs - Groundwater



ATTACHMENT "2"

FORA, Resolution 98-1

ATTACHMENT 2

Resolution 98-1

A RESOLUTION OF THE FORT ORD REUSE AUTHORITY, AMENDING SECTION 1.01.050 AND ADDING CHAPTER 8 TO THE FORT ORD REUSE AUTHORITY MASTER RESOLUTION, RELATING TO BASE REUSE PLANNING AND CONSISTENCY DETERMINATIONS

Section 1. Section 1.01.050 of the Fort Ord Reuse Authority Master Resolution is amended by adding the following definitions to such section in alphabetical order:

“Affected territory” means property within the Fort Ord Territory that is the subject of a legislative land use decision or an application for a development entitlement and such additional territory within the Fort Ord Territory that may be subject to an adjustment in density or intensity of allowed development to accommodate development on the property subject to the development entitlement.

“Army urbanized footprint” means the Main Garrison Area and the Historic East Garrison Area as such areas are described in the Reuse Plan.

“Augmented water supply” means any source of potable water in excess of the 6,600 acre feet of potable water from the Salinas Basin as allowed under the Reuse Plan.

“Development entitlements” includes but is not limited to tentative and final subdivision maps, tentative, preliminary, and final parcel maps or minor subdivision maps, conditional use permits, administrative permits, variances, site plan reviews, and building permits. The term “development entitlement” does not include the term “legislative land use permits” as that term is defined in this Master Resolution. In addition, the term “development entitlement” does not include:

- 1) Construction of one single family house, or one multiple family house not exceeding four units, on a vacant lot within an area appropriately designated in the Reuse Plan.
- 2) Improvements to existing single family residences or to existing multiple family residences not exceeding four units, including remodels or room additions.
- 3) Remodels of the interior of any existing building or structure.
- 4) Repair and maintenance activities that do not result in an addition to, or enlargement of, any building or structure.
- 5) Installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and development approved pursuant to the Authority Act.
- 6) Replacement of any building or structure destroyed by a natural disaster with a comparable or like building or structure.
- 7) Final subdivision or parcel maps issued consistent with a development entitlement subject to previous review and approval by the Authority Board.
- 8) Building permit issued consistent with a development entitlement subject to previous review by the Authority Board.

"Fort Ord Territory" means all territory within the jurisdiction of the Authority.

"Habitat Management Plan" means the Fort Ord Installation-Wide Multi-Species Habitat Management Plan, dated April, 1997.

"Land use agency" means a member agency with land use jurisdiction over territory within the jurisdiction of the Authority Board.

"Legislative land use decisions" means general plans, general plan amendments, redevelopment plans, redevelopment plan amendments, zoning ordinances, zone district maps or amendments to zone district maps, and zoning changes.

"Noticed public hearing" means a public hearing noticed in the following manner

1. Notice of the public hearing shall be posted on the public meeting room at the FORA office at least 10 days before the date of the hearing; and
2. Notice of the public hearing shall be mailed or delivered at least 10 days prior to the affected land use agency, to any person who has filed an appeal, and to any person who has requested special notice; and
3. Notice of the public hearing shall be published at least 10 days before the date of the hearing in at least one newspaper of general circulation within the area that the real property that is the subject of the public hearing is located.

"Reuse Plan" means the plan for reuse and development of the territory within the jurisdiction of the Authority, as amended or revised from time to time, and the plans, policies, and programs of the Authority Board, including the Master Resolution.

Section 2. Chapter 8 is added to the Fort Ord Master Resolution to read:

**CHAPTER 8.
BASE REUSE PLANNING AND CONSISTENCY DETERMINATIONS.**

Article 8.01. GENERAL PROVISIONS.

8.01.010. REUSE PLAN

(a) The Authority Board shall prepare, adopt, review, revise from time to time, and maintain a Reuse Plan for the use and development of the territory within the jurisdiction of the Authority. Such plan shall contain the elements mandated pursuant to the Authority Act and such other elements, policies, and programs as the Authority Board may, in its sole discretion, consider and adopt.

Article 8.02. CONSISTENCY DETERMINATION CRITERIA

8.02.010. LEGISLATIVE LAND USE DECISION CONSISTENCY.

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that

- (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
- (2) Provides for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory;
- (3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
- (5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision; and
- (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.

(b) FORA shall not preclude the transfer of intensity of land uses and/or density of development involving properties within the affected territory as long as the land use decision meets the overall intensity and density criteria of Sections 8.02.010(a)(1) and (2) above as long as the cumulative net density or intensity of the Fort Ord Territory is not increased.

(c) The Authority Board, in its discretion, may find a legislative land use decision is in substantial compliance with the Reuse Plan when the Authority Board finds that the applicant land use agency has demonstrated compliance with the provisions specified in this section and Section 8.020.020 of this Master Resolution.

8.02.020. SPECIFIC PROGRAMS AND MITIGATION MEASURES FOR INCLUSION IN LEGISLATIVE LAND USE DECISIONS.

(a) Prior to approving any development entitlements, each land use agency shall act to protect natural resources and open spaces on Fort Ord Territory

by including the open space and conservation policies and programs of the Reuse Plan, applicable to the land use agency, into their respective general, area, and specific plans.

- (1) Each land use agency shall review each application for a development entitlement for compatibility with adjacent open space land uses and require suitable open space buffers to be incorporated into the development plans of any potentially incompatible land uses as a condition of project approval.
- (2) When buffers are required as a condition of approval adjacent to Habitat Management areas, the buffer shall be designed in a manner consistent with those guidelines set out in the Habitat Management Plan. Roads shall not be allowed within the buffer area adjacent to Habitat Management areas except for restricted access maintenance or emergency access roads.

(b) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will ensure consistency of future use of the property within the coastal zone through the master planning process of the California Department of Parks and Recreation, if applicable. All future use of such property shall comply with the requirements of the Coastal Zone Management Act and the California Coastal Act and the coastal consistency determination process.

(c) Monterey County shall include policies and programs in its applicable general, area, and specific plans that will ensure that future development projects at East Garrison are compatible with the historic context and associated land uses and development entitlements are appropriately conditioned prior to approval.

(d) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall limit recreation in environmentally sensitive areas, including, but not limited to, dunes and areas with rare, endangered, or threatened plant or animal communities to passive, low intensity recreation, dependent on the resource and compatible with its long term protection. Such policies and programs shall prohibit passive, low-density recreation if the Board finds that such passive, low-density recreation will compromise the ability to maintain an environmentally sensitive resource.

(e) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall encourage land uses that are compatible with the character of the surrounding districts or neighborhoods and discourage new land use activities which are potential nuisances and/or hazards within and in close proximity to residential areas. Reuse of property in the Army urbanized footprint should be encouraged.

(f) Each land use agency with jurisdiction over property in the Army urbanized footprint shall adopt the cultural resources policies and programs of the Reuse Plan concerning historic preservation, and shall provide appropriate incentives for historic preservation and reuse of historic property, as determined by the affected land use agency, in their respective applicable general, area, and specific plans.

(g) The County of Monterey shall amend the Greater Monterey Peninsula Area Plan and designate the Historic East Garrison Area as an historic district in the County Reservation Road Planning Area. The East Garrison shall be planned and zoned for planned development mixed uses consistent with the Reuse Plan. In order to implement this aspect of the plan, the County shall adopt at least one specific plan for the East Garrison area and such specific plan shall be approved before any development entitlement shall be approved for such area.

(h) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall support all actions necessary to ensure that sewage treatment facilities operate in compliance with waste discharge requirements adopted by the California Regional Water Quality Control Board.

(i) Each land use agency shall adopt the following policies and programs:

- (1) A solid waste reduction and recycling program applicable to Fort Ord Territory consistent with the provisions of the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.*
- (2) A program that will ensure that each land use agency carries out all action necessary to ensure that the installation of water supply wells comply with State of California Water Well Standards and well standards established by the Monterey County Health Department; and
- (3) A program that will ensure that each land use agency carries out all actions necessary to ensure that distribution and storage of potable and non-potable water comply with State Health Department regulations.

(j) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans to address water supply and water conservation. Such policies and programs shall include the following:

- (1) Identification of, with the assistance of the Monterey County Water Resources Agency and the Monterey Peninsula Water Management District, potential reservoir and water impoundment sites and zoning of such sites for watershed use, thereby precluding urban development;

- (2) Commence working with appropriate agencies to determine the feasibility of development additional water supply sources, such as water importation and desalination, and actively participate in implementing the most viable option or options;
- (3) Adoption and enforcement of a water conservation ordinance which includes requirements for plumbing retrofits and is at least as stringent as Regulation 13 of the Monterey Peninsula Water Management District, to reduce both water demand and effluent generation.
- (4) Active participation in support of the development of "reclaimed" or "recycled" water supply sources by the water purveyor and the Monterey Regional Water Pollution Control Agency to ensure adequate water supplies for the territory within the jurisdiction of the Authority.
- (5) Promotion of the use of on-site water collection, incorporating measures such as cisterns or other appropriate improvements to collect surface water for in-tract irrigation and other non-potable use.
- (6) Adoption of policies and programs consistent with the Authority's Development and Resource Management Plan to establish programs and monitor development of territory within the jurisdiction of the Authority to assure that it does not exceed resource constraints posed by water supply.
- (7) Adoption of appropriate land use regulations that will ensure that development entitlements will not be approved until there is verification of an assured long-term water supply for such development entitlements.
- (8) Participation in the development and implementation of measures that will prevent seawater intrusion into the Salinas Valley and Seaside groundwater basins.
- (9) Implementation of feasible water conservation methods where and when determined appropriate by the land use agency, consistent with the Reuse Plan, including; dual plumbing using non-potable water for appropriate functions; cistern systems for roof-top run-off; mandatory use of reclaimed water for any new golf courses; limitation on the use of potable water for golf courses; and publication of annual water reports disclosing water consumption by types of use.

(k) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will require new development to demonstrate that all measures will be taken to ensure that storm water

runoff is minimized and infiltration maximized in groundwater recharge areas. Such policies and programs shall include:

- (1) Preparation, adoption, and enforcement of a storm water detention plan that identifies potential storm water detention design and implementation measures to be considered in all new development, in order to increase groundwater recharge and thereby reduce potential for further seawater intrusion and provide for an augmentation of future water supplies.
- (2) Preparation, adoption, and enforcement of a Master Drainage Plan to assess the existing natural and man-made drainage facilities, recommend area-wide improvements based on the approved Reuse Plan, and develop plans for the control of storm water runoff from future development. Such plans for control of storm water runoff shall consider and minimize any potential for groundwater degradation and provide for the long term monitoring and maintenance of all storm water retention ponds.

(l) Each land use agency shall adopt policies and programs that ensure that all proposed land uses on the Fort Ord Territory are consistent with the hazardous and toxic materials clean-up levels as specified by state and federal regulation.

(m) Each land use agency shall adopt and enforce an ordinance acceptable to the California Department of Toxic Substances Control ("DTSC") to control and restrict excavation or any soil movement on those parcels of the Fort Ord Territory, which were contaminated with unexploded ordnance, and explosives. Such ordinance shall prohibit any digging, excavation, development, or ground disturbance of any type to be caused or otherwise allowed to occur without compliance with the ordinance. A land use agency shall not make any substantive change to such ordinance without prior notice to and approval by DTSC.

(n) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will help ensure an efficient regional transportation network to access the territory under the jurisdiction of the Authority, consistent with the standards of the Transportation Agency of Monterey County. Such policies and programs shall include:

- (1) Establishment and provision of a dedicated funding mechanism to pay for the "fair share" of the impact on the regional transportation system caused or contributed by development on territory within the jurisdiction of the Authority; and
- (2) Support and participate in regional and state planning efforts and funding programs to provide an efficient

regional transportation effort to access Fort Ord Territory.

(o) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that ensure that the design and construction of all major arterials within the territory under the jurisdiction of the Authority will have direct connections to the regional network consistent with the Reuse Plan. Such plans and policies shall include:

- (1) Preparation and adoption of policies and programs consistent with the Authority's Development and Resource Management Plan to establish programs and monitor development to assure that it does not exceed resource constraints posed by transportation facilities;
- (2) Design and construction of an efficient system of arterials in order to connect to the regional transportation system; and
- (3) Designate local truck routes to have direct access to regional and national truck routes and to provide adequate movement of goods into and out of the territory under the jurisdiction of the Authority.

(p) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans to provide regional bus service and facilities to serve key activity centers and key corridors within the territory under the jurisdiction of the Authority in a manner consistent with the Reuse Plan.

(q) Each land use agency shall adopt policies and programs that ensure development and cooperation in a regional law enforcement program that promotes joint efficiencies in operations, identifies additional law enforcement needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services.

(r) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that ensure development of a regional fire protection program that promotes joint efficiencies in operations, identifies additional fire protection needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services

(s) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will ensure that native plants from on-site stock will be used in all landscaping except for turf areas, where practical and appropriate. In areas of native plant restoration, all cultivars, including, but not limited to, manzanita and ceanothus, shall be obtained from stock originating on Fort Ord Territory.

(t) Each land use agency shall include policies and programs in their general, area, and specific plans that will ensure compliance with the 1997 adopted FORA Reuse Plan jobs/housing balance provisions. The policies and programs for the provision of housing must include flexible targets that generally correspond with expected job creation on the former Fort Ord. It is recognized that, in addressing the Reuse Plan jobs/housing balance, such flexible targets will likely result in the availability of affordable housing in excess of the minimum 20% local jurisdictional inclusionary housing figure, which could result in a range of 21% - 40% below market housing. Each land use agency should describe how their local inclusionary housing policies, where applicable, address the Reuse Plan jobs/housing balance provisions.

(1) Agencies submitting consistency determination requests to FORA should identify and describe, where applicable, any factors that impact production of housing. These factors may include, without limitation, public financing, water resources, land use regulations, and environmental conditions. Each jurisdiction should consider but not be limited to, the following in establishing its Reuse Plan jobs/housing balance policies and programs:

- (a) Earmarking of tax increment housing set aside funds for housing programs, production, and/or preservation linked to jobs;
- (b) Development and/or preservation of ownership or rental housing linked to jobs;
- (c) Incorporation of job creation targets in project specifications;
- (d) Linkage of existing housing resources with jobs created;
- (e) Development of agreements with such jurisdictions for Reuse Plan-enhancing job creation or housing programs, production, and/or preservation; and
- (f) Granting of incentives to increase additional below-market housing productions to meet job creation needs.

(2) As a reference and guide for determining income limits and housing affordability levels, each land use agency should use measures established by the U.S. Department of Housing and Urban Development, the California Department of Housing and Community Development, and/or the Association of Monterey Bay Area Governments when determining compliance for very low, low, median, moderate affordability and comparable affordability factors for below-market housing up to 180% of median as approved as FORA

policy guidelines at the January 9, 2004 FORA Board meeting.

8.02.030. DEVELOPMENT ENTITLEMENT CONSISTENCY.

(a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section 8.01.030 of this Resolution, the Authority Board shall withhold a finding of consistency for any development entitlement that:

- (1) Provides an intensity of land uses, which is more intense than that provided for in the applicable legislative land use decisions, which the Authority Board has found consistent with the Reuse Plan;
- (2) Is more dense than the density of development permitted in the applicable legislative land use decisions which the Authority Board has found consistent with the Reuse Plan;
- (3) Is not conditioned upon providing, performing, funding, or making an agreement guaranteeing the provision, performance, or funding of all programs applicable to the development entitlement as specified in the Reuse Plan and in Section 8.02.020 of this Master Resolution and consistent with local determinations made pursuant to Section 8.02.040 of this Resolution.
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority.
- (5) Does not require or otherwise provide for the financing and installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the applicable legislative land use decision.
- (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.
- (7) Is not consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.
- (8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

8.03.080. CONFLICT DETERMINATIONS.

This article establishes procedural guidelines for the evaluation of the environmental factors concerning activities within the jurisdiction of the Authority and in accordance with State Guidelines. Where conflicts exist between this article and State Guidelines, the State Guidelines shall prevail except where this article is more restrictive.

Section 3. This resolution shall become effective upon adoption.

PASSED AND ADOPTED this 20 day of November, 1998, upon motion of Member MANEINI, seconded by Member RUCKER, and carried by the following vote:


AYES: 10

NOES: 2

ABSENT: 1

I, EDITH JOHNSEN, Chair Of the Board of Directors of the Fort Ord Reuse Authority of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of the said Board of Directors duly made and entered in the minutes thereof at section 4a., page 2 of Minute Book
Nov. 20 1998 on Dec 2, 1998.

Dated: January 20, 1999

By: 
EDITH JOHNSEN
Chair, Board of Directors
Fort Ord Reuse Authority

ATTACHMENT "3"

*Table 3-1
Summary of Land Use Covenants*

ATTACHMENT 3

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
Del Rey Oaks	12/28/05	Soil 3	E29a		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without soil management plan 3. Notification of MEC 4. Access rights
			E29b.1		
			E31.b		
			E31a		
			E31c		
			E36		
	In Review	Soil 4	L20.13.1.2		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without soil management plan 3. Notification of MEC 4. Access rights
			L20.13.3.1		
L6.2					

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media

Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media

Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor)

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
Marina	10/12/01	Soil 1	L5.1.1		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without a mangement plan 3. Access rights
	05/22/02	Groundwater 1a	E17		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
			E4.1.1		
			E4.2		
			E4.3.1.1		
	09/17/03	Groundwater 1	L2.2.1		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
			L35.1		
			L35.2		
	09/22/03	Groundwater 2	E2B.1.1.1		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
			E2B.1.1.2		
			E2B.1.2		
			E2B.1.3		
			E2B.1.4		
			E2B.1.5		
			E2B.2.1		
			E2B.2.2		
			E2B.2.3		
			E2B.2.4		
			E2B.2.5		
			E2B.3.1.1		
			E2B.3.2		
			E2C.1		
			E2C.2		
			E2C.3.1		
			E2C.3.2		
			E2C.3.3		
			E2C.4.1.1		
			E2C.4.2.1		
E2D.1					
E2D.2					
E2E.1					
E4.5					
L12.2.2					
L12.2.3					
L12.3					
L20.16.1					
L20.16.2					
L20.16.3					
L20.17.1					
L5.8.1					
L5.8.2					
S4.1.4					
09/28/04	Groundwater 3	S4.1.3		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area.	

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
	03/20/07	Groundwater 6	S4.1.5		3. Notify damages to remedy and monitoring systems. 4. Access rights.
	03/13/06	Groundwater 4	E2a E4.1.2.1 E4.1.2.2 E4.1.2.3 E4.3.1.2 E4.3.2.1 E4.6.1 L5.6.1 L5.6.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
	03/21/06	Groundwater 5	E2d.3.1 E5a.2 L5.10.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
	In Review	Groundwater 8	E4.3.2.2 E4.7.1 E5a.1 L5.10.1		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
	In Review	Groundwater TBA	E2c.4.1.2 E2c.4.2.2 E2c.4.3 E2c.4.4 E2d.3.2 L5.9.2 L20.17.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
	In Review	Groundwater TBA	L2.2.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media

Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media

Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor) media

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
City of Monterey	In Review	Soil 5	E29.1		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without a mangement plan 3. Notification of MEC 4. Access rights

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media

Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media

Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor) media

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
Monterey County	05/22/02	Groundwater 1a	L2.4.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
			L2.4.3.2		
	09/17/03	Groundwater 1	L35.3		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
			L35.6		
			L35.7		
			L35.8		
	9/28/04 and TBD	Groundwater 3 and Landfill 1	E8a.1.2		1. No construction of wells. 2. No disturbance or creation of recharge area. 3. No sensitive uses. 4. Notify damages to remedy and monitoring system. 5. Access rights. 6. No structures unless protective for LFG per Title 27
			E8a.1.3		
			E8a.1.4		
			E8a.1.5		
09/28/04	Groundwater 3	E11B.1		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.	
		E11B.2			
		E11B.3			
		E11B.4			
		E2E.2			
		L20.10.1.1			
		L20.10.1.2			
		L20.10.2			
		L20.14.1.2			
		L20.20			
		L20.21.1			
		L20.21.2			
		L20.22			
		L23.3.1			
L23.3.2.1					
L32.4.2					
S4.1.2.2					
06/26/06	Groundwater 6	E4.6.2		1. No construction of wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.	
6/26/2006 and TBD	Groundwater 6 and Landfill 2	E8a.1.1.2		1. No construction of wells. 2. No disturbance of systems or cap. 3. No sensitive uses. 4. No disturbance or creation of recharge area. 5. Notify damages to remedy and monitoring systems. 6. Access rights 7. No structures unless protective for LFG per Title 27	
10/18/06	Groundwater 7	S3.1.1		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.	
In Review	Groundwater 9	E4.7.2, L5.7, L20.2.1, L32.1		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.	
		E4.7.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.	

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
In Review		Soil TBD/GW 9	L5.7		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights. 5. No sensitive uses. 6. No soil disturbance or violation of ordinance without soil management plan 7. Notification of MEC
			L20.2.1		
			L32.1		
			E11.b.6.1		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without soil management plan 3. Notification of MEC 4. Access rights
			E11b.7.1.1		
			E11b.8		
			E18.1.2		
			E19a.1		
			E19a.2		
			E19a.3		
			E19a.4		
			E19a.5		
			E21b.3		
			E39		
			E40		
			E41		
			E42		
			F1.7.2		
			L20.3.1.		
			L20.3.2		
			L20.5.1		
			L20.5.2		
			L20.5.3		
L20.5.4					
L20.8					
L20.18					
L20.19.1.1					
L23.2					
TBD	Landfill 3 and Groundwater 11	E8a.2		1. No construction of wells. 2. No disturbance of systems or cap. 3. No sensitive uses. 4. No disturbance or creation of recharge area. 5. Notify damages to remedy and monitoring systems. 6. Access rights 7. No structures unless protective for LFG per Title 27	
		E8a.1.1.1			
TBD	Soil TBD	L23.3.2.2		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without soil management plan 3. Access rights	

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media
 Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media
 Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor)

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
Seaside	05/22/02	Groundwater 1a	L2.4.3.1		1. No construction of wells. 2. no disturbance or creation of recharge area 3. Notify damages to remedy and monitoring systems. 4. Access rights
			L32.4.1.2		
			L37		
	09/17/03	Groundwater 1	L1.1		1. No construction of wells. 2. no disturbance or creation of recharge area 3. Notify damages to remedy and monitoring systems. 4. Access rights
	09/22/03	Groundwater 2	E15.1		1. No construction of wells. 2. no disturbance or creation of recharge area 3. Notify damages to remedy and monitoring systems. 4. Access rights
			L19.2		
			L19.3		
			L19.4		
	03/22/04	Soil 2	F2.7.2		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without a mangement plan 3. Access rights
	09/28/04	Groundwater 3	L15.1		1. No construction of wells. 2. no disturbance or creation of recharge area 3. Notify damages to remedy and monitoring systems. 4. Access rights
			L20.19.2		
			L32.4.1.1		
			L36		
L7.8					
L7.9					
In Review	Soil 6	S4.1.2.1		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without a mangement plan 3. Notification of MEC 4. Access rights	
		E18.1.1			
		E18.1.3			
		E18.4			
		E20c.2			
		E23.1			
		E23.2			
E24					
E34					

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media

Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media

Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor) media

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
MPC (Marina)	09/28/04	Groundwater 3	L23.1.1		1. No construction of wells. 2. No disturbance or creation of recharge area 3. Notify damages to remedy and monitoring systems. 4. Access rights
			L23.1.2		
			L23.1.3		
			L23.1.4		
			L23.1.5		
			L23.4		
MPC (Seaside)			L23.6		
MPC (Monterey County)	In Review	Soil TBD	E19a.5		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without a mangement plan 3. Notification of MEC 4. Access rights
			E21b.3		
			E39		
			E40		
			E41		
			E42		
			F1.7.2		
L23.2					
MPC (Seaside)	In Review	Soil 6	E38		1. No sensitive uses. 2. No soil disturbance or violation of ordinance without a mangement plan 3. Notification of MEC 4. Access rights

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media

Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media

Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor) media

When an above described LUC contains parcels belonging to more than one jurisdiction, shading is used to clarify the jurisdiction.

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
CSUMB (Seaside)	05/22/02	Groundwater 1a	S1.4		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
CSUMB (Marina)			S1.5.1.1		
			S1.5.2		
			S1.5.1.1		
CSUMB (Marina)		S1.5.2			
CSUMB (Monterey County)	09/17/03	Groundwater 1	L32.2.1		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
CSUMB (Seaside)			S1.3.3		
			L32.2.2		
			L32.3		
			L33.1		
CSUMB (Marina)		L33.2			
CSUMB (Marina)		S1.5.1.2			
CSUMB (Monterey County)	In Review	Groundwater 9	S1.3.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media

Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media

Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor)

When an above described LUC contains parcels belonging to more than one jurisdiction, shading is used to clarify the jurisdiction.

**TABLE 3-1
SUMMARY OF LUCS BY JURISDICTION**

Jurisdiction	Date LUC Recorded	DTSC LUC Tracking Number	Parcel	GPS Coordinates	Restrictions
UCSC (Monterey County)	05/22/02	Groundwater 1a	S2.5.2.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
UCSC (Marina)			S2.1.3		
			S2.1.4.1		
			S2.5.1.1		
			S2.5.2.1		
UCSC (Monterey County)	09/17/03	Groundwater 1	F7.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.
UCSC (Marina)			S2.1.4.2		
UCSC (Marina)	TBD FOST 11	Groundwater 10 (UCSC, OU1 GW)	S2.1.2		1. No construction of groundwater wells. 2. No disturbance or creation of recharge area. 3. Notify damages to remedy and monitoring systems. 4. Access rights.

Explanations:

Soil = chemicals (such as metals) and Munitions and Explosives of Concern (MEC) are the primary concern in soil media

Groundwater = chemicals such as Volatile organic compounds (VOCs) are the primary concern in the groundwater media

Landfill = chemicals such as Volatile Organic Compounds (VOCs) are the primary concern in the landfill (soil) and landfill gas (vapor) media

When an above described LUC contains parcels belonging to more than one jurisdiction, shading is used to clarify the jurisdiction.

ATTACHMENT "4"

LUC Review Annual Report Outline

ATTACHMENT 4

Former Fort Ord

Land Use Covenant Report Outline

Annual Status Report for _____ (Jurisdiction) _____ on Land Use Covenants
Covering July 1, 2___ to June 30, 2___.

(See Parcel and LUC lists in Table 3-1)

This form is to be submitted by each Jurisdiction to:

Fort Ord Reuse Authority

by

August 1 of each year

DATE OF REPORT: _____

SUBMIT TO: Fort Ord Reuse Authority
Attn: _____
100 12th Street, Bldg. 2880
Marina, California 93933

GENERAL:

Has jurisdiction staff previously provided a compliance summary in regards to the local digging and excavation ordinances, including the number of permits issued?

yes or no

Has jurisdiction staff provided an annual update of any changes to applicable digging and excavation ordinances?

yes or no

Has jurisdiction staff provided an annual update of any changes to the Monterey County Groundwater Ordinance No. 4011?

yes or no

PARCELS:

Have any of the parcels with covenants in the jurisdiction split since the last annual report?

yes or no

If so, please reflect the split(s) in reporting on compliance with section 2.1.2 of the MOA in Table 3-1.

GROUND WATER COVENANTS:

Is a ground water covenant applicable in your jurisdiction? yes or no
(If no, skip questions 1 through 4)

1. Did jurisdiction staff visually inspect the parcels in your jurisdiction (see Table 3-1) with ground water covenants? Such visual inspection shall include observed groundwater wells, and any other activity that would interfere with or adversely affect the groundwater monitoring and remediation systems on the Property or result in the creation of a groundwater recharge area (e.g., unlined surface impoundments or disposal trenches).

yes or no

2. Did jurisdiction staff check with the applicable local building department (please list department name: _____) to ensure that no wells or recharge basins such as surface water infiltration ponds were built within your jurisdiction?

yes or no

3. Did jurisdiction staff check with the applicable local planning department (please list department name: _____) to ensure that no well permits were granted or recharge basins requested within your jurisdiction?

yes or no

4. Did jurisdiction staff review the County well permit applications pertaining to your jurisdiction to ensure that no wells have been dug or installed in violation of the ordinance or the ground water covenants?

yes or no

If you answered yes to any questions 1 through 4 above, please note and describe violations with USACE parcel numbers and street addresses (Use additional sheets if needed).

LANDFILL BUFFER COVENANTS:

Is a landfill buffer covenant applicable in your jurisdiction? yes or no
(If no, skip questions 1 through 3)

1. Did jurisdiction staff visually inspect the parcels in your jurisdiction (see Table 3-1) with landfill buffer covenants? Such visual inspection shall include observation of any structures and any other activity that would interfere with the landfill monitoring and remediation systems on the Property.

yes or no

2.. Did jurisdiction staff check with the applicable local building department (please list department name: _____) to ensure that no sensitive uses such as residences, hospitals, day care or schools (not including post-secondary schools, as defined in Section 1.19 of the MOA), were built on the restricted parcels within your jurisdiction?

yes or no

3. Did jurisdiction staff check with the applicable local planning department (please list department name: _____) to ensure that no other structures were built without protection for vapors in accordance with the landfill buffer covenants?

yes or no

If you answered yes to any questions 1 through 3 above, please note and describe violations with street addresses. (Use additional sheets if needed).

SOIL COVENANTS:

Is a soil covenant applicable in your jurisdiction?
(If no, skip questions 1 through 4)

yes or no

1. Did jurisdiction staff visually inspect the parcels (see Table 3-1) in your jurisdiction with soil covenants to assure no sensitive uses such as residences, hospitals, day care or schools (not including post-secondary schools, as defined in Section 1.19 of the MOA), were constructed or are occurring on the restricted parcels in your jurisdiction?

yes or no

2. Did jurisdiction staff check with the applicable local building department to ensure that no soil was disturbed without an approved soil management plan in accordance with the excavation and digging Ordinance in your jurisdiction?

yes or no

3. Did jurisdiction staff check with the applicable local planning department for notification of MEC within your jurisdiction?

yes or no

4. Did jurisdiction staff review the 911 records of MEC observations and responses and provide a summary in annual report?

yes or no

If you answered yes to any questions 1 through 4 above, please provide the following information:
(Use additional sheets if needed).

- a) date and time of the call,
- b) contact name,
- c) location of MEC finding,
- d) type of munitions, if available and
- e) response of jurisdiction law enforcement agency.

Jurisdiction's Representative Compiling this Report: _____

Contact Information: **Phone:** _____
 Email: _____

Signature of Preparer: _____

Suggested Attachments to Annual LUC Report

1. Table summarizing inspections, parcels, restrictions and any deficiencies in the LUCs.
2. Inspection Notes for each parcel.
3. Inspection Photos for each parcel.
4. County and jurisdiction well records, permit reports.
5. Building department permit records.
6. Planning department permit records.
7. MEC findings (911 call records).
8. GPS coordinates for parcels.

ATTACHMENT "5"

DEPARTMENT'S Annual Cost Estimate

ATTACHMENT 5

Attachment

Cost Estimate The Department's LUC Oversight

The number of parcels anticipated to require LUCs are listed below and the restrictions are detailed in Section 4.0 of each LUC. The list of parcels and respective restrictions are summarized by jurisdiction in Table 3-1 of the Memorandum of Agreement (MOA) between the Department of Toxic Substances Control (DTSC), Fort Ord Reuse Authority (FORA), Monterey County (County), the City of Seaside (Seaside), the City of Monterey (Monterey), the City of Del Rey Oaks (Del Rey Oaks), the City of Marina (Marina) California State University Monterey Bay ("CSUMB"), University of California Santa Cruz ("UCSC"), and Monterey Peninsula College ("MPC"). The restrictions generally fall in one of three categories:

1. Prohibition of groundwater wells for injection or extraction and utilization of groundwater and any other activity that would interfere with or adversely affect the groundwater remediation systems on the former Fort Ord on property within the Prohibition Zone of the Special Groundwater Protection Zone.
2. Prohibition of sensitive land uses (residences, schools [not including post-secondary schools as defined in Section 1.19 of the MOA], hospitals, day care centers, etc.) and soil disturbance on property where Munitions and Explosives (MEC) may remain. These covenants will also have requirements for construction support, and reporting to DTSC if soil disturbance occurs.
3. Prohibition of sensitive land uses (residences, schools [not including post-secondary schools, as defined in Section 1.19 of the MOA], hospitals, day care centers, etc.) the Fort Ord Landfills and excavation activities (i.e. digging, drilling, or any other excavation or disturbance of the land surface or subsurface) or other activities, which may damage the OU2 Fort Ord Landfills soil cover and liners or landfill gas extraction and treatment systems.

Total Costs by Jurisdiction

Jurisdiction	# Parcels with Soil/MEC LUCs	# Parcels with Groundwater LUCs	# Parcels with Landfill LUCs	Annual DTSC oversight cost (includes FORA Administrative Costs of 15%)	Annual DTSC oversight cost (without FORA Administrative Costs)
Monterey County	2	55	7	\$6,081	\$5,288
City of Marina	<u>1</u>	<u>58</u>	0	\$5,633	\$4,898
City of Monterey	1	0	0	\$958	\$833
City of Del Rey Oaks	9	0	0	\$2,944	\$2,560
City of Seaside	<u>10</u>	15	0	\$3,036	\$2,640
CSUMB		11		\$1,213	\$1,055
UCSC		8		\$787	\$684
MPC	<u>1</u>	15		\$1,669	\$1,451
			Total Estimate	\$22,321	\$19,409

Estimate By Jurisdictions

Monterey County

DTSC Task	Hours per year	\$ per hour/day	Annual Total
Review the MOA and 13 LUCs for 70 parcels	<u>4</u>	117	\$468
Review Annual Report on compliance with MOA and LUCs	<u>6</u>	117	\$702
Annual inspection of 70 parcels (including travel)	<u>24</u>	117	\$2,805
Review of Property Transfer Documents	<u>4</u>	117	\$468
Mileage	<u>1</u>	\$205	\$205
Per Diem	<u>3</u>	\$138	\$414
Draft and complete inspection reports, and/or approval letter	<u>6</u>	117	\$702
Supervisor QA	<u>2</u>	166	\$332
Branch Chief Briefing	<u>1</u>	166	\$166
Clerical	<u>4</u>	58	\$232
Subtotal DTSC Costs in County	<u>24</u>		\$6,494
Subtotal Prorated County Costs 57/70 LUC parcels)			\$5,288
FORA Administrative Costs (15%)			\$793
Total County Costs			\$6,081

City of Marina

DTSC Task	Hours per year	\$ per hour	Annual Total
Review the MOA and 9 LUCs for 73 parcels	<u>4</u>	117	\$468
Review Annual Report on compliance with MOA and LUCs	<u>3</u>	117	\$351
Annual inspection of 73 parcels (including travel)	<u>24</u>	117	\$2,805
Draft and complete inspection reports, and/or approval letter	<u>6</u>	117	\$702
Mileage	<u>1</u>	\$205	\$205
Per Diem	<u>3</u>	\$138	\$414
Review of Property Transfer Documents	<u>4</u>	117	\$468
Supervisor QA	<u>2</u>	166	\$332
Branch Chief Briefing	<u>1</u>	166	\$166
Clerical	<u>4</u>	58	\$232
Subtotal DTSC Costs in Marina	<u>9</u>		\$6,143
Subtotal Prorated Marina Costs 59/74 LUC parcels			\$4,898
FORA Administrative Costs (15%)			\$735
Total Marina Costs			\$5,633

City of Monterey

DTSC Task	Hours per year	\$ per hour	Annual Total
Review 1 LUC for <u>1</u> parcel	<u>0.5</u>	117	\$58.5
Review Annual Report on compliance with MOA and LUC	<u>0.5</u>	117	\$58.5
Annual inspection of the parcel (no travel)	<u>1</u>	117	\$117
Mileage to Site and per diem	<u>0</u>	0	\$0
Review of Property Transfer Documents	<u>1</u>	117	\$117
Draft and complete inspection reports and/or approval letter	1	117	\$117
Supervisor QA	2	166	\$306
Branch Chief Briefing	0.5	166	\$83
Clerical	2	58	\$116
Subtotal DTSC Costs in Monterey	<u>24</u>		\$833
FORA Administrative Costs (15%)			\$125
Total Monterey Costs			\$958

City of Del Rey Oaks

DTSC Task	Hours per year	\$ per hour	Annual Total
Review the MOA and 2 LUCs for <u>9</u> parcels	<u>1</u>	117	\$117
Review Annual Report on compliance with MOA and LUCs	<u>4</u>	117	\$468
Annual inspection of <u>9</u> parcels (including travel)	<u>6</u>	117	\$702
Review of Property Transfer Documents	<u>1</u>	117	\$117
Mileage	<u>1</u>	\$102	\$102
Per Diem	<u>1</u>	\$138	\$138
Draft and complete inspection reports, and/or approval letter	4	117	\$468
Supervisor QA	1	166	\$166
Branch Chief Briefing	1	166	\$166
Clerical	2	58	\$116
Subtotal DTSC costs in Del Rey Oaks	<u>22</u>		\$2,560
FORA Administrative Costs (15%)			\$384
Total Del Rey Oaks Costs			\$2,944

City of Seaside

DTSC Task	Hours per year	\$ per hour	Annual Total
Review the MOA and 7 LUCs for <u>32</u> parcels	<u>2</u>	117	\$234
Review Annual Report on compliance with MOA and LUCs	<u>5</u>	117	\$585
Annual inspection of <u>32</u> parcels (including travel)	<u>10</u>	117	\$1,170
Review of Property Transfer Documents	<u>2</u>	117	\$234
Mileage	<u>1</u>	\$205	\$205
Per Diem	<u>1</u>	\$138	\$138

Draft and complete inspection reports and/or approval letter	4	117	\$468
Supervisor QA	<u>1</u>	166	\$166
Branch Chief Briefing	1	166	\$166
Clerical	<u>2</u>	58	\$116
Subtotal DTSC costs in Seaside	<u>28</u>		\$3,379
Subtotal Prorated Seaside Costs 25/32 LUC parcels			\$2,640
FORA Administrative Costs (15%)			\$396
Total Seaside Costs			\$3,036

CSUMB

Description	Factor	Annual Cost	Annual Total
Monterey County (Prorated 3/70 LUC parcels)	4.29%	\$6,494	\$278
Marina (Prorated 3/74 LUC parcels)	4.05%	\$6,143	\$249
Seaside (Prorated 5/32 LUC parcels)	15.63%	\$3,379	\$528
Subtotal CSUMB costs to DTSC			\$1,055
FORA Administrative Costs (15%)	15%	\$1,055	\$158
Total CSUMB Costs			\$1,213

UCSC

Description	Factor	Annual Cost	Annual Total
Monterey County (Prorated 2/70 LUC parcels)	<u>2.86%</u>	\$6,494	\$186
Marina (Prorated 6/74 LUC parcels)	8.11%	\$6,143	\$498
Subtotal UCSC costs to DTSC			\$684
FORA Administrative Costs (15%)	15%	\$684	\$103
Total UCSC Costs			\$787

MPC

Description	Factor	Annual Cost	Annual Total
Monterey County (Prorated 8/70 LUC parcels)	11.43%	\$6,494	\$742
Marina (Prorated 6/74 LUC parcels)	8.11%	\$6,143	\$498
Seaside (Prorated 2/32 LUC parcels)	<u>6.25%</u>	\$3,379	\$211
Subtotal MPC costs to DTSC			\$1,451
FORA Administrative Costs (15%)	15%	\$1,173	\$218
Total MPC Costs			\$1,669

Notes and Assumptions:

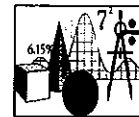
1. The estimates in the tables above are for DTSC's costs to oversee the LUCs on existing and anticipated future land transfers. These estimates based on the attached 2007 DTSC Contract Estimation Rates for the time period between July 1, 2006 and June 30, 2007. Actual charges will be based on actual individual salary and benefits of each employee, actual per diem, mileage rates and expenses and will be invoiced quarterly on a "time and materials" basis. On an annual basis, DTSC will compare this cost estimate with actual charges. If the invoice variance is greater than 20% from the original cost estimate for any jurisdiction, DTSC will notify FORA and prepare an addendum to this cost estimate. DTSC anticipates that staff time required to inspect parcels and review and approve annual reports may increase over time due to increased development and increase in the number of LUCs on newly transferred properties.
2. Pursuant to CCR Section 67391.1, a LUC Implementation and Enforcement Plan (IEP) is required. FORA and the jurisdictions are entering into the MOA, which describes each participant's roles and responsibilities and serves as the EIP.
3. The Army will continue to perform all operation and maintenance activities, monitoring, inspections and five-year reviews for the groundwater remediation and the OU 2 landfill as required by the FFA. DTSC's oversight costs for these tasks will continue to be paid by the Army via DSMOA or equivalent mechanism.
4. DTSC costs for variances, changes or termination of the covenant will be paid by the party requesting the action and are not included in this cost estimate.
5. This cost estimate is based on 2007 DTSC billing rates (attached) and expenses (i.e. mileage, per diem and expenses). Annually, DTSC publishes new billing rates; therefore, this cost estimate may change.

ATTACHMENT "5A"

DTSC Cost Estimation Rates

ATTACHMENT 5A

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



Contract Estimation Rates
Effective 7/01/06 - 06/30/07

These rates are to be used to estimate contract costs for the 2006/07 Fiscal Year effective 7/1/06. The rates are based on the highest salary rate for the class including all pay and equity raises that DTSC is aware of as of 11/1/06. Actual costs will be determined by individual salary rates and benefits, which may be higher or lower than the rate shown.

Questions concerning these rates should be addressed to:
Lillian Haglo, Fiscal Systems at CALNET 8-454-6431 or (916) 324-6431

Rev 11/15/06

SITE MITIGATION AND BROWNFIELD REUSE HAZARDOUS WASTE MANAGEMENT SCIENCE POLLUTION PREVENTION & TECHNOLOGY

Class Code	Class Name	ALL INCLUSIVE HOURLY RATE 175.11%	ALL INCLUSIVE HOURLY RATE 159.37%	ALL INCLUSIVE HOURLY RATE 194.36%
5871	Assistant Chief Counsel	\$212	\$200	\$227
4711	Associate Environmental Planner	\$115	\$108	\$123
5393	Associate Governmental Program Analyst	\$109	\$103	\$117
3856	Associate Industrial Hygienist	\$122	\$115	\$131
7941	Associate Toxicologist	\$131	\$123	\$140
3833	CEA II	\$176	\$166	\$188
8060	Chemist	\$112	\$105	\$120
7574	Criminal Investigator, DTSC	\$115	\$108	\$123
3756	Engineering Geologist	\$145	\$137	\$155
8054	Environmental Biochemist	\$151	\$142	\$162
3726	Hazardous Substances Engineer	\$145	\$136	\$155
3564	Hazardous Substances Scientist	\$117	\$110	\$125
4247	Health Program Audit Manager I, DHS	\$126	\$119	\$135
5278	Management Services Technician	\$70	\$66	\$75
1441	Office Assistant (General)	\$57	\$53	\$61
1379	Office Assistant (Typing)	\$58	\$54	\$62
1148	Office Services Supervisor I (Typing)	\$67	\$63	\$71
1150	Office Services Supervisor II (General)	\$73	\$69	\$79
1138	Office Technician (General)	\$66	\$62	\$70
1139	Office Technician (Typing)	\$67	\$63	\$71
5373	Public Participation, Specialist (DHS)	\$109	\$103	\$117
5372	Public Participation, Supervisor (DHS)	\$125	\$118	\$134
6001	Research Program Specialist II (Soil Erosion)	\$132	\$124	\$141
5581	Research Scientist II (Chemical Sciences)	\$131	\$123	\$140
5638	Research Scientist Sup 1	\$159	\$149	\$170
3751	Senior Engineering Geologist	\$166	\$157	\$178
4713	Senior Environmental Planner	\$138	\$130	\$147
3725	Senior Hazardous Substances Engineer	\$166	\$156	\$178
3565	Senior Hazardous Substances Scientist	\$134	\$127	\$144
3852	Senior Industrial Hygienist	\$139	\$131	\$149
7943	Senior Toxicologist	\$166	\$157	\$178
8068	Staff Chemist	\$122	\$115	\$131
5778	Staff Counsel	\$165	\$156	\$177
5795	Staff Counsel III (Specialist)	\$200	\$189	\$214
5815	Staff Counsel III (Supervisor)	\$201	\$189	\$215
5157	Staff Services Analyst (General)	\$91	\$86	\$97
4800	Staff Services Manager I	\$125	\$118	\$134
4801	Staff Services Manager II (Supervisor)	\$138	\$130	\$147
7978	Staff Toxicologist (Specialist)	\$158	\$149	\$169
8070	Supervising Chemist	\$123	\$116	\$131
7575	Supervising Criminal Investigator I, DTSC	\$126	\$119	\$135
7576	Supervising Criminal Investigator II, DTSC	\$142	\$134	\$152
3748	Supervising Engineering Geologist	\$182	\$172	\$195
3724	Supervising Hazardous Substances Engineer I	\$166	\$157	\$178
3723	Supervising Hazardous Substances Engineer II	\$182	\$172	\$195
3566	Supervising Hazardous Substances Scientist I	\$135	\$127	\$144
3567	Supervising Hazardous Substances Scientist II	\$155	\$146	\$166
1181	Word Processing Technician	\$61	\$57	\$65

Appendix E

Response to Comments on the Draft
Document

RESPONSES TO COMMENTS

Document: Draft Remedial Design/Remedial Action Work Plan, Del Rey Oaks Munitions Response Area, Former Fort Ord, California, dated April 28, 2010

Commenting Organization: U.S. Environmental Protection Agency (EPA)
Name: Judy Huang
Date of Comments: May 21, 2010

General Comment:

“The Federal Deed and the State Covenant to Restrict Use of Property need to be modified to be consistent with the Record of Decision dated October 6, 2008 (ROD). Prior to these modifications, surveys need to be conducted to delineate the areas where the residential use restriction will be retained.”

RESPONSE:

The City of Del Rey Oaks has recently provided a letter to California Department of Toxic Substances Control (DTSC) formally requesting DTSC to initiate the variance process in order to modify the Covenant to Restrict Use of Property (CRUP) to remove the residential restriction on the central portion of the site, as described in the ROD. The City of Del Rey Oaks will delineate the central portion of the site in a manner that meets the requirements of the Monterey County Recorder for the purposes of recording.

The Federal deed will be amended to provide the warranty under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), after receiving the EPA letter that certifies the completion of all remedial actions. The deed amendment will reflect the restrictions as described in the modified CRUP.

This information will be included in Section 5 of the Remedial Design/Remedial Action Work Plan.

Specific Comment:

“Page 10, Section 4.11 Future Residential Development: This section discussed the application of and the process to remove the residential use restriction on the property. As currently written, it is unclear if the restriction and the restriction removal process applies to the entire site or only to the northern and southern portion of the site as specified by the ROD. Please revise the Draft LUCIP to be consistent with the ROD.”

RESPONSE:

As specified in the Record of Decision, the CRUP will be modified to remove the residential restriction from the central portion of the Del Rey Oaks property. Therefore, after the modification of the CRUP, the process described in the referenced section will apply only to the northern and southern portions of the property. Section 4.11 will be revised for clarification.

RESPONSES TO COMMENTS

Document: Draft Remedial Design/Remedial Action Work Plan, Del Rey Oaks Munitions Response Area, Former Fort Ord, California, dated April 28, 2010

Commenting Organization: Fort Ord Community Advisory Group (FOCAG)
Name: Mike Weaver
Date of Comments: June 5, 2010

Comment 1:

“1) The Fort Ord Community Advisory group is adding CalTrans, District 5 to the addressees above because we could not find them on the Arcadis/City of Del Rey Oaks Distribution List that was provided in a separate mailing, after receipt of the document referenced above.

“2) Cal Trans has an interest in this property as the Official Plan Lines for the South-West Alternative, also known as the Fort Ord Bypass go through this property. The City of Del Rey Oaks asked to have these Official Plan Lines (OPL) modified several years ago when the City approved the plans for the Stone Creek Shopping Center This shopping center is at the intersection of State Highways 68 and 218.

“3) You will remember that the Programmed EIR for the rather ambitious 1997 Former Fort Ord Reuse Plan, and the Plan itself, identified the South-West Alternative as the main mitigation for a lot of the traffic that was to be generated by the Reuse Plan. The Official Plan Lines remain, however are not identified on any map in the Draft Remedial Design/Remedial Action Work Plan for Del Rey Oaks. These Plan Lines may have to be modified some depending on design and specific area to be traversed. Please include discussion, a map, and a plan in the Draft Final of the document. Traffic mitigations are imperative and the traffic issue was part of the Settlement Agreement when the Fort Ord Reuse Authority settled the suit filed by the Sierra Club. Resolution 98-1. You have a copy of this Resolution in the document.”

RESPONSE:

The comments do not pertain to the subject document. The purpose of this document is to provide information on how the remedy selected in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Record of Decision (ROD) for the Del Rey Oaks Munitions Response Area (MRA) (Administrative Record [AR] number: OE-0670) will be implemented and maintained.

Comment 2:

“4) The approximately 350 acres under discussion in this document is a multi-layered area of former Army Training Ranges. After cleanup for unexploded ordnance began it was determined that the area had also been used for Army Tank training purposes. This document discusses some of the important unexploded ordnance issues but does not address the other elements of the Fort Ord National Superfund Site. Those are:

- a) Contaminated groundwater
- b) Residual chemical contamination from years of pyrotechnics, that is flares, tracers, smoke bombs, chemical warfare training, etc.
- c) Years of heavy herbicide and pesticide use at the former training base.

“These carcinogens need to be tested for and cleaned. The FOCAG is including two attachments, a couple of our research papers from this past year. Please include details of plans to address these other issues, and a time line.”

RESPONSE:

The purpose of this document is to provide information on how the remedy selected in the ROD for the Del Rey Oaks MRA will be implemented and maintained. The selected remedy includes land use controls intended to address risks from munitions and explosives of concern (MEC) that, although not expected, may potentially remain at the property. Subsurface MEC removal has been completed in the property.

Potential human health and ecological risks related to any soil contamination from small arms and small caliber items (less than .50 caliber), and military munitions ranges, have been addressed under the Basewide Range Assessment and the Site 39 Feasibility Study Addendum, which are components of the Hazardous Toxic Waste (HTW) Remedial Investigation/Feasibility Study (RI/FS) program at the former Fort Ord. No restrictions related to munitions constituents in soil were recommended following completion of both a soil removal action and post remediation risk assessment. Under the HTW RI/FS program, no groundwater contamination has been identified in the vicinity of the Del Rey Oaks parcels.

With regard to the comment on past use of pesticides and herbicides, the potential presence of pesticides on former Fort Ord has been thoroughly investigated as part of the Army's interim action and basewide remedial investigation activities. FOCAG comments on this topic are reiterated in the “Attachment 2” to the FOCAG letter; the Army has provided responses on the issue in a letter dated June 21, 2010 (AR number: BW-2540).

The possibility of chemical warfare materiel use at Fort Ord has been researched by the Army's Non-Stockpile Chemical Warfare Materiel Program. The Non-Stockpile Chemical Warfare Materiel Program conducted a survey which found no evidence to indicate the use of chemical weapons at Fort Ord. The Installation did, however, receive chemical warfare materiel in the form of Chemical Agent Identification Sets (CAIS) to train soldiers in the identification of chemical warfare agents and in proper responses upon identification. Four sets in the inventory were removed from Fort Ord in 1974. During the environmental cleanup of the former Fort Ord, there have been several incidents where the presence of chemical warfare materiel was suspected, however, only one incident involved the actual discovery of CIAS. Each incident has been thoroughly evaluated and documented. FOCAG comments on this topic are reiterated in the “Attachment 3” to the FOCAG letter, which the Army has received previously and will respond separately.

As described in the Finding of Suitability for Early Transfer (FOSET) for the Del Rey Oaks parcels (AR number: FOSET-003K), all environmental factors of concern associated with the property were identified and considered, and the property was demonstrated as suitable for transfer, in 2004.

Comment 3:

“5) The FOCAG was told in two meetings, we remember, that the costs for cleaning this parcel for unexploded ordnance was \$20,000,000. Later we were told it wasn't quite that much. We have asked several times for a dollar amount of the Federal tax dollars spent, but to date, have not been provided this information. Please provide an accounting of dollars spent. \$20 Million

seems to be a lot of money spent for a population of 1,650 in the current Del Rey Oaks city limits. (Year 2000 census)”

RESPONSE:

As described in the Responsiveness Summary included in the for the Del Rey Oaks MRA ROD (AR number: OE-0670), the total cost of the cleanup for the Del Rey Oaks MRA at the time, over the two phases of work during which MEC removals were conducted at the site, was estimated at approximately \$4.5 million.

Comment 4:

“6) Please provide a few maps, available from Army documents, of the specific areas sampled for ordnance, and the specific grids sampled in those sample areas. To what depth were these samples cleaned? Describe the equipment used. If Schoenstedt [sic] Magnetometers, then their range, or depth of discovery, is approximately two and one half feet, to maybe three feet. Your Final Remedial design, Remedial Action Work Plan needs to build on this and provide justification for your specific reuse plan. What is in the 11-Grid Area of the MRA? Is it located anywhere near the Highway Official Plan Lines?”

RESPONSE:

A history of munitions response investigations conducted at the Del Rey Oaks MRA is provided in *Final Track 2 Munitions Response RI/FS, Del Rey Oaks MRA, Former Fort Ord, California* (AR number: OE-0615Q). Plate 3-1 of the RI/FS report shows the locations of the sampling grids. During sampling, anomalies were investigated to the depth of detection. Subsequent to multiple sampling investigations, MEC removal action and geophysical investigation that covered the entire Del Rey Oaks MRA were completed, during which all detected MEC was removed. The manmade berm at Range 26 was deconstructed during the MEC removal action at the Del Rey Oaks MRA. The Army’s subsequent assessment of the MEC removal data and quality control/quality assurance (QC/QA) information indicated that the 11-Grid Area within Range 26 had uncertainties associated with the removal due to metallic clutter in the area. As a result, construction support is required for soil disturbance activity beyond 4-ft depth within the 11-Grid Area (while construction support is required to the 4-ft depth in the rest of the site). This information is provided in detail in the RI/FS report. The remedy selected for the Del Rey Oaks MRA is supported by the detailed evaluation of the potential for MEC to remain in the site, as described in the RI/FS, and public comments received on *Superfund Proposed Plan, Remedial Action is Proposed for Del Rey Oaks MRA, Track 2 Munitions Response RI/FS* (AR number: OE-0625).

Comment 5:

“7) For the record, at least three developers have pulled out of doing a project on this property partially because there is no source of potable water. The last developer, Federal Development, LLC, requested, via Del Rey Oaks, for a twenty year "loan" of potable water. This fell through and according to a news story in the Herald newspaper, Federal Development LLC, left town stating ‘You never got us the water you promised!’

- a) What is the source of potable water for the uses, including residential, outlined in this Draft Plan?
- b) How will the water get to Del Rey Oaks?
- c) Who will pay for it?”

RESPONSE:

The comments do not pertain to the subject document.

Comment 6:

“8) The bottom of page 1 and the top of page 2 describe a rather complicated series of land divisions.

a) Please describe, under CERCLA, and the RI/FS agreement the Army made as a settlement of the Fort Ord Toxics Project lawsuit, how these divisions could be made prior to completion of the cleanup?

b) Were these land divisions made before or after modifying the Federal Facilities Agreement?”

RESPONSE:

Since the initiation of the MR RI/FS in 1998, the Army has utilized MRS designations to facilitate munitions response in different areas of the former Fort Ord, and to document and track the wealth of investigation data. In the case of the Del Rey Oaks MRA, which encompasses several MRSs as described in the referenced section of the document, all areas within the MRA were evaluated in the RI/FS. The MRS designations do not affect the Fort Ord Federal Facility Agreement.

Comment 7:

“9) Please provide a chart as to the depth the various known ordnance can go. Include a description of the ordnance types. You seem to have chosen a Selected Remedy of Army assistance at depths over four feet below ground surface, although the specifics are not real clear. At least one aspect of it seems to start with a call to 9-1-1.”

RESPONSE:

The types, quantities and depths of MEC items that have been removed from the Del Rey Oaks MRA are reported in the RI/FS report (AR number: OE-0615Q). Based on the detailed evaluation as presented in the RI/FS report, the munitions response investigations and removal actions conducted at the Del Rey Oaks MRA successfully detected, excavated and recovered MEC from the site. The rationale for the requirement for construction support beyond the 4-ft depth in within the 11-Grid Area is as described in the response to comment 4. The standard procedure for reporting any encounter with a known or suspected military munitions item in transferred former Fort Ord property is to report the encounter immediately to local law enforcement. The local law enforcement agency will promptly request Department of Defense (DoD) support for response, if required. As part of the selected remedy, training will be provided to people who conduct soil disturbance or intrusive activities in the Del Rey Oaks property so they are familiar with the safety and reporting procedures. The Army also incorporates the safety and reporting procedures in its community outreach materials.

Comment 8:

“10) The FOCAG remembers a past meeting it had with Dan Ward of DTSC. He explained that DTSC was lifting the restriction on residential, but only to the extent that Timeshare Condos would be allowed in certain areas. The DTSC rationale was that people residing in a timeshare condo would be less likely to be digging in the backyard planting flowers and such. The FOCAG's response and question to this was, ‘Won't the landscapers and gardeners still be digging in the backyards planting things?’ To date we have not received a response to our question. We now see additional areas opened up to ‘residential’. How much Federal money was spent on the additional cleanup necessary to justify residential. Please provide a map of these areas cleaned, border to border, and the depths to which they were cleaned.”

RESPONSE:

A history of munitions response investigations conducted at the Del Rey Oaks MRA is provided in the RI/FS report (AR number: OE-0615Q). Based on the detailed evaluation as presented in the RI/FS report, the munitions response investigations and removal actions conducted at the site successfully detected, excavated and recovered MEC from the site. However, based on the RI/FS, MEC removal in portions of the MRA was associated with a greater uncertainty; therefore, residential restriction was selected as a component of the remedy in these areas.

As summarized in the ROD, a review of the remedial investigation data indicated that the majority of high hazard MEC items (37mm projectiles and 2.36-inch rockets) had been recovered from the northern and southern portions of the Del Rey Oaks MRA. Penetrating projectiles (primarily 75mm Shrapnel, and 37mm projectiles), both as MEC and munitions debris, had been found primarily in the northern and southern portions of the MRA. Because these items, if encountered and disturbed, may pose the highest hazard, and were more likely to be found in the subsurface, greater uncertainty was associated with the removal in these areas.

The MEC risk assessment considered the proposed future land uses for the property, and evaluated several receptors including recreational user (golfer), indoor worker, outdoor maintenance worker, construction worker, and adult/child resident. No additional munitions cleanup has been conducted in order to support residential development in the Del Rey Oaks MRA.

Comment 9:

“11) Page 4 of this document states, ‘In November 1998, the Army agreed to evaluate MEC at the former Fort Ord and perform a basewide Munitions Response (MR) Remedial Investigation Feasibility study (RI/FS) consistent with CERCLA.’

a) Please add that this agreement by the Army, was the result of a Settlement of a lawsuit brought against the Army.

“It continues on page 4, ‘In April of 2000, an agreement was signed between the Army, EPA, and DTSC to evaluate MEC at the former Fort Ord subject to the provisions of the FFA.’

b) Please provide a description of the modifications later made to this FFA and the justifications for doing so.”

RESPONSE:

These comments are noted. The referenced agreements did not necessitate any modification to the Fort Ord Federal Facility Agreement.

Comment 10:

“12) The City of Del Rey Oaks early plans for the property as stated in city meetings, complete with drawing and sketches. was for a moderate size eco-resort similar to the Asilomar in Pacific Grove.

a) What changed after year 2005 to expand proposed uses to golf course, two hotels, retail, commercial, golf school, restaurants, and residential housing?

b) Has a project specific California Environmental Impact Report been prepared or is it being prepared?”

RESPONSE:

The proposed reuse for the Del Rey Oaks MRA is described in the Fort Ord Base Reuse Plan and reiterated in the FOSET (AR number: FOSET-003K). Residential use was contemplated by

the City of Del Rey Oaks after the property was transferred to the City, therefore the possibility of residential use was evaluated in the RI/FS. This information is included in Section 1.3 of the RD/RA Work Plan.

Comment 11:

“13) Del Rey Oaks is a pleasant small town with a population of about 1,650. It is immediately adjacent to both the cities of Monterey and Seaside. For years Del Rey Oaks had a Mayor, a City Council, and a combination police chief and city manager. Since that time and in about the last twelve years, Del Rey Oaks has variously hired a City Planner, City Manager, and numerous consultants and attorneys.

- a) How much money has the City spent in the past twelve years on all this additional personnel?
- b) Was former developer Federal Development, LLC, paying for Del Rey Oaks FOR A fees? Is this just a rumor going about?”

RESPONSE:

The comments do not pertain to the subject document.

Comment 12:

“14) Please include in the Site Description some additional information regarding the site.

- a) The non-time critical removal action, whose justification was, ‘You never know when some 14 year old kid with a shovel may go in there, start digging around, and hurt himself?’
- b) Del Rey Oaks requesting an Early Development Conveyance due to economic devastation it claimed it suffered as a result of base closure.
- c) Del Rey Oaks declaring the area partially cleaned as being ‘blighted’.
- d) Del Rey Oaks hiring consultants to walk it through a Redevelopment process.”

RESPONSE:

A detailed site description and a history of munitions response investigations conducted at the Del Rey Oaks MRA is provided in the RI/FS report (AR number: OE-0615Q). Other comments do not pertain to the subject document.

Comment 13:

“15) It seems to the FOCAG that a lot of money has been spent and a lot of ambitious plans have been floated about but the City is in the same financial situation it was some twelve years ago.

- a) Is the City included in the FOR A insurance policy purchased from A.I.G.?
- b) There are some real liability issues that need a serious analysis. The plan, as outlined in this draft gives the FOCAG an uneasy feeling as it seems to be a lot of paper promises. Spell out the penalties for not complying. Identify specific penalties and specific mechanisms to ensure compliance.
- c) Included as an attachment to this letter, marked as ‘Attachment 1’ are four pages from a California Public Records request of the Department of Toxic Substances Control. It is an email from December 12, 2006 of some highly placed people apparently discussing significant changes. These changes include the removal of restrictions to ‘Residential’. The FOCAG’s specific questions about this email are on the right hand side and begin with, ‘Who drafted and holds the ‘Model Bona Fide Purchaser Agreement?’”

“Can Del Rey Oaks facilitate the FOCAG getting answers to these questions?”

RESPONSE:

The comments related to the financial standing of the City of Del Rey Oaks or insurance do not pertain to the subject document.

The ROD for the Del Rey Oaks MRA is supported by the technical evaluation of site conditions, cleanup that has been completed, and associated risk from MEC that may remain in the property, as detailed in the RI/FS report (AR number: OE-0615Q). Remedial alternatives were evaluated to address the risks and to support the reuse designated for the property. Although many discussions may have been held by various parties concerning the development of the Del Rey Oaks property, as it may be surmised by "Attachment 1" to FOCAG's comment letter, the RI/FS must rely on the documented reuse planning information such as those described in Section 1.3 of the RD/RA Work Plan.

As described in the RD/RA Work Plan, the implementation of the remedy will utilize various existing mechanisms, such as the City of Del Rey Oaks Excavation Ordinance, that includes implementation and enforcement components. Implementing activities are subject to annual land use control monitoring and reporting. The effectiveness of the remedy will be evaluated as part of the five-year review process. The next five-year review will be conducted in 2012.

Comment 14:

"16) Additionally, the offsite mitigations necessary to accommodate the traffic generated as a result of both Del Rey Oaks and former Fort Ord projects have to be addressed. Please don't fail to include good maps with locations in your Draft Final regarding the Official Plan Lines for the Fort Ord Bypass on this property. Long term planning is key. Uses compatible with these official Plan Lines are important to recognize now."

RESPONSE:

It is acknowledged that a Highway 68 Bypass right-of-way is included in the Fort Ord Reuse Authority (FORA) March 1997 Fort Ord Base Reuse Plan, covering a portion of the Del Rey Oaks MRA. Mitigation of traffic impacts associated with the reuse of the property is not in the scope of this document.

Comment 15:

"Thank you for the opportunity to comment on this Draft. We look forward to receiving your Draft Final document. Please include the entirety of this letter and the three attachments at the back of your Draft Final along with substantive answers to the FOCAG questions and concerns."

RESPONSE:

The FOCAG comment letter has been entered into the Administrative Record (AR number: OE-0714.3). The responses to comments are included in the draft final version of the document (this document).