

## California Native Plant Society, Monterey Bay Chapter

June 23, 2020

Public record – not a confidential settlement communication.

Alison Kerr, Mayor

Council members Kristin Clark, John Gaglioti, Louise Goetzelt, and Pat Lintell  
City of Del Rey Oaks, CA

Subject: California Native Plant Society Reserve 1 North in Del Rey Oaks.  
June 23, 2020 Council meeting – closed session agenda item

Dear Mayor Kerr and council members Lintell, Clark, Goetzelt, and Gaglioti:

I write to assure you of the good faith of the California Native Plant Society (CNPS) and the ongoing efforts of its current chair, me, Brian LeNeve, and its past chair, Nicole Nedeff, to try to resolve the issues related to the Plant Reserve 1 North. CNPS would have liked to have resolved the issues sooner. To that end, CNPS met several times in 2019 with official representatives of Del Rey Oaks and FORA, and again in 2020 with city manager Dino Pick several times, including at least three times with City Attorney Alex Lorca. CNPS stands ready to continue to talk and to meet with the Mayor and council members with the goal of resolving the situation.

CNPS has offered a stipulation for your consideration tonight that would go far in resolving the current disputes, and that could resolve them fully. We look forward to hearing your response after your meeting tonight.

The lawsuit is the only litigation that CNPS has ever filed in Monterey County, which shows the importance of the issues to CNPS. Before and after filing the lawsuit, CNPS, a non-profit organization working for the public benefit, had several times proposed mediation as a way to resolve the disputes.<sup>1</sup> Mediation is a voluntary form of alternative dispute resolution. Alternative dispute resolution is not required as a prerequisite to the California Environmental Quality Act claim and the California Public Records Act claim. The 1998 contract between Del Rey Oaks and CNPS has a general reference to the parties getting a “consultant” involved in the event of a dispute.<sup>2</sup> A mediation would meet that contract term. CNPS proposed mediation and a retired judge as the professional mediator. Del Rey Oaks rejected the proposed mediator without explanation, and Del Rey Oaks has not agreed to mediation at all. This is unfortunate and also inconsistent with Del Rey Oaks’ arguments to the Superior Court that alternative dispute resolution is required. The refusal by Del Rey Oaks to respond to the requests by CNPS for mediation is puzzling.

CNPS proposed a second mediator promptly after Del Rey Oaks rejected the first. Del Rey Oaks has made no response to that proposal.

Request: Please consider the proposed stipulation and the proposed mediation and mediator tonight, and please let us know your response promptly.

Offer to meet: CNPS again offers to meet with you with the goal of resolving these matters, with or without a mediator. There is still time to resolve the controversies, and CNPS stands ready and willing to resolve them.

We hope to resolve the matter at this stage and to save everybody time and money. You, as mayor and members of the city council, have fiduciary duties to take a hard look and affirmative steps and that will end this litigation now, honor the Del Rey Oaks contract, and protect the residents and taxpayers of Del Rey Oaks. Thank you.

Brian LeNeve   
President, Monterey Bay Chapter

#### End notes

1. Here is a chronology of recent efforts by California Native Plant Society (CNPS) to talk with Del Rey Oaks.

- On May 1, 2020, CNPS wrote a letter pointing out the many concerns to date with the way FORA and Del Rey Oaks were acting under the FORA-CNPS-Del Rey Oaks contract. CNPS offered to meet. There was no response.
- On May 13, 2020, CNPS again wrote directly to Del Rey Oaks and FORA, with the email subject line "Letter from CNPS RE: Breach of contract" and saying

Attached is a letter from the Monterey Bay Chapter of the California Native Plant Society regarding the Notice of Breach of Contract of the FORA-Del Rey Oaks-CNPS Contract and Request for Mediation . . .

The May 13 letter explained the issues and stated in key part:

Accordingly, MB-CNPS puts FORA on notice of these important responsibilities and allegations and demands that FORA and Del Rey Oaks promptly enter into dispute resolution with MB-CNPS with mediation to take place and be resolved no later than May 31, 2020, so in the event of an impasse MB-CNPS would have time to act before FORA is dissolved on June 30, 2020.

Please contact MB-CNPS . . . no later than May 15, 2020, in order to arrange mediation with a mutually acceptable mediator.

- FORA and Del Rey Oaks did not respond by May 31 or at any time after that.
- On May 21, 2020, CNPS again wrote to the Del Rey Oaks Mayor and City Council as follows:

Offer to meet.

CNPS again offers to meet with you with the goal of resolving these matters. FORA and Del Rey Oaks control the schedule. CNPS does not control the schedule. There is time to resolve this before FORA dissolves. Neither FORA [nor] Del Rey Oaks have made meaningful efforts to resolve the situation. Neither FORA nor Del Rey Oaks has responded to CNPS's recent offers to meet. If you would like to meet, please contact me promptly at erickson@stamlaw.us.

- The Del Rey Oaks City Council met on May 26, 2020. The May 1, 2020 CNPS letter and the May 13, 2020 CNPS letter were part of the City Council packet and on the agenda as communications received.
- On May 31, 2020, CNPS sent a notice of intent to sue to FORA and Del Rey Oaks and LAFCO.
- On June 1, 2020, CNPS wrote to Del Rey Oaks, stating that CNPS "remains willing to address the issues promptly."
- The Del Rey Oaks City Council met on June 2, 2020, and could have addressed the letters from CNPS of May 1, May 13, May 26, May 31 and June 2 and the requests to mediate and meet. The letters were not on the June 2, 2020 agenda and the City of Del Rey Oaks did not respond to the pleas of CNPS.
- Since the lawsuit was served on June 3, 2020, CNPS has met three or more times with Del Rey Oaks city manager Pick and city attorney Lorca and has repeatedly proposed mediation. CNPS continues to stand ready and willing to meet and mediate to resolve the situation.

2. The sentence in the 1998 CNPS-Del Rey Oaks contract says: "If a disagreement arises on interpretation of this agreement, a mutually agreed upon consultant shall be engaged to resolve the dispute, with fees and costs paid one third by CNPS and two-thirds by the City (or one third each by the City and Developer)." (Contract, p. 1.)