



# CITY OF DEL REY OAKS

650 CANYON DEL REY RD. • DEL REY OAKS, CALIFORNIA 93940  
PHONE (831) 394-8511 • FAX (831) 394-6421

## REGULAR MEETING OF THE CITY OF DEL REY OAKS CITY COUNCIL TUESDAY, MAY 26, 2020 AT 6:00 P.M.

**MEETING TO BE HELD VIRTUALLY ONLY  
AT THE FOLLOWING ZOOM LINK PER GOVERNOR NEWSOM'S EXECUTIVE  
ORDERS N-29-20 AND N-33-20 REGARDING COVID-19 PROTOCOLS:**

*Click on link below  
If you are not able to,  
then copy and paste or type the link into your browser  
You must have a computer with a camera or smart phone to participate in  
the video portion of the meeting.*

*Join Zoom Meeting  
<https://zoom.us/j/173400555>  
Meeting ID: 173 400 555 Password: 913653*

*To participate telephonically, call either number below.*

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+1 408 638 0968 US (San Jose)*

1. 6:00 P.M. - ROLL CALL – *Council*
2. PUBLIC COMMENTS: General Public Comment must deal with matters subject to the jurisdiction of the City and the Council that are not on the Agenda. Anyone wishing to address the City Council on matters not appearing on the Agenda may do so now. The public may comment on any other matter listed on the Agenda at the time the matter is being considered. *There will be a time limit of not more than three minutes for each speaker. No action will be taken on matters brought up under this item and all comments will be referred to staff.*
3. PROCLAMATIONS:
  - A. Military Appreciation Month
  - B. National Public Works Week
4. CONSENT AGENDA: *Action Items*
  - A. MINUTES: (CEQA: as to all, not a project per Guidelines Article 20, Section 15378)
    1. April 28, 2020 Regular City Council Meeting
    2. March 11, 2020 Planning Commission Meeting

- B. **MONTHLY REPORTS: (CEQA: as to all, not a project per Guidelines Article 20, Section 15378)**
1. Claims, April 2020
  2. Unpaid Bills Detail, All
  3. Financials, April 2020 and April 2019
  4. Fire Department Response Report, April 2020
  5. Police Activity Report, April 2020
- C. **MISCELLANEOUS (CEQA: as to all, not a project per Guidelines Article 20, Section 15378)**
1. Updated Strategic Planning Grid
  2. Amended Resolution Adopting a List of Projects for FY 20-21 Funded by SB1
5. **OLD BUSINESS:**
- A. Consider an Urgency Ordinance Relating to a Temporary Moratorium on Evicting Tenants, and Declaring the Ordinance to Be an Urgency Measure to Take Effect Immediately Upon Adoption *Action*
6. **NEW BUSINESS:** **Action/Information Items**
- A. Consider an Agreement with Marina Coast Water District Regarding Water and Wastewater Services *Action*
  - B. Consider a Memorandum of Agreement with FORA for the South Boundary Road Project *Action*
  - C. Consider a Joint Community Facilities Agreement with FORA for Habitat Related Services *Action*
  - D. Consider a letter of support for Monterey County variance request *Action*
7. **STAFF REPORTS:**
- A. City Manager Report
8. **MAYOR AND COUNCIL REPORTS**
- A. Council Member Goetzelt
9. **CORRESPONDENCE:**
- A. CNPS letter to FORA from Molly Erickson
  - B. CNPS letter to FORA from Brian LeNeve
  - C. FORA response to CNPS
  - D. MRWMD Board Highlights from Dennis Allion
10. **CLOSED SESSION: As permitted by Government Code Section 54956 et. seq. the Council may adjourn to a Closed Session to consider specific matters dealing with certain litigation, personnel, or labor/real property negotiations.**  
**MEETING TO BE HELD VIRTUALLY ONLY PER GOVERNOR NEWSOM'S EXECUTIVE ORDERS N-29-20 AND N-33-20 REGARDING COVID-19 PROTOCOLS: The Council alone will participate in the Closed Session portion of the meeting via invitation. They will return to the open zoom link meeting listed above upon adjourning from closed session.**

- A. **Public Comment on Closed Session Items:** Anyone wishing to address the City Council on an item to be discussed in closed session may do so now. There will be a time limit of not more than three minutes for each speaker. No action will be taken on matters brought up under this public comment period.
- B. **Closed Session Items:**
  - 1) **Conference with Legal Counsel – Existing Litigation (Gov’t Code § 54956.9(a)) *LandWatch Monterey County vs. City of Del Rey Oaks et al.* (Monterey County Superior Court case No. 19CV005255.)**
  - 2) **Conference with Legal Counsel – Existing Litigation (Gov’t Code § 54956.9(a)) *Robert vs. City of Del Rey Oaks et al.* (Monterey County Superior Court case No. 20CV001323.)**
- C. **Adjourn to Open Session**
- D. **Report Out By City Attorney**

11. **NEXT MEETING DATE:** Tuesday, June 23, 2020, at 6:00 P.M.

12. **ADJOURNMENT**

*Information distributed to the Council at the meeting becomes part of the public record. A copy of written material, pictures, etc. must be provided to the secretary for this purpose. All enclosures and materials regarding these agenda items are available for public review at the Del Rey Oaks City Hall, 650 Canyon Del Rey Road, Del Rey Oaks.*

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- From the Zoom website
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## **Proclamation**

### **Recognition of Public Service Recognition Week**

**May 4-10, 2020**

WHEREAS, Public Service Recognition Week, celebrated the first full Monday through Sunday in May since 1985, recognizes the roles of public servants, including the military, at local, state, regional and federal levels.

WHEREAS, the US Congress expanded this celebration with the passage of a resolution in 1999 designating May as National Military Appreciation Month, to honor the sacrifices of members the United States Armed Forces.

WHEREAS, that resolution summons U.S. citizens to observe the month in a symbol of unity, to honor the current and former members of the armed forces, including those who have died in the pursuit of freedom and peace.

WHEREAS, every role in each military branch is honored this month, from the foot soldier to the navy chef, from the Air Force navigator to the Army general.

WHEREAS, this month is also meant to show appreciation for the families of servicewomen and servicemen, who tirelessly stand by and support their serving relative.

WHEREAS, there are more military related observances during the month of May than any other month, so it is an appropriate time to celebrate the men and women in uniform. During May, we recognize Loyalty Day, VE Day, Armed Forces Day, Military Spouses Day and Memorial Day.

WHEREAS, the month culminates with Memorial Day, which dates from the Civil War era, traditionally has marked recognition of those who have died in service to the nation.

NOW THEREFORE BE IT RESOLVED that, I, Alison Kerr, Mayor of Del Rey Oaks, do hereby proclaim that although National Military Appreciation Month has ended, our support to our uniformed heroes continues. We encourage everyone to remember, honor, and support our service members both past and present every day of the year.

Signed this 26<sup>th</sup> day of May, 2020

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Alison Kerr, Mayor



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## **Proclamation Recognition of National Public Works Week May 17-23, 2020**

WHEREAS, public works infrastructure, facilities and services are of vital importance to sustainable communities and to the health, safety and well-being of the people of this community; and,

WHEREAS, such facilities and services could not be provided without the dedicated efforts of public works professionals from State and local units of Government and the private sector, who are responsible for the operations and maintenance of our public buildings, parks, greenways and other structures and facilities essential to serve our citizens; and

WHEREAS, it is in the public interest for the citizens, civic leaders and children in California to gain knowledge of and maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and

WHEREAS, the year 2020 marks the 60th annual National Public Works Week sponsored by the American Public Works Association; and

WHEREAS, the city has one full-time Public Works Employee, Ron Fucci, Jr who works tirelessly to keep our city attractive and working well by maintaining the streets, greenways, parks, buildings, storm drains and other infrastructure as well as keeping city equipment well-maintained and ready to go whenever needed.

WHEREAS, the contract City Engineer, Sherman Low has worked tirelessly to design, bid, and supervise construction of numerous significant Public Works streets projects that improve the quality of life of our residents and visitors.

NOW THEREFORE BE IT RESOLVED that, I, Alison Kerr, Mayor of Del Rey Oaks, do hereby proclaim the week May 17-23, 2020 as National Public Works Week; and I urge all our citizens to join with representatives of the American Public Works Association and City of Del Rey Oaks in paying tribute to our public works professionals and to recognize the substantial contributions they have made to our national health, safety, welfare and quality of life.

Dated this 26<sup>th</sup> day of May, 2020

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Alison Kerr  
Mayor

**CITY OF DEL REY OAKS CITY COUNCIL REGULAR MEETING CONVENED AT 6:00 P.M.  
ON TUESDAY, APRIL 28, 2020 VIA ZOOM ON LINE MEETING**

**Present:** Council Member Gaglioti, Vice Mayor Clark and Mayor Kerr

**Absent: None**

**Also present:** City Attorney Lorca, City Manager Pick, Assistant to the City Manager/Deputy City Clerk Carvalho and Deputy City Clerk Minami

Meeting came to order at 6:12 pm and roll call was taken.

**PUBLIC COMMENT:**

**Gary Kreeger:** Council Member Gaglioti's vote at Monterey One meeting ignores CEQA recommendations. His unethical behavior and the Council Members who appointed him to the board are to blame for this fatal decision. He does not vote for this communities best interests.

**Kim Shirley:** Council Member Gaglioti's poor leadership does nothing for Del Rey Oaks, it is in name only. Holds other Council Members responsible for appointing him to the board. He received many resident letters, spoke with many people but still voted in his own interest, not the City's. He has political interests in big business such as Agriculture. Remove Council Member Gaglioti from Monterey One Board!

**Ken Rutherford:** Thanks Staff, no more looping planes! Nice because working from home. Council Member Gaglioti touts protocol and procedure but doesn't rely on information given during the Monterey One board meeting. He went forward to deny without reason. No response when he called Council Member Gaglioti.

**Karen Harris:** Very surprised at the vote during the Monterey One meeting. Asks for an explanation tonight. Debated for an hour on the phone with him. Didn't expect termination. Thanks Staff.

**Council Member Lintell and Council Member Goetzelt enter Zoom meeting**

**Mayor Kerr reads the Proclamations.**

**PROCLAMATIONS:**

- A. National Teachers Appreciation Week - Mayor Kerr reads
- B. Arbor Day – Mayor Kerr reads

**CONSENT AGENDA:**

**A. MINUTES**

1. March 24, 2020, Regular City Council Meeting
2. March 11, 2020, Planning Commission Meeting - Draft
3. February 12, 2020, Planning Commission Meeting

**B. REPORTS**

1. Claims Report, March 2020
  2. Unpaid Bills Detail, All
  3. Financials March 2020 and March 2019
  4. Fire Department Response Report, March 2020
  5. Police Activity Report, March 2020
- C. MISCELLANEOUS:**
1. Updated Strategic Planning Grid
  2. Resolution 2020-05, Certifying the Election Results for the Presidential Primary Election
  3. Consider a Resolution to apply for State LEAP Planning Grant Funds
  4. Consider Fort Ord Recreation Trails and Greenway (FORTAG) Master Agreement and Mitigation Monitoring Plan

**City Manager Pick:** Regarding C.4: Important for Del Rey Oaks, Peninsula Cities, TAMC and County. There will be more detail in a future report, with items such as environmental cost summary, security lights and Police patrol costs.

***Motion to approve consent agenda by Vice Mayor Clark***

***Second by Council Member Lintell***

***Public Comment: No further comments received***

***MOTION PASSED UNANIMOUSLY***

**OLD BUSINESS: None**

**NEW BUSINESS:**

**Consider Application to Fill One (1) Vacancy on the Planning Commission – Action**

**Mayor Kerr:** Thanks both applicants.

**Mike Burger:** Moved to Monterey County in 2018. Has great friends in the neighborhood. Wants to help preserve the City and future of the City. Car sales and interior car design. Loves architectural drawings. Is a people person, wants to be involved.

**Vice Mayor Clark:** Welcome to Del Rey Oaks, thanks for applying.

**Council Member Lintell:** Thanks for supporting Del Rey Oaks.

**Council Member Goetzelt:** Whether it's Planning Commission or other assignment, welcome to the City.

**Council Member Gaglioti:** Known Mike for years, his reference on his application. He has the skills for Planning Commission. A car guy that is very detailed oriented.

**Mayor Kerr:** What kind of community service? What is the single most important skill to have as a Planning Commissioner?

**Mike Burger:** Worked with under privileged children in college. Now is involved with fund raisers mostly in the car industry. Volunteers at Good Ol' Days, car shows, Laguna Seca and is pushing for more charity for homeless children and a toy give away. Listening is the most important skill.

**Denise Wood:** 12 years on Rosita Road. Works for a landscape design firm where she does design, plans and crew management. Past DROCAG President, likes volunteering. Has done the landscaping in front of City Hall twice and once in front of Old Town Hall.

**Vice Mayor Clark:** Reference on the application. Highly qualified for Planning Commission. Does beautiful work at City Hall and Old Town Hall. Great person!

**Council Member Lintell:** Beautiful volunteer work that she has done for the city. Her kids still help out with Santa's Village every year! Thanks for all of the work.

**Council Member Goetzelt:** Appreciates her applying, thank you.

**Council Member Gaglioti:** Very qualified, thanks for applying.

**Mayor Kerr:** What is her vision for the future of the City?

**Denise Wood:** Utilizing technology yet keeping the same closeness. Listening and compromise are the most important traits.

**Public Comment:**

**Gary Kreeger:** Nice to see two good applicants. Not the same since Alice left, would be nice to have a female on the Commission.

**Public Comment Closed**

*Mayor and Council submit votes to Deputy City Clerk Carvalho, via chat function on Zoom meeting video.*

**4 votes for Denise Wood**

**1 vote for Mike Burger**

**Mayor Kerr:** Congratulations Denise! Hope to see Mike elsewhere around the City.

**Consider First Reading of Ordinance 302, Modifying Chapter 17.59 of the Del Rey Oaks Municipal Code Relating to Signs as Recommended by the Planning Commission**

**City Manager Pick:** Taking certain sections of the code that are old and City is taking the time to update. Chair Donaldson did all of the homework for these revisions. Looked at what other cities are doing or not doing. This item has been to Planning Commission and changes have been incorporated into the document. Thanks the Planning Commission and public for their input.

**City Attorney Lorca:** Thanks the Planning Commission and public. Good, long and informative meeting.

**Vice Chair Clark:** Much needed changes, great document and good job Planning Commissioners.

**Council Member Lintell:** Thanks Scott. This has been needed for a long time.

**Council Member Goetzelt:** Thanks everyone, plus the public helped shape it.

**Council Member Gaglioti:** Thanks everyone. Scott owned this document. Not all of the signs need to listed, some can be combined. It would be easier to read. What is a wall sign?

**City Attorney Lorca:** Painted on the side of a building. A wall sign is commercial, that should go to Planning Commission. It's different than a house. Window signs can be temporary or permanent.

**Council Member Gaglioti:** Reader board, message can change every day?

**City Attorney Lorca:** Yes

**Council Member Gaglioti:** Garage sale signs.

**Mayor Kerr:** There are many emotions behind signs for political reasons. Residents want to express themselves. Enforcement is to be consistent for the sign, business and event. Clarify “right of way”.

**City Attorney Lorca:** City reserves the right to allow anything to go into the right of way. City maintains and regulates the “right of way”.

**Mayor Kerr:** Surveying going on throughout the City?

**City Manager Pick:** Planning Commission and public had a great discussion regarding right of way. The right of ways vary throughout the City. Most are 5 feet from the edge of pavement, some are shorter and some can go to 9 feet. The City doesn’t have a map of right of ways. The recommendation is a 5 foot right of way. Chair Donaldson spoke with Frank Lucido about surveying the streets. Frank was told that the City doesn’t have the staff to manage the G.I.S layer. Frank wants to volunteer his time and survey services and to manage data. City is still working with Frank on a work product, indemnity etc.

**Mayor Kerr:** What would be the preferred method of enforcement on private property?

**City Attorney Lorca:** Abandoned signs will be dealt with differently. Health and safety is the main reason for enforcement. Whether private or Right of Way. It’s always best to abate and move to a safer spot.

**Police Chief Hoyne:** With sign enforcement, the code is written to always give a verbal warning first or move it on the property in a safer location. If the owner can’t be located, then we will remove the sign, but every effort will be made to find the owner. The department treats signs like parked cars, using education first.

**Mayor Kerr:** Doesn’t want the surprise like what happened 2 years ago. Temporary signs are 45 days, a sign cannot be reused.

**Vice Mayor Clark:** The issues 2 years ago where complaint driven and they know who they are. So many years have gone by with no complaints until 2 years ago. When a complaint is filed, staff has to do something. Hopefully with all of this, the complaints will stop.

**Mayor Kerr:** Wants a softer touch, gentle approach with complaints for health and safety reasons.

**City Manager Pick:** Last time used up a lot of Police hours. Some signs were focused on and staff couldn’t do enough. It was a unique setting and we all learned from it. Soft touch will be preferred. We will be better equipped now.

#### **PUBLIC COMMENT:**

**Kim Shirley:** Asks for clarification on ancillary signs and ideological signs.

**City Attorney Lorca:** The difference between temporary and permanent signs is the construction of the sign and how is it mounted. Temporary sign would be a garage sale sign. A permanent sign would be made of wood and screwed.

**Kim Shirley:** Ordinance doesn’t define that issue.

**City Attorney Lorca:** City Staff will work with the home owner.

**Kim Shirley:** Worries that it will be left up to the City. Example is “No road in DRO” signs, would that be an exempt sign?

**City Manager Pick:** Great issues to consider, Council needs to decide. Same rule of one doesn’t solve another. Example would be “no road in DRO” sign and same rules apply to a sign with a swastika on it.

**The City Council and Staff had extensive discussion with the public about the specifics of the sign ordinance.**

**City Attorney Lorca:** It is up to the City Council if they want to drill down deeper.

**Ken Rutherford:** Thanks the Planning Commission for good work. Hoped document would be shorter, cleaner and clearer. Freedom of speech needs to be recognized. Enforcement needs to be clearer so residents know what to expect. The staff won’t always be the same as it is now.

**Council Member Gaglioti:** If property line is 9 feet back from the curb, the City owns that 9 feet land and it’s public.

**Ken Rutherford:** What is a plastic sign?

**City Attorney Lorca:** Like a political sign, it’s temporary.

**Gary Kreeger:** Clarify 45 day period.

**City Manager Pick:** At the staff level, there is always a triggering event that drives the start of the 45 days. We will enforce on complaints. Someone can always take down after 45 days and then put it back up.

**Karen Harris:** Grateful to the Planning Commission. Encourages the option of banning single use plastic signs. What about plaques and flags? Plaques for types of flower for informational purposes. Permit needed? Bench dedicated?

**City Attorney Lorca:** Only addresses commercial flags, residential flags aren’t included.

**City Manager Pick:** Flags for Government Buildings are fine, commercial need Planning Commission approval.

**Karen Harris:** How deep in the woods should we go?

**City Manager Pick:** Private property is very different than public property, which will need city approval. Those need to go to Planning Commission and not at a City staff decision. The Planning Commission is qualified to look at art and sign designs etc.

## **PUBLIC COMMENT CLOSED**

**Vice Mayor Clark:** Why weren’t these questions brought up at the Planning Commission meeting? So be it, if it has to go back to Planning Commission.

**Council Member Lintell:** City property such as the butterfly garden shouldn’t be addressed tonight.

**Council Member Goetzelt:** If these concerns were brought up at Planning Commission Meeting, were they taken into consideration in this document? Agrees with Council Member Gaglioti, several items can be combined. Wants to move forward.

**Council Member Gaglioti:** Find out if it is public or private and then go to Planning Commission, it’s a discretionary process. Kim has every right to put sign up for 6 months if she wants. Protected speech. 80% of the private property signs should be exempt. Give the City some control, pay a fee and put a sign up.

**Council Member Goetzelt:** No authority over signs on private property.

**City Attorney Lorca:** Explains the difference between commercial and non-commercial. The construction of the sign is very important in determining the type of sign.

**City Manager Pick:** It's about health and safety. What does the city want to do to regulate signs? The amount of time spent on regulating signs. This document is from the best practices from Monterey and Seaside.

**Council Member Gaglioti:** Strike distinction between the permanent and the temporary signs and with no time limit. Content neutral.

**Mayor Kerr:** Political signs all year long?

**Council Member Gaglioti:** Yes.

**City Attorney Lorca:** Yes, it can be done.

**Council Member Goetzelt:** What do other cities do about political signs?

**City Manager Pick:** Election signs are considered temporary signs.

**Vice Mayor Clark:** Doesn't like the idea of signs up year round.

**City Manager Pick:** Signs like "ADT" for security or "beware of dog" are allowed up year round.

***Motion to approve item 6.B with changes to combine the awning and canopy description together and to strike the 45 day limit on temporary signs by Mayor Kerr***

***Second by Council Member Gaglioti***

***Secondary Motion to approve item 6.B with changes by removing the language referencing ancillary signage by Council Member Lintell***

***Second by Vice Mayor Clark***

**Mayor Kerr:** Asks Council Member Lintell to explain requested changes.

**Council Member Lintell:** Wants the language regarding ancillary signs removed.

**Council Member Goetzelt:** It was removed already.

**Mayor Kerr:** You were successful.

**Council Member Gaglioti:** If Council Member Lintell made a substitute motion shouldn't that be voted on first, if it doesn't pass then go to first motion?

**City Attorney Lorca:** Correct. Council Member Lintell can offer a friendly motion with changes to the first motion or a stand only motion.

***Substitute Motion to approve item 6.B as presented by Council Member Lintell***

***Second by Vice Mayor Clark***

***MOTION FAILED VIA ROLL CALL VOTE:***

***Ayes: Council Member Lintell and Vice Mayor Clark***

***Noes: Council Member Gaglioti, Council Member Goetzelt and Mayor Kerr***

**Motion to approve item 6.B with changes to combine the awning and canopy description together and to strike the 45 day limit on temporary signs by Mayor Kerr**

**Second by Council Member Gaglioti**

**MOTION PASSED VIA ROLL CALL VOTE:**

**Ayes: Council Member Gaglioti, Council Member Goetzelt and Mayor Kerr**

**Noes: Council Member Lintell and Vice Mayor Clark**

**PUBLIC COMMENT: NO FURTHER COMMENT RECEIVED**

**Receive a Report on COVID-19 related Budget Impacts and Consider Cannabis Business Tax deferral during the Emergency Period**

**City Manager Pick:** Reported on impact of COVID-19 Pandemic on the City's 2019-20 budget. The City took a small hit on TOT of \$2,500.00. The City will defer \$21,000.00 rent of public buildings. A drop in sales tax of \$50,000.00. Plan check and permit fees will drop by \$28,000.00. Lost revenue adds up to \$80,500.00, deferred revenue adds \$210,000.00 and the grand total lost and deferred will be \$356,500.00.

The City estimates cost avoidance and savings of \$504,430.00. The break down is from payroll, supplies and operations, consultants and capital projects. Capital projects are currently on hold, not cancelled. If staff recommends cancellation of one or more the projects, return to City Council. Staff worked hard at cost saving measures, great job! Staff is reducing expenses and the results will be needed to balance the FY 2020-21 budget. If downturn lasts longer than thought, staff might suggest using Economic Uncertainty fund, but only if absolutely necessary.

**Vice Mayor Clark:** Grant deferral to cannabis businesses in good standing only.

**Council Member Lintell:** Agrees with Vice Mayor Clark.

**Council Member Goetzelt:** Thanks the staff for the work. Small staff doing really good, compared to other cities right now.

**Council Member Gaglioti:** Does the City have to ability to collect if they default? Would they be open to an agreement, first creditor status? Wants some kind of protection.

**City Manager Pick:** Would have to review with City Attorney Lorca.

**Mayor Kerr:** Glad we don't have to depend on hospitality.

**PUBLIC COMMENT:**

**Adam Yader:** Hates to see the City lose revenue and doesn't want to be a burden. Appreciates this very much. It will help to weather the storm right now and to keep the business open. They will come back stronger than ever! Things seem to be picking up slightly. They will repay all of the taxes!

**PUBLIC COMMENT CLOSED**

**Vice Mayor Clark:** Grace during this time is important.

**Council Member Lintell:** Agrees with Council Member Gaglioti about a contract.

**Council Member Goetzelt:** Wants a deferred debt written agreement.

**Mayor Kerr:** What would be involved in an agreement document?

**City Attorney Lorca:** Possibly a lien for security. Will need to research. It's up to the motion.

**Mayor Kerr:** What does Adam think of the idea?

**Adam Yader:** Open to it, if it helps the situation.

**Mayor Kerr:** Would like to extend from 4 to 6 months after S.I.P. is lifted.

**Vice Mayor Clark:** How about a note? We don't want their inventory.

***Motion to approve item 6.C to explore having an agreement and to extend from 4 to 6 months by Mayor Kerr  
Second by Council Member Goetzelt***

**Friendly amendment to the motion for item 6.C to keep the agreement exploration but to keep it at 4 months, for a review at 2 months to see how healthy the businesses are and to possibly extend to 6 months if need be by Council Member Gaglioti.**

**Council Member Lintell:** Vote on what?

**City Attorney Lorca:** If the friendly amendment was accepted.

**Council Member Gaglioti:** Repeats the friendly amendment. Four months and to review in the middle for a better understanding. The maker of the motion must agree.

**Mayor Kerr:** Agree.

**MOTION PASSED UNANIMOUSLY VIA ROLL CALL VOTE**

**PUBLIC COMMENT: NO FURTHER COMMENT RECEIVED**

**STAFF REPORT:**

**City Manager Pick:** The community continues to care for one another in a way that makes me proud to be associated with it. As many have heard by now the County has amended the shelter in place order to require face coverings and removed the end date of the order. The City is sending out periodic updates to residents by email and posting them to the City website, we held a virtual coffee with the CM last night. The Mayor is also sending out updates and hold virtual meetings weekly. Staff met regarding Mr. Mori's CUP application. His application is for his expansion plans. I spoke with him yesterday about bringing his business into compliance with his existing CUP within 30 days following the lifting of shelter in place. After he is compliant with the existing permit, we will process the expansion request. I am working with

the increasingly limited FORA staff to open an escrow account and transfer \$8.3M from FORA into it for the completion of the South Boundary Road project. We are beginning to move furniture in City Hall to locate Kim's desk in the office with a door, move Karen's desk to where Kim's is, and moving the two smaller desks from inside the office to where Karen's currently is. I am inspired by the grace being shown by so many.

**COUNCIL REPORT:**

**Vice Mayor Clark:** Wasn't able to attend MST, and the highlights are in the packet, must wear masks on buses.

**Council Member Lintell:** Lots of Zoom meetings, which is new. Seaside Sanitation signed a new agreements, one with Seaside to reimburse up to \$64,000 in sewer repairs, another with Wallace for the repairs on the Fremont/Broadway/Ortiz project. MST, Mask required on buses. Community Human Services, 10% hero pay for front line workers and laid off or cut hours back of 6-7 employees.

**Council Member Goetzelt:** Full report is in the packet, housekeeping items for Mosquito Abatement and AMBAG didn't have a meeting. Veteran's Council was canceled. The ceremony for the Retired Veterans Council is still on the calendar for July 2<sup>nd</sup>.

**Council Member Gaglioti:** FORA, will certify the EIR for the HCP end of May or last meeting in June. City Manager Pick secured the 8.3 million from FORA, it's a huge accomplishment. Explains actions at last night's Water meeting. Board did not certify the E.I.R. Speaks with everyone and folks with Landwatch and Public Water Now, and some will never see eye to eye. Since there is no water listed in the EIR, so there isn't a project. What is presented and what is reality are two different things. Should trust and verify. Why should the board certify the EIR, if these isn't a water project? People will believe what they believe, no matter what.

**Mayor Kerr:** Very busy. The write up regarding her trip to Conference in Yosemite is the packet. Several Mayor's meetings, CALOES meetings, State and local meetings regarding COVID 19. They will be extending testing to asymptomatic first responders too. Holding weekly "camp fires" and had a "what's on your mind" last Saturday. All on Zoom. Loving all of the chalk art on sidewalks and some fences.

**City Manager Pick:** Missed mentioning a few people. Chief Hoyne, taking on different responsibilities as an Assistant City Manager role. Wrote the staff report of FORTAG. Taking important HR responsibilities too. Karen Minami, taking the application for becoming a Tree City, running with it and made it happen.

**PUBLIC COMMENT: NO FURTHER COMMENT RECEIVED**

**Mayor Kerr** announced the item to be heard on closed session and opened public comment; seeing none, public comment was closed.

**CLOSED SESSION:**

Closed Session: As permitted by Government Code Section 54956 et. seq. the Council may adjourn to a Closed Session to consider specific matters dealing with certain litigation, personnel, or labor/real property negotiations.

- A. Public Comment on Closed Session Items: Anyone wishing to address the City Council on an item to be discussed in closed session may do so nay. There will be a time limit of not more than three minutes for each speaker. No action will be taken on matters brought up under this public comment period.
- B. Closed Session Items:
  - 1) Conference with Legal Counsel – Existing Litigation (Gov’t Code 54956.9(a))  
*LandWatch Monterey County vs. City of Del Rey Oaks et al.* (Monterey County Superior Court Case No. 19CV005255)
- C. Adjourn to Open Session
- D. Report out by City Attorney

**9:10 pm: Adjourned to closed session**

**10:00p.m. Reconvened into open session**

**City Attorney Lorca:** Stated as to the matter of LandWatch vs. City of Del Rey Oaks, status was provided to Council and Council provided him with direction but no reportable action taken.

**10:00p.m.: Adjourned to next meeting date of Tuesday, May 26, 2020 at 6 pm.**

**Attest:**

**Date:**

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**CITY OF DEL REY OAKS PLANNING COMMISSION REGULAR MEETING  
CONVENED AT 6:00 P.M. ON WEDNESDAY, MARCH 11, 2020 IN THE  
CHARLES BENSON MEMORIAL HALL, CITY HALL**

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**Present:** Chairman Donaldson, Vice Chair Hayworth, Commissioner Jaksha, Commissioner Kreeger, Commissioner Hallock and Commissioner Burton.

**Absent:** None

**Also present:** City Manager Pick, City Attorney Lorca, Chief of Police Hoyne and Deputy City Clerk Minami

Meeting came to order at 6:00 p.m. and roll call was taken.

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

**Commissioner Kreeger:** For the record, did not support Councilmember Gaglioti's decision to keep his signs up, as stated in the minutes from February meeting, only supports the idea of free speech and the ordinance that needs to be revised.

**Motion to approve:** *Commissioner Hayworth*

**Second:** *Commissioner Kreeger*

**Public Comment:** *None*

**Vote:** *Approved 6-0*

**PUBLIC COMMENT:**

*None*

**REPORTS:**

*Accepted*

**NEW BUSINESS:**

**Consider revision of the Del Rey Oaks Municipal Code Chapter 17.59 Signs.**

**Chairman Donaldson:** Thanks the audience, there input is crucial. Explains the process of the revision of the ordinance. City Attorney's document has information for enforcement that will help the City. Violations via the Muni-Code for administrative citations. He reviews all of the new codes and possible changes. Every property is different in DRO, if the city right of way is 5 feet, the signs will be placed at different locations in the yards. He wanted to ban single use plastic for political signs. Sustainable DRO is going to propose a ban on single use plastic any way.

- **Public Property**

- The City may ban the posting of signs, including political signs, on public property.
- City may summarily remove them.

- **Private Property**

- The City cannot limit the number of signs in support of or opposition to a candidate or issue.
- The City can limit the size of signs if doing so doesn't "infringe on the ability to effectively exercise free speech or unjustifiably treat signs unequally to other noncommercial signage."
- Size limits have been accepted by courts, e.g., 16-square-foot size limit on signs.
- Courts have struck down time limits relating to how far in advance of an election political signs may be posted, when such signage would be effectively banned other times of the year.
- However, a requirement that the signs be removed 10 days after the election survived challenge.

- **Private Property - Process**

- Summary pre-election removal of signs is unlawful.
  - Absent an immediate public health or safety justification, the City cannot unilaterally remove a sign in violation of the sign ordinance. It must give notice to the sign owner and provide a reasonable opportunity to respond before the City removes the sign.

#### Regulation of Content

- *Town of Reed v. Gilbert*: the Town's sign ordinance distinguished between political, ideological (non-commercial), temporary vs. permanent, and directional signs with different rules (e.g., size and location of signs).
- US Supreme Court found this to be content based restriction: "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech."
- "If you need to read a sign to know how to regulate it, it's content-based."
- In a concurrence to Justice Thomas' decision, three other Justices provided "a few words of further explanation" in which they suggested regulations that would not be content based: location regulations; free-standing v. those attached to buildings; lighted vs. unlighted signs; fixed messages vs. electronic or variable regulations; private vs. public placement.

**City Attorney Lorca:** Reviews and explains each of the slides. These will be tools in a tool box, the frame work on how you wish to regulate.

**Commissioner Burton:** What are we really afraid of? What is the forcing function? What happened to make this change?

**City Manager Pick:** Not afraid, just realizing that it is a grey area now and it needs to be clearer. Has to be enforceable yet reasonable.

**Chairman Donaldson:** The emotional aspect and the citizens that get involved. The City needs better guidelines. The Planning Commission is the forcing function, signs need to be regulated.

**Commissioner Kreeger:** It's a generous policy.

**Commissioner Burton:** Why aren't we following the State's regulations?

**City Attorney Lorca:** It is a free speech issue and planning is up to the City.

**Commissioner Jaksha:** Likes to look at ordinances occasionally. Doesn't want signs all over the place like other cities. Keep it clean looking. Language on signs should be addressed.

**Commissioner Hayward:** Village feel, content is an issue.

**Commissioner Hallock:** Good sign ordinance. Law enforcement measures are good to have. What do we want to accomplish? There was accusations during the last election through social media that just were not true! Made for some raised eyebrows. Equal treatment for all, wants it to be peaceful.

**Commissioner Kreeger:** Perception is more important than anything. Can the sign be on the fence if it's 5 feet from the street?

**Chairman Donaldson:** No, because of safety, set back is 5 feet and can't be on a fence.

**Commissioner Burton:** Fences can be an obstruction, the fence won't make a difference.

**Commissioner Kreeger:** Line of sight. Ancillary signs, what about bumper stickers, free speech issue. How long does the sign have to be up, 45 days?

**City Attorney Lorca:** Yes, there is nothing to stop someone from putting it back up on the 46 day.

**Chairman Donaldson:** Once feedback is given, then City Attorney will make changes. The reason for the time limit for the temporary signs is that permanent would need Planning Commission approval.

**Commissioner Jaksha:** Most people are reasonable. Ordinances are to stop the unreasonable people that need the guidelines. Fences are all different, have to draw the line somewhere.

**Commissioner Hallock:** Typically setback is 4 feet from the curb cut, but now 5 feet.

**Chairman Donaldson:** Edge of curb. Each property is unique. Consulted with Frank Lucido and he stated that minimum city right of way goes into the property by 5 feet.

**Commissioner Burton:** The Chief of Police would set the rules, is it clear and enforceable?

**Chief of Police Hoyne:** Yes absolutely. This will make enforcement easier. A lot of misinformation last November regarding election signs. Dozens of calls from both sides. The Police Department takes the lowest level of action. 1) warning 2) Went on CITY RIGHT OF WAY to remove signs, not private property. Treated complaints equally. After 31 years of being a Cop, the PD never gets involved politically. Hard position to be put in. This will solve problems across the board. The line of sight for the fences is a safety issue, similar to a child running in between two cars into the street.

**Commissioner Burton:** Every issue uses up resources.

**Chief of Police Hoyne:** Not really, because this will help us.

**Public Comment:**

**Irene Barlich:** When she first moved into her house, she was told by the former Police Chief that the setback was 3 feet. How much of her property will the city take over!

**Chairman Donaldson:** Sorry any misinformation so many years ago.

**Ken Rutherford:** Each lot is different, makes sense that she was told it was 3 feet. No 5 foot limit. Limit the size of sign and don't do a setback of 5 feet. Line of sight is an issue, with cars parking on street and kids in the street. A post up from the fence will be unappealing. Citizens want to know that everyone is treated the same, no matter who you are. Everyone should be treated fairly.

**Kim Shirley:** Thanks Planning Commission for the work. List of signs that she thought of and noticed around City that are not included in the document:

\*Values/Believes-like her house

\*No road DRO

\*Lending Library-wonders if the project received city approval

\*Garage sale -specifically George's sign's

\*Signs on utility poles

\*Home security

\*Missing animal

\*Pick up after your dog

It's not clear about the 45 days. Hand held signs are not clear either, 6 square feet is too limiting.

**Chairman Donaldson:** The ordinance addresses if the sign isn't a temporary sign, then it should go to Planning Commission, it would be a permanent sign. Signs are not allowed on utility poles, speaking to George. Lending library needs approval. City needs to address home security and dog signs.

**Chief of Police Hoyne:** Quality of life like security signs should be allowed. Since he started at the City, issued only 3 or 4 citations, 1 of them for a sign. The fee is the highest level. Holds public officials to a higher standard.

**Commissioner Kreeger:** Is it 6 feet per person for the hand held signs?

**City Attorney Lorca:** The Commissioner has that discretion to make that recommendation.

**John Gaglioti:** Democracy in action. Supports free speech. Lifetime resident of DRO, thanks the Planning Commission. Their work help provide relief for City and Police Department.

Commercial signs are clear cut. But residential signs on private property is a slippery slope, not a Planning Commission matter. It's a free speech issue. Reads from the 1<sup>st</sup> amendment and a court case. Simply put: residential signs are free speech and we don't need to be on that slippery slope.

**Pat Lintell:** This new ordinance should be put on the website and in the Acorn, so everyone will know about it.

## **Public Comment Closed**

**Commissioner Burton:** If the Council decides to pass this new ordinance, there needs to be an easy and free permit process. There is always an exception to the rules. The City must be able to react with 48 hours, it will make it easier.

**Commissioner Jaksha:** The garage sale signs are for the betterment of the DROCAG. Would be upset if he couldn't hang up signs for the City wide garage sale. Bothers him when a lost cat sign or other sign is up for 6 months or more! Irene and he are founding members of the DROCAG, it's come a long way. His signs are down by 2:00, the afternoon of the garage sale. Line of sight, half of the garages in DRO don't have a car in them, cars parked on the street is an issue.

**Chairman Donaldson:** No permit for garage sale signs.

**Commissioner Hayworth:** Most people are reasonable and there is an appeal process. Hard to fashion an ordinance with a 5 feet setback. Glad the C.O.P. is here, important input.

**Commissioner Hallock:** Advertises his business. Can he put a huge banner across Fremont to draw attention to his business? Of course not and he understands why. Reads about safety and well-being. It's a very clear sign ordinance. Doing his part to keep the peace.

**Commissioner Kreeger:** Thanks Alex and citizens. Must be something in the California Superior court decisions. Permits should be easy to get, make is ministerial and then they can be heard at a latterly date. Agrees with Kim Shirley. Sign on fence is nicer than on a pole. Ready make changes and have it go to City Council.

**Chairman Donaldson:** The intent behind Planning Commission doing this was to give City Council a clear document. Wants City staff time to focus on the following:

\*Address Setback issue

\*Days of temporary signs

\*Hand held signs

\*Permanent signs of residential

\*Fees for permanent signs

\*Check for redundancies

*Motion to approve item 7.A., Consider revision of the Del Rey Oaks Municipal Code Chapter 17.59 Signs, with conditions as followed:*

*\*Address setback issue*

*\*Days of temporary signs*

*\*Hand held signs*

*\*Permanent signs of residential*

*\*Fees for permanent signs*

*\*Check for redundancies*

*Second:*

*Public Comment:*

*Vote:*

*Commissioner Hayworth*

*Commissioner Kreeger*

*None*

*6-0*

*Motion passes*

## **COMMISSIONER REPORTS:**

**Chairman Donaldson:** Note from Planning Commissioner Academy in March:

- Provided opportunity to complete required Ethics Training
- Improving your community
  - Solicit ideas... welcome and validate all of them
  - Yes, and...
  - Demonstrate what a project would look like (create crosswalks/bike lanes, bring trees, set up tables and chairs, etc.) so public can see vision
  - Revitalize city through maximum community input and business involvement
- CEQA
  - Baseline is starting point. Conditions frozen in time
  - Old baseline can be used if it shows conditions haven't changed
  - CEQA document and project should be considered separately by Planning Comm.
  - Thresholds are part of General Plan and are compared to the baseline, but they're not absolute

If threshold is exceeded, mitigation required

Statement of overriding consideration – does the benefit outweigh the impact? should not be part of the EIR

- CEQA can't fix what's already wrong... for example, if traffic is already bad, a project can't be expected to fix it, it'll only mitigate impacts of the specific project

- Planning Commission/City Council Relationship
  - Schedule a joint meeting
  - Planning Commissioners should attend Council Meetings, but not vice versa
  - Use surveys and workshops to get public opinion
  - Invite stakeholders to meetings, in addition to members of the community
- Development Agreements
  - Begin Planning Commission and community involvement early in process
  - Create vision, plan workshops, set developer for success
  - Clarify what we want to do and how it's going to be done
  - Establish performance agreement between developer and city
  - Keep on track with schedule of performance and set penalties
  - Developer should do community outreach
  - Agreements are done in open session
  - Have stipulations for unseen situations such as economic downturns, acts of god, etc
- ADUs
  - Uncertainty if they can be used in RHNA numbers
  - Relax parking and setback requirements, and allow garage conversion
  - State allows 1 Jr. ADU and 1 detached up to 800 sq/ft
  - Impacts on character of the neighborhood -- noise, parking, privacy, etc
- City Finances. How problems arise:
  - Overcompensation of employees
  - No control over management and policy decisions
  - Overreliance on one-time land development money
  - Lack of diversified revenue streams
  - Risky financial schemes
  - Toxic relationships
  - Economic downturn
- Legislative Update
  - State can make cities plan to meet RHNA, but can't make them build
  - They can facilitate and incentivize (SB 35 and LEAP grants)
  - RHNA increased for cities where jobs, population growth and commercial areas exist
  - Continued reduction of height, density and parking restrictions
  - States trying to make cities lower impact and development fees

**Commissioner Kreeger:** United Way might be a resource for ADU's, missing out by not taking advantage of it. Academy was interesting and really glad to have gone.

**Commissioner Burton:** Thanks to the Commissioners that went to the academy, they make the commission stronger and smarter.

**Commissioner Jaksha:** Got madder at the academy, State telling us what we have to do! Learn a lot about the Brown Act at the academy. ADU's are a nice idea, but parking will still be an issue.

**7:30 p.m., Adjourned to next meeting date April 8, 2020 at 6:00 pm.**

**Attest:**

**Date:**

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**City of Del Rey Oaks  
Check/Voucher Register - Claims Report**

10100 - General Checking  
From 5/1/2020 Through 5/31/2020

Check #	Document D...	Vendor Name	Transaction Description	Check Amount
19004	5/4/2020	AT&T CAL NET 2	TELEPHONE SERVICE	528.72
19005	5/4/2020	CALIFORNIA-AMERICAN WATER	WATER FOR APRIL 2020	405.44
19006	5/4/2020	CALIFORNIA BUILDING STANDA...	SMIP FEES1/1/20-3/31/20	7.20
19007	5/4/2020	CENTER FOR EDUCATION & EMP...	SUBSCRIPTION	159.00
19008	5/4/2020	CITY OF SEASIDE	3RD QTR FIRE CONTRACT INVOICE	50,212.50
19009	5/4/2020	COMCAST BUSINESS	INTERNET AT AIRPORT	183.21
19010	5/4/2020	COMMUNITY HOSPITAL OF MTY	BLOOD TEST	27.00
19011	5/4/2020	CORONADO DEISEL MOBILE SER...	#32 MAINTENANCE	394.18
19012	5/4/2020	DENISE DUFFY & ASSOCIATES	HOUSING ELEMENT WORK	20,899.50
19013	5/4/2020	DEPT OF CONSERVATION	SB1473 FEES FOR 1/1/20-3/31/20	11.24
19014	5/4/2020	ECONOMIC&PLANNING SYSTEMS...	FORT ORD NEGOTIATION	4,345.00
19015	5/4/2020	FEDEX	SHIPPING	36.00
19016	5/4/2020	FENTON & KELLER	MARCH CITY ATTORNEY GENERAL SERVICES	18,056.65
19017	5/4/2020	GOVERNMENT FINANCIAL SOLU...	MARCH 2020 ACCOUNTING SERVICES	1,295.00
19018	5/4/2020	HINDERITER DE LLAMAS AND AS...	CANNABIS FINANCIAL AUDITS ON II INC AND ALL-OUT DIST	12,000.00
19019	5/4/2020	I.M.P.A.C.GOVERNMT SER	VARIOUS VISA CHARGES	1,227.77
19020	5/4/2020	JAMES DE CHALK	CLEANING SERVICE FOR APRIL	300.00
19021	5/4/2020	JEFF ANDOY	REIM FOR UNIFORM	34.91
19022	5/4/2020	MONTEREY COUNTY EMERGENC...	FY 2019-20 NGEN O&M Q4	2,316.93
19023	5/4/2020	OFFICE DEPOT	SUPPLIES	26.04
	5/4/2020	OFFICE DEPOT	SUPPLIES FOR PD	249.20
19024	5/4/2020	OFFICE EQUIPMENT FINANCE SE...	LEASE ON COPIER IN CITY HALL	375.71
19025	5/4/2020	PG&E-GJM&218	LIGHTAT GJM & 218	55.78
19026	5/4/2020	REGIONAL GOVERNMENT SERIV...	CONTRACT SERVICES HR	1,090.00
	5/4/2020	REGIONAL GOVERNMENT SERIV...	CONTRACT SERVICES PLANNING	240.00
19027	5/4/2020	R.K. WILSON PLUMBING, INC.	LABOR AND MATERIAL TO INSTALL WATER FOUNTAINS IN PARK	2,874.23
19028	5/4/2020	VSP	VISION COVERAGE FOR MAY 2020	320.47
19029	5/18/2020	AT&T MOBILITY	PD Cellular	686.57
19030	5/18/2020	CALIFORNIA-AMERICAN WATER	Portola/Quendale Island	32.35
19031	5/18/2020	CENTER FOR EDUCATION & EMP...	2020 Annual Renewal	159.00
19032	5/18/2020	COMCAST BUSINESS	Internet May-June 2020	527.12
19033	5/18/2020	CORELOGIC SOLUTIONS, LLC.	Mid-May 2020 Bills	115.00
19034	5/18/2020	COUNTY OF MONTEREY, EDD	Unemployment Payment reimbursement for (Ball, Rice, Pereda)	6,108.36
19035	5/18/2020	CYPRESS COAST FORD	#94 Crown Vic Airbag control	288.41
19036	5/18/2020	DANIAL D. PICK	Wellness Reimbursement for 2020	500.00
19037	5/18/2020	DEL REY OAKS GARDEN	Plants City Hall Planters	733.80
	5/18/2020	DEL REY OAKS GARDEN	Push Trimmer parts for repair	160.22
19038	5/18/2020	FORT ORD REUSE AUTHORITY	May 2020 FORA Loan Pmt	31,096.58
19039	5/18/2020	GLOBALSTAR USA	Sat Phone	213.14
19040	5/18/2020	GRANITEROCK #26438	Safety Glasses	48.74
19041	5/18/2020	HOME DEPOT	Gopher supplies	119.63
19042	5/18/2020	KRISTOFER MOORE	Shipping Reimbursement	23.31
19043	5/18/2020	MARTINS IRRIGATION SUPPLY, I...	Park pipe repair supplies	317.40
19044	5/18/2020	MONTEREY AUTO SUPPLY INC.	2.5 DEF	31.65
19045	5/18/2020	MONTEREY BAY OFFICE PRODU...	PD Copier Lease	127.80
19046	5/18/2020	MONTEREY COUNTY SHERIFF	Jan 20-Mar 20 ACJIS System	2,505.64
19047	5/18/2020	MONTEREY REGIONA WASTE M...	Annual contract management services Mar 2018-Feb 2019	2,500.00
	5/18/2020	MONTEREY REGIONA WASTE M...	Annual contract management services Mar 2019-Feb 2020	2,500.00

**City of Del Rey Oaks**  
**Check/Voucher Register - Claims Report**

10100 - General Checking  
From 5/1/2020 Through 5/31/2020

Check #	Document D...	Vendor Name	Transaction Description	Check Amount
19048	5/18/2020	OFFICE DEPOT	Office Supplies	125.36
	5/18/2020	OFFICE DEPOT	paper clips, batteries	51.18
19049	5/18/2020	PG&E	Gas/Electric Throughout City	2,178.00
19050	5/18/2020	POLICE EXEC RESEARCH FORUM	PD Exec Research Forum Membership	150.00
19051	5/18/2020	PRECISION ALARMS AND AUTO...	Alarm/Security Monitoring	316.00
19052	5/18/2020	PURE WATER	Drinking Water	43.50
19053	5/18/2020	SHELL OIL COMPANY	Fuel Streets and Parks	997.80
19054	5/18/2020	TERMINIX	Pest Control	85.00
19055	5/18/2020	THE MAYNARD GROUP	Phones and voicemail	134.00
496005262...	5/13/2020	CHEVRON	Chevron	1,301.14
EFT PERS ...	5/5/2020	PERS	PERS UAL MAY	13,673.63
EFTPERSH...	5/1/2020	P.E.R.S.-HEALTH	PERS HEALTH MAY	20,989.93
Report Total				206,511.94



U.S. BANCORP SERVICE CENTER  
 P. O. Box 6343  
 Fargo, ND 58125-6343

DEL REY OAKS

<b>STATEMENT DATE</b>	04-22-20
<b>TOTAL ACTIVITY</b>	\$ 860.78

**"MEMO STATEMENT ONLY"  
 DO NOT REMIT PAYMENT**

POLICE DEPARTMENT  
 CITY OF DEL REY OAKS  
 650 CANYON DEL REY  
 DEL REY OAKS CA 93940-5505

We certify that all purchases listed on this statement, unless annotated to the contrary, are true, correct and for official business only. Payment is authorized.

Cardholder	Date	Approver	Date
------------	------	----------	------

NEW ACCOUNT ACTIVITY					
POST DATE	TRAN DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	MCC	AMOUNT
03-26	03-25	AMZN MKTP US*5X4CI2AR3 AMZN.COM/BILL WA PUR ID: 111-7918767-10426 TAX: 9.25	Webcam PD	5942	109.24
03-27	03-26	ENVIRO MASTER INTL FRANCH CHARLOTTE NC PUR ID: 1 TAX: 0.00	Spraying Disinfect PD/CH	7399	176.00
03-30	03-26	BOUND TREE MEDICAL LLC 800-2827904 PUR ID: E190242 TAX: 12.47	PD Medical supplies	5047	156.37
04-01	03-31	IN *SHIELD INVESTIGATION 888-4467560 CA PUR ID: NVUNGCEESCDZ8B01D TAX: 8.00	Background investigation	7393	88.00
04-03	04-01	PREMIER FOOD SAFETY CORPO 714-4510075 CA PUR ID: 480040203070118 TAX: 0.00	Food Safety Material	8299	9.95
04-09	04-08	ENVIRO MASTER INTL FRANCH CHARLOTTE NC PUR ID: 1 TAX: 0.00	Spraying Disinfect PD/CH	7399	212.00
04-20	04-18	AMZN MKTP US*K83ZD6743 AMZN.COM/BILL WA PUR ID: 112-5605243-63402 TAX: 9.25	Webcam for PD	5942	109.22

<b>Default Accounting Code: 210</b>				
<b>CUSTOMER SERVICE CALL</b>  <b>800-344-5696</b>			<b>ACCOUNT SUMMARY</b>	
	<b>STATEMENT DATE</b>	<b>DISPUTED AMOUNT</b>	PREVIOUS BALANCE	\$ .00
	04-22-20	\$ .00	PURCHASES &	
<b>SEND BILLING INQUIRIES TO:</b>  G/O U.S. BANCORP SERVICE CENTER, INC U.S. BANK NATIONAL ASSOCIATION P.O. BOX 6335 FARGO, ND 58125-6335	<b>AMOUNT DUE</b>		CASH ADVANCES	\$ .00
	\$ 0.00		CASH ADVANCE FEE	\$ .00
	<b>DO NOT REMIT</b>			
			<b>TOTAL ACTIVITY</b>	<b>\$860.78</b>



U.S BANCORP SERVICE CENTER  
P. O. Box 6343  
Fargo, ND 58125-6343



DEL REY OAKS

<b>STATEMENT DATE</b>	04-22-20
<b>TOTAL ACTIVITY</b>	\$ 14.99

**"MEMO STATEMENT ONLY"  
DO NOT REMIT PAYMENT**

DANIAL D PICK  
650 CANYON DEL REY RD  
DEL REY OAKS CA 93940-5505

We certify that all purchases listed on this statement, unless annotated to the contrary, are true, correct and for official business only. Payment is authorized.

<b>Cardholder</b>	<b>Date</b>	<b>Approver</b>	<b>Date</b>
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NEW ACCOUNT ACTIVITY					
POST DATE	TRAN DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	MCC	AMOUNT
04-21	04-20	ZOOM.US 888-799-9666 CA PUR ID: P-17229276 TAX: 0.00	Monthly fee	5968	14.99

<b>Default Accounting Code:</b>					
<b>CUSTOMER SERVICE CALL</b>  <b>800-344-5696</b>			<b>ACCOUNT SUMMARY</b>		
	<b>STATEMENT DATE</b>	<b>DISPUTED AMOUNT</b>	PREVIOUS BALANCE \$ .00		
	04-22-20	\$ .00	PURCHASES &		
<b>SEND BILLING INQUIRIES TO:</b>  C/O U.S. BANCORP SERVICE CENTER, INC U.S. BANK NATIONAL ASSOCIATION P.O. BOX 6335 FARGO, ND 58125-6335	<b>AMOUNT DUE</b>  \$ 0.00  <b>DO NOT REMIT</b>		CASH ADVANCES \$ .00		
					CASH ADVANCE FEE \$ .00
					<b>TOTAL ACTIVITY \$14.99</b>



U.S BANCORP SERVICE CENTER  
P. O. Box 6343  
 Fargo, ND 58125-6343

DEL REY OAKS

<b>STATEMENT DATE</b>	04-22-20
<b>TOTAL ACTIVITY</b>	\$ 352.00

**"MEMO STATEMENT ONLY"  
DO NOT REMIT PAYMENT**

CITY STAFF  
650 CANYON DEL REY RD  
DEL REY OAKS CA 93940-5505

We certify that all purchases listed on this statement, unless annotated to the contrary, are true, correct and for official business only. Payment is authorized.

Cardholder	Date	Approver	Date
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NEW ACCOUNT ACTIVITY					
POST DATE	TRAN DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	MCC	AMOUNT
03-26	03-25	CONFERENCING 888-289-0593 CA PUR ID: 1636169143 TAX: 0.00	Monthly Conference Calls	7372	33.82
03-27	03-26	AMAZON.COM*OK9UL3XN3 AMZN AMZN.COM/ PUR ID: 114-0076132-56986 TAX: 6.41	Toner	5942	79.70
03-30	03-27	AMAZON.COM*DE51M7MO3 AMZN.COM/BILL WA PUR ID: 111-8823075-05202 TAX: 12.74	Doggy bags for park	5942	150.43
04-02	04-01	TLO TRANSUNION 561-988-4200 FL PUR ID: 248536-202003-156 TAX: 0.00	Monthly Computer Service	7372	50.00
04-02	04-01	AMZN MKTP US*L69474ER3 AMZN.COM/BILL WA PUR ID: 111-6820787-80986 TAX: 3.06	Bank Bags for night deposit	5942	38.05

<b>Default Accounting Code:</b>					
<b>CUSTOMER SERVICE CALL</b>  <b>800-344-5696</b>			<b>ACCOUNT SUMMARY</b>		
	<b>STATEMENT DATE</b>	<b>DISPUTED AMOUNT</b>	PREVIOUS BALANCE	\$ .00	
	04-22-20	\$ .00	PURCHASES &		
<b>SEND BILLING INQUIRIES TO:</b>  C/O U.S. BANCORP SERVICE CENTER, INC U.S. BANK NATIONAL ASSOCIATION P.O. BOX 6335 FARGO, ND 58125-6335	<b>AMOUNT DUE</b>  \$ 0.00  <b>DO NOT REMIT</b>		CASH ADVANCES	\$ .00	
			CASH ADVANCE FEE	\$ .00	
			<b>TOTAL ACTIVITY</b>		<b>\$352.00</b>

## **Unpaid Bills Detail**

There were no open or unpaid invoices at the time of the printing of this packet.

**City of Del Rey Oaks**  
**Statement of Revenue and Expenditures - Unposted Transactions Included In Report**

From 7/1/2019 Through 4/30/2020

		<u>Current Period Actual</u>	<u>Total Budget</u>	<u>Percent of Budget Used</u>
<b>Revenue</b>				
<b>Property Taxes</b>				
P/T-Secured	41110	472,091.53	440,000.00	107.29%
P/T-Unsecured	41120	17,796.84	16,700.00	106.56%
P/T-Prior Secured	41130	4,478.79	5,000.00	89.57%
Prior Unsecured	41140	0.00	100.00	0.00%
P/T-Unitary Tax	41150	8,056.84	8,200.00	98.25%
P/T-Sb813	41160	7,714.00	9,400.00	82.06%
Property Tax - Vlf	41170	141,186.36	150,000.00	94.12%
P/T-Int/Penal	41180	<u>1,454.22</u>	<u>700.00</u>	<u>207.74%</u>
<b>Total Property Taxes</b>		<b>652,778.58</b>	<b>630,100.00</b>	<b>103.60%</b>
<b>Other Taxes</b>				
Sales Tax	42210	321,025.36	430,000.00	74.65%
Sales Tax - Add On	42220	721,847.00	800,000.00	90.23%
Cannabis Tax	42222	534,848.98	725,000.00	73.77%
Transient Occupancy Tax	42230	37,376.16	40,000.00	93.44%
Property Transfer Tax	42250	7,224.25	10,000.00	72.24%
Sewer Impact	42290	15,487.82	15,400.00	100.57%
Gas Franchises	42761	5,500.47	5,500.00	100.00%
Electric Franchises	42762	17,644.76	17,500.00	100.82%
Garbage Franchises	42763	70,869.39	86,500.00	81.92%
Cable Tv Franchises	42764	19,168.23	20,500.00	93.50%
Water Franchises	42765	<u>16,869.03</u>	<u>16,000.00</u>	<u>105.43%</u>
<b>Total Other Taxes</b>		<b>1,767,861.45</b>	<b>2,166,400.00</b>	<b>81.60%</b>
<b>Licenses and Permits</b>				
Business Licenses	42310	211,399.85	210,000.00	100.66%
SB1473 Environmental Assessment Fee	43312	36.26	100.00	36.26%
Building Permits	43320	24,240.71	30,000.00	80.80%
Cannabis Business Permit	43325	5,000.00	42,500.00	11.76%
Plan Check Fees	43330	11,740.96	15,000.00	78.27%
Street Opening Permits Fees	43340	4,350.00	4,300.00	101.16%
Plumbing Permits	43350	1,625.00	1,200.00	135.41%
Electrical Permits	43360	1,000.00	1,000.00	100.00%
Other Licenses/Permits	43390	<u>200.00</u>	<u>1,000.00</u>	<u>20.00%</u>
<b>Total Licenses and Permits</b>		<b>259,592.78</b>	<b>305,100.00</b>	<b>85.08%</b>
<b>Reimbursements</b>				
Sb1186 Disability Access Fund	43311	<u>900.00</u>	<u>900.00</u>	<u>100.00%</u>
<b>Total Reimbursements</b>		<b>900.00</b>	<b>900.00</b>	<b>100.00%</b>
<b>Fines and Forfeitures</b>				
Vehicle Code Fines	45510	<u>10,868.44</u>	<u>13,000.00</u>	<u>83.60%</u>
<b>Total Fines and Forfeitures</b>		<b>10,868.44</b>	<b>13,000.00</b>	<b>83.60%</b>
<b>Other</b>				
Interest Earned	46100	34,010.46	30,000.00	113.36%
HOPTR	47130	1,084.60	1,500.00	72.30%
Vehicle License Collection	47140	0.00	900.00	0.00%
Prop 172	47750	10,451.94	14,700.00	71.10%
Traffic Congestion Relief-Ab438	47770	<u>1,949.40</u>	<u>1,000.00</u>	<u>194.94%</u>
<b>Total Other</b>		<b>47,496.40</b>	<b>48,100.00</b>	<b>98.75%</b>
<b>Grants</b>				
Cop Monies	47240	130,947.63	155,000.00	84.48%
Grants - Wellness	47760	7,500.00	7,500.00	100.00%
FORA Caretaker Grant	47767	193,750.00	143,750.00	134.78%
Police Grants Other Agencies	47780	4,888.06	12,500.00	39.10%
Grant Other Agencies	47783	<u>350.00</u>	<u>0.00</u>	<u>0.00%</u>
<b>Total Grants</b>		<b>337,435.69</b>	<b>318,750.00</b>	<b>105.86%</b>
<b>Current Services</b>				
Police Reports	48210	3,976.38	1,000.00	397.63%
Police Services	48211	14,203.12	5,000.00	284.06%
Public Events	48212	35,159.00	40,500.00	86.81%
Airport Police Services	48220	915,416.36	1,124,800.00	81.38%
Use Permits	48805	24,645.00	33,000.00	74.68%
Maps/Publications	48810	33.00	300.00	11.00%
Property Inspections	48825	4,175.00	3,500.00	119.28%
Miscellaneous Services	48840	<u>10,656.60</u>	<u>194,000.00</u>	<u>5.49%</u>
<b>Total Current Services</b>		<b>1,008,264.46</b>	<b>1,402,100.00</b>	<b>71.91%</b>

**City of Del Rey Oaks**  
**Statement of Revenue and Expenditures - Unposted Transactions Included In Report**

From 7/1/2019 Through 4/30/2020

		<u>Current Period Actual</u>	<u>Total Budget</u>	<u>Percent of Budget Used</u>
<b>Parks and Recreation</b>				
Park Rental	48910	2,777.00	8,000.00	34.71%
Rental City Facilities	48920	22,194.70	35,000.00	63.41%
<b>Total Parks and Recreation</b>		<b>24,971.70</b>	<b>43,000.00</b>	<b>58.07%</b>
<b>Other Financing Sources</b>				
Rental Income Garden Center	46815	30,000.00	56,000.00	53.57%
Gas Tax 2103	47010	859.26	0.00	0.00%
Gas Tax 2105	47020	699.28	0.00	0.00%
Gas Tax 2106	47030	677.39	0.00	0.00%
Gas Tax 2107	47040	695.61	0.00	0.00%
<b>Total Other Financing Sources</b>		<b>32,931.54</b>	<b>56,000.00</b>	<b>58.81%</b>
<b>Total Revenue</b>		<b>4,143,101.04</b>	<b>4,983,450.00</b>	<b>83.14%</b>
<b>Expense</b>				
<b>Payroll and Benefits</b>				
Payroll	61105	962,624.02	1,329,400.00	72.41%
Temp Payroll	61107	9,360.66	20,000.00	46.80%
Overtime	61110	85,668.72	133,000.00	64.41%
Council Member Stipend	61115	0.00	7,500.00	0.00%
Reserves Payroll	61120	45,015.00	58,000.00	77.61%
PERS UAL	61124	125,096.75	164,100.00	76.23%
PERS Retirement	61125	111,667.80	145,600.00	76.69%
Dental Exp - City Council	61127	3,183.02	12,000.00	26.52%
Medicare	61130	16,115.09	20,510.00	78.57%
Dental Expense	61135	19,800.23	33,000.00	60.00%
Health Ins	61140	251,401.93	325,700.00	77.18%
Vision Ins	61145	1,658.83	4,500.00	36.86%
Workers Comp	61150	289,379.00	289,400.00	99.99%
Wellness Program	61155	2,767.27	7,500.00	36.89%
Uniform Allowance	61160	4,750.00	11,000.00	43.18%
Admin Leave	61175	5,970.92	0.00	0.00%
Auto Allowance	61180	3,825.00	5,400.00	70.83%
<b>Total Payroll and Benefits</b>		<b>1,938,284.24</b>	<b>2,566,610.00</b>	<b>75.52%</b>
<b>Payroll Expense</b>				
Payroll Expense	62310	921.68	3,500.00	26.33%
<b>Total Payroll Expense</b>		<b>921.68</b>	<b>3,500.00</b>	<b>26.33%</b>
<b>Bank Service Charges</b>				
Bank Service Charges	62320	879.34	1,000.00	87.93%
<b>Total Bank Service Charges</b>		<b>879.34</b>	<b>1,000.00</b>	<b>87.93%</b>
<b>Supplies</b>				
Materials/Supply	62410	55,173.63	62,700.00	87.99%
Ammunition	62420	0.00	7,000.00	0.00%
Office Supplies	62430	15,184.20	18,300.00	82.97%
Accounting Software	62431	3,168.00	3,200.00	99.00%
Special Supply Police	62440	44,692.86	53,700.00	83.22%
PD Safety Equip Lease - Principal	62460	0.00	16,500.00	0.00%
<b>Total Supplies</b>		<b>118,218.69</b>	<b>161,400.00</b>	<b>73.25%</b>
<b>Utilites and Services</b>				
Repair/Maintenance	63505	88,810.57	87,000.00	102.08%
Street Sweeping	63510	1,847.28	14,000.00	13.19%
Gabilan Crew	63515	0.00	5,000.00	0.00%
Utilities/Pge	63520	9,638.72	13,000.00	74.14%
Utilities/Water	63525	5,048.52	6,500.00	77.66%
Telephone / Internet	63530	15,610.59	19,100.00	81.73%
Website Design & Maintenance	63535	2,785.00	2,700.00	103.14%
Postage / Shipping	63540	2,759.00	2,900.00	95.13%
<b>Total Utilites and Services</b>		<b>126,499.68</b>	<b>150,200.00</b>	<b>84.22%</b>
<b>Other Services</b>				
Municipal Code Service	64320	395.00	2,000.00	19.75%
Personnel Recruit & Pre-Employment	64545	2,953.00	7,000.00	42.18%
Member/Dues/Contributions	64550	41,812.71	48,500.00	86.21%
Ad/Promotion City Cnd	64555	875.00	1,200.00	72.91%
Legal Advert	64560	420.00	6,200.00	6.77%
Books and Periodicals	64565	1,756.80	1,900.00	92.46%
Strategic Planning	64570	10,733.17	10,000.00	107.33%

**City of Del Rey Oaks**  
**Statement of Revenue and Expenditures - Unposted Transactions Included In Report**

From 7/1/2019 Through 4/30/2020

		<u>Current Period Actual</u>	<u>Total Budget</u>	<u>Percent of Budget Used</u>
Misc Expenses	64580	870.60	0.00	0.00%
Election Cost	64588	<u>132.55</u>	<u>5,000.00</u>	<u>2.65%</u>
Total Other Services		59,948.83	81,800.00	73.29%
Outside Services				
Training Police	63605	33,728.13	46,600.00	72.37%
Other Permits Pw/Engnr	63610	0.00	1,200.00	0.00%
Liability/Prop Non-Dpt	63620	86,487.18	71,400.00	121.13%
Contractual Services - Audit	63625	34,954.21	30,250.00	115.55%
Contractual Services - IT	63635	11,523.00	10,000.00	115.23%
Contractual Services - Planning	63640	196,120.27	215,000.00	91.21%
Contractual Services - Accounting	63645	31,731.45	35,000.00	90.66%
Contractual Services - Legal	63650	127,824.24	150,000.00	85.21%
Contractual Services - HR	63652	14,495.38	20,000.00	72.47%
Contractual Services - PM	63653	1,520.00	50,000.00	3.04%
Janitorial Fund	63660	3,124.29	4,000.00	78.10%
Radio Dispatch Police	63665	5,321.24	76,000.00	7.00%
Comm Hum Serv Non-Dept	63670	<u>4,000.00</u>	<u>4,000.00</u>	<u>100.00%</u>
Total Outside Services		550,829.39	713,450.00	77.21%
Auto Ops				
Auto Ops - Supplies / Equip	62710	9,973.25	22,500.00	44.32%
Auto Ops - Fuel	62720	23,535.26	30,000.00	78.45%
Auto Repair/Maintenance	63730	16,133.06	20,000.00	80.66%
Auto Replacement	66735	<u>89,411.75</u>	<u>89,500.00</u>	<u>99.90%</u>
Total Auto Ops		139,053.32	162,000.00	85.84%
Police and Fire				
Fire Seaside	63810	150,637.50	200,850.00	75.00%
Animal Regulation Fire	63820	480.00	1,600.00	30.00%
Fund Jail & Prisoner	63830	0.00	100.00	0.00%
Acjis System Police	63840	<u>2,162.38</u>	<u>7,000.00</u>	<u>30.89%</u>
Total Police and Fire		153,279.88	209,550.00	73.15%
Street Lighting and Storm Water				
Street Lighting	63910	9,148.08	15,000.00	60.98%
Storm Water Project - Phase 4	64920	18,873.00	35,500.00	53.16%
S.M.I.P.	64930	150.50	200.00	75.25%
Sb 1473	64940	<u>57.84</u>	<u>100.00</u>	<u>57.84%</u>
Total Street Lighting and Storm Water		28,229.42	50,800.00	55.57%
Capital Improvement				
Capital Improvements	63955	<u>19,802.50</u>	<u>330,000.00</u>	<u>6.00%</u>
Total Capital Improvement		19,802.50	330,000.00	6.00%
Debt Service				
Principal - Fora Loan	65101	<u>521,865.24</u>	<u>552,900.00</u>	<u>94.38%</u>
Total Debt Service		<u>521,865.24</u>	<u>552,900.00</u>	<u>94.39%</u>
Total Expense		<u>3,657,812.21</u>	<u>4,983,210.00</u>	<u>73.40%</u>
Net Income		<u>485,288.83</u>	<u>240.00</u>	<u>202,203.67%</u>

**CASH FUND BALANCE REPORT  
CITY OF DEL REY OAKS  
AS OF APRIL 30, 2020**

<u>Account Number</u>	<u>Description</u>	<u>Ending Balance</u>
10100	General Checking	\$549,327.29
10110	LAIF Account	\$1,359,567.33
	<i>Economic Uncertainty Fund</i>	\$1,359,567.33
10150	PARS Investment (Restricted)	\$301,155.96
10180	Monterey Peninsula Properties	\$9,062.62
	<b>Total All Accounts</b>	<b>\$2,219,113.20</b>

**CITY OF DEL REY OAKS  
CASH BALANCES**

2:26 PM

05/22/2020

PRIOR FISCAL YEAR

Accrual Basis

Apr 30, 19

**ASSETS**

**Current Assets**

**Checking/Savings**

10100 · GENERAL CHECKING 70,295.85

10110 · LAIF CITY - 246 15,961.28

10180 · DEV - MONTEREY PENINSULA PARTNE 39,860.12

**Total Checking/Savings** 126,117.25

**Total Current Assets** 126,117.25

**TOTAL ASSETS** 126,117.25

**LIABILITIES & EQUITY**

PRIOR FISCAL YEAR

City of Del Rey Oaks

Statement of Revenue and Expenditures - Unposted Transactions Included In Report

From 7/1/2018 Through 4/30/2019

		Current Period Actual	Total Budget	Percent of Budget Used
<b>Revenue</b>				
<b>Property Taxes</b>				
P/T-Secured	41110	667,431.19	440,000.00	151.68%
P/T-Unsecured	41120	16,662.51	15,500.00	107.50%
P/T-Prior Secured	41130	6,841.67	5,000.00	136.83%
Prior Unsecured	41140	192.03	100.00	192.03%
P/T-Unitary Tax	41150	12,279.01	8,200.00	149.74%
P/T-Sb813	41160	14,282.66	8,300.00	172.08%
Property Tax - Vlf	41170	156,808.00	150,000.00	104.53%
P/T-Int/Penal	41180	(8,967.88)	700.00	(1,281.12)%
<b>Total Property Taxes</b>		<b>865,529.19</b>	<b>627,800.00</b>	<b>137.87%</b>
<b>Other Taxes</b>				
Sales Tax	42210	348,544.09	425,000.00	82.01%
Sales Tax - Add On	42220	725,218.08	800,000.00	90.65%
Cannabis Tax	42222	818,020.79	850,000.00	96.23%
Transient Occupancy Tax	42230	5,842.50	15,000.00	38.95%
Property Transfer Tax	42250	10,218.77	8,000.00	127.73%
Sewer Impact	42290	0.00	14,300.00	0.00%
Gas Franchises	42761	4,899.65	5,500.00	89.08%
Electric Franchises	42762	17,137.41	17,500.00	97.92%
Garbage Franchises	42763	74,696.55	86,500.00	86.35%
Cable Tv Franchises	42764	19,716.12	20,500.00	96.17%
Water Franchises	42765	17,423.24	16,000.00	108.89%
<b>Total Other Taxes</b>		<b>2,041,717.20</b>	<b>2,258,300.00</b>	<b>90.41%</b>
<b>Licenses and Permits</b>				
Business Licenses	42310	189,392.46	200,000.00	94.69%
SB1473 Environmental Assessment Fee	43312	32.00	50.00	64.00%
Building Permits	43320	14,719.55	10,000.00	147.19%
Cannabis Business Permit	43325	47,673.80	42,500.00	112.17%
Plan Check Fees	43330	7,254.91	5,000.00	145.09%
Street Opening Permits Fees	43340	2,397.96	4,300.00	55.76%
Plumbing Permits	43350	500.00	1,200.00	41.66%
Electrical Permits	43360	750.00	1,000.00	75.00%
Other Licenses/Permits	43390	8,024.25	1,000.00	802.42%
<b>Total Licenses and Permits</b>		<b>270,744.93</b>	<b>265,050.00</b>	<b>102.15%</b>
<b>Reimbursements</b>				
Sb1186 Disability Access Fund	43311	886.00	900.00	98.44%
<b>Total Reimbursements</b>		<b>886.00</b>	<b>900.00</b>	<b>98.44%</b>
<b>Fines and Forfeitures</b>				
Vehicle Code Fines	45510	10,672.52	10,000.00	106.72%
<b>Total Fines and Forfeitures</b>		<b>10,672.52</b>	<b>10,000.00</b>	<b>106.73%</b>
<b>Other</b>				
Interest Earned	46100	259.96	935.00	27.80%
HOPTR	47130	1,890.45	1,500.00	126.03%
Vehicle License Collection	47140	78,654.00	885.00	8,887.45%
Prop 172	47750	11,265.79	10,000.00	112.65%
Traffic Congestion Relief-Ab438	47770	0.00	1,000.00	0.00%
<b>Total Other</b>		<b>92,070.20</b>	<b>14,320.00</b>	<b>642.95%</b>
<b>Grants</b>				
Cop Monies	47240	132,079.88	100,000.00	132.07%
Grants - Wellness	47760	0.00	7,500.00	0.00%
FORA Caretaker Grant	47767	132,720.99	179,567.00	73.91%
Measure X	47775	150,221.94	861,300.00	17.44%
Sb 1 Funds	47777	22,063.37	19,400.00	113.72%

**PRIOR FISCAL YEAR**  
**City of Del Rey Oaks**

**Statement of Revenue and Expenditures - Unposted Transactions Included In Report**

From 7/1/2018 Through 4/30/2019

		Current Period Actual	Total Budget	Percent of Budget Used
Police Grants Other Agencies	47780	1,914.04	12,500.00	15.31%
Grant Other Agencies	47783	10,000.00	0.00	0.00%
<b>Total Grants</b>		<b>449,000.22</b>	<b>1,180,267.00</b>	<b>38.04%</b>
<b>Current Services</b>				
Police Reports	48210	4,378.96	1,000.00	437.89%
Police Services	48211	31,588.59	5,000.00	631.77%
Public Events	48212	19,937.50	40,500.00	49.22%
Airport Police Services	48220	602,059.11	758,056.00	79.42%
Use Permits	48805	26,040.00	33,000.00	78.90%
Maps/Publications	48810	120.00	350.00	34.28%
Property Inspections	48825	4,000.00	3,500.00	114.28%
Miscellaneous Services	48840	26,517.88	20,000.00	132.58%
Donation - Other Non-Pd	48844	5,000.00	0.00	0.00%
<b>Total Current Services</b>		<b>719,642.04</b>	<b>861,406.00</b>	<b>83.54%</b>
<b>Parks and Recreation</b>				
Park Rental	48910	4,402.94	8,000.00	55.03%
Rv Rental Parks	48920	(9,102.80)	35,000.00	(26.00)%
<b>Total Parks and Recreation</b>		<b>(4,699.86)</b>	<b>43,000.00</b>	<b>(10.93)%</b>
<b>Other Financing Sources</b>				
Rental Income Garden Center	46815	30,250.00	36,000.00	84.02%
Gas Tax 2103	47010	4,629.37	6,694.00	69.15%
Gas Tax 2105	47020	6,925.46	9,760.00	70.95%
Gas Tax 2106	47030	6,593.95	8,880.00	74.25%
Gas Tax 2107	47040	8,490.55	12,600.00	67.38%
Gas Tax 2107.5	47050	1,000.00	1,000.00	100.00%
<b>Total Other Financing Sources</b>		<b>57,889.33</b>	<b>74,934.00</b>	<b>77.25%</b>
<b>Total Revenue</b>		<b>4,503,451.77</b>	<b>5,335,977.00</b>	<b>84.40%</b>
<b>Expense</b>				
<b>Payroll and Benefits</b>				
Payroll	61105	1,015,093	1,288,560.00	78.78%
Overtime	61110	61,862	88,800.00	69.63%
Council Member Stipend	61115	5,000	7,500.00	66.67%
Reserves Payroll	61120	51,638	53,800.00	58.80%
Pers	61125	285,685.49	265,700.00	107.52%
Medicare	61130	18,297	19,450.00	94.08%
Dental Expense	61135	19,014.99	15,000.00	126.76%
Health Ins	61140	183,458.34	244,510.00	75.03%
Vision Ins	61145	1,955.84	1,500.00	130.38%
Workers Comp	61150	195,259.00	195,020.00	100.12%
Wellness Program	61155	3,825.75	7,500.00	51.01%
Uniform Allowance	61160	3,500.00	8,800.00	39.77%
Opeb	61170	0.00	17,200.00	0.00%
Admin Leave	61175	346.14	6,900.00	5.01%
Auto Allowance	61180	4,500	5,400.00	83.34%
<b>Total Payroll and Benefits</b>		<b>\$1,855,983</b>	<b>2,225,640.00</b>	<b>83.39%</b>
<b>Payroll Expense</b>				
Payroll Expense	62310	(684.29)	3,500.00	(19.55)%
<b>Total Payroll Expense</b>		<b>(684.29)</b>	<b>3,500.00</b>	<b>(19.55)%</b>
<b>Bank Service Charges</b>				
Bank Service Charges	62320	877.75	5,000.00	17.55%
<b>Total Bank Service Charges</b>		<b>877.75</b>	<b>5,000.00</b>	<b>17.56%</b>
<b>Supplies</b>				
Materials/Supply	62410	47,042.20	47,100.00	99.87%
Ammunition	62420	3,417.74	7,000.00	48.82%

**PRIOR FISCAL YEAR**  
**City of Del Rey Oaks**

**Statement of Revenue and Expenditures - Unposted Transactions Included In Report**

From 7/1/2018 Through 4/30/2019

		Current Period Actual	Total Budget	Percent of Budget Used
Office Supplies	62430	15,952.27	21,300.00	74.89%
Accounting Software	62431	11,293.00	6,200.00	182.14%
MuniCode Updates	62432	1,625.00	1,000.00	162.50%
Special Supply Police	62440	36,642.74	46,700.00	78.46%
<b>Total Supplies</b>		<b>115,972.95</b>	<b>129,300.00</b>	<b>89.69%</b>
<b>Utilites and Services</b>				
Repair/Maintenance	63505	125,765.58	159,500.00	78.84%
Street Sweeping	63510	7,823.52	16,000.00	48.89%
Gabilan Crew	63515	1,126.81	10,000.00	11.26%
Utilities/Pge	63520	10,787.83	13,000.00	82.98%
Utilities/Water	63525	4,500.60	6,500.00	69.24%
Telephone / Internet	63530	17,713.47	19,100.00	92.74%
Website Design & Maintenance	63535	1,603.48	3,000.00	53.44%
Postage / Shipping	63540	2,171.86	2,900.00	74.89%
<b>Total Utilites and Services</b>		<b>171,493.15</b>	<b>230,000.00</b>	<b>74.56%</b>
<b>Other Services</b>				
Personnel Recruit & Pre-Employment	64545	20,306.49	20,000.00	101.53%
Member/Dues/Contributions	64550	50,116.94	45,000.00	111.37%
Legal Advert	64560	6,391.88	8,200.00	77.94%
Books and Periodicals	64565	992.94	1,000.00	99.29%
Strategic Planning	64570	11,276.97	15,000.00	75.17%
Misc Expenses	64580	201.49	5,600.00	3.59%
Election Cost	64588	3,930.85	5,000.00	78.61%
<b>Total Other Services</b>		<b>93,217.56</b>	<b>99,800.00</b>	<b>93.40%</b>
<b>Outside Services</b>				
Training Police	63605	18,068.64	32,600.00	55.42%
Other Permits Pw/Engnr	63610	0.00	1,700.00	0.00%
Liability/Prop Non-Dpt	63620	61,841.90	61,200.00	101.04%
Contractual Services - Audit	63625	23,800.00	26,750.00	88.97%
Contactual Services - IT	63635	2,904.00	3,700.00	78.48%
Contractual Services - Planning	63640	75,532.91	135,000.00	55.95%
Contractual Services - Cop	63641	27,716.25	27,700.00	100.05%
Contractual Services - Pw	63644	19,791.68	19,800.00	99.95%
Contractual Services - Accounting	63645	36,114.75	35,000.00	103.18%
Contractual Services - Legal	63650	69,962.12	100,000.00	69.96%
Janitorial Fund	63660	2,550.00	4,000.00	63.75%
Radio Dispatch Police	63665	9,044.23	59,300.00	15.25%
Comm Hum Serv Non-Dept	63670	3,800.00	3,800.00	100.00%
<b>Total Outside Services</b>		<b>351,126.48</b>	<b>510,550.00</b>	<b>68.77%</b>
<b>Auto Ops</b>				
Auto Ops - Supplies / Equip	62710	6,313.22	24,000.00	26.30%
Auto Ops - Fuel	62720	30,447.65	33,800.00	90.08%
Auto Repair/Maintenance	63730	6,918.22	16,300.00	42.44%
Auto Lease Payments-Principal	65740	15,395.95	9,800.00	157.10%
Auto Lease Payments-Interest	65741	477.25	1,100.00	43.38%
Auto Replacement	66735	87,255.38	87,255.00	100.00%
<b>Total Auto Ops</b>		<b>146,807.67</b>	<b>172,255.00</b>	<b>85.23%</b>
<b>Police and Fire</b>				
Fire Seaside	63810	146,250.00	195,000.00	75.00%
Animal Regulation Fire	63820	960.00	1,600.00	60.00%
Fund Jail & Prisoner	63830	0.00	50.00	0.00%
Acjis System Police	63840	8,552.82	7,000.00	122.18%
<b>Total Police and Fire</b>		<b>155,762.82</b>	<b>203,650.00</b>	<b>76.49%</b>
<b>Street Lighting and Storm Water</b>				

**PRIOR FISCAL YEAR**  
**City of Del Rey Oaks**

**Statement of Revenue and Expenditures - Unposted Transactions Included In Report**

From 7/1/2018 Through 4/30/2019

		Current Period Actual	Total Budget	Percent of Budget Used
Street Lighting	63910	13,392.01	15,000.00	89.28%
Storm Water Project - Phase 4	64920	26,311.44	35,500.00	74.11%
S.M.I.P.	64930	53.90	200.00	26.95%
Sb 1473	64940	41.00	100.00	41.00%
Total Street Lighting and Storm Water		39,798.35	50,800.00	78.34%
Capital Improvement				
Capital Improvements	63955	277,627.45	1,225,011.00	22.66%
Total Capital Improvement		277,627.45	1,225,011.00	22.66%
Total Expense	<b>3,207,983.44</b>	<del>-2,831,295.86</del>	4,855,506.00	<b>66.07%</b> <del>58.31%</del>
Net Income		<b>1,295,468.33</b>	480,471.00	<b>269.63%</b> <del>348.02%</del>



**FIRE DEPARTMENT**  
1635 Broadway Avenue  
Seaside, CA 93955

Telephone (831) 899-6790  
FAX (831) 899-6261

May 8, 2020

Dino Pick, City Manager  
Del Rey Oaks City Hall  
650 Canyon Del Rey  
Del Rey Oaks, CA 93940

Dear Mr. Pick:

Enclosed is a copy of the response reports for the Seaside Fire Department response to Del Rey Oaks for the period of April 1, 2020 through April 30, 2020.

The Seaside Fire Department responded to the following incidents in the month of April:

Incident #

00401-SEA00751  
200401-SEA00754  
200403-SEA00765  
200406-SEA00780  
200415-SEA00836

200416-SEA00843  
200425-SEA00899  
200429-SEA00927  
200429-SEA00928

There are a total of nine (9) fire calls for the month of April. If you have any questions, please contact me.

Sincerely,

Melissa Fattauga  
Sr. Administrative Assistant  
CC: File





# POLICE DEL REY OAKS

## City Council Report April, 2020

Completed by C. Bourquin

### ARRESTS:

YEAR TO DATE

<i>Felony Arrests</i>	0	1
<i>Misdemeanor Arrests</i>	4	9
<i>Warrant Arrests (OJ)</i>	1	2
<b>TOTAL ARRESTS</b>	<b>5</b>	<b>12</b>

### ASSAULTS:

YEAR TO DATE

<i>Simple Assault</i>	1	1
<i>Domestic Violence</i>	1	1
<i>Weapon Involved</i>	0	0
<b>TOTAL ASSAULTS</b>	<b>2</b>	<b>2</b>

### BURGLARIES:

<i>Residential</i>	0	0
<i>Commercial</i>	0	2
<i>From Locked Vehicle</i>	0	1
<i>Other</i>	0	0
<b>TOTAL BURGLARIES</b>	<b>0</b>	<b>3</b>

### TRAFFIC ACCIDENTS:

<i>Non-Injury Accidents</i>	2	9
<i>Injury Accidents</i>	0	0
<b>TOTAL ACCIDENTS</b>	<b>2</b>	<b>9</b>

### GRAND & PETTY THEFTS:

<i>Residential</i>	0	1
<i>Commercial</i>	0	5
<i>Shoplifting</i>	4	4
<i>From Motor Vehicle</i>	1	3
<i>Other</i>	0	1
<b>TOTAL THEFTS</b>	<b>5</b>	<b>14</b>

### ALARMS:

<i>Residential</i>	2	3
<i>Commercial</i>	9	47
<b>TOTAL ALARMS</b>	<b>11</b>	<b>50</b>

### DUI ENFORCEMENT:

<b>0</b>	<b>4</b>
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### CITATIONS ISSUED:

<i>Traffic Citations Issued</i>	0	26
<i>Parking Citations Issued</i>	0	73
<i>Admin Citations Issued</i>	1	3
<i>Warning Citations</i>	0	15
<b>TOTAL CITATIONS ISSUED</b>	<b>01</b>	<b>117</b>

### REPORTS FILED:

<b>18</b>	<b>90</b>
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### TOTAL ACTIVITY:

<b>219</b>	<b>1148</b>
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# CITY OF DEL REY OAKS SIX-MONTH STRATEGIC OBJECTIVES

March 3, 2020 – September 1, 2020  
As of May 26, 2020

<b>THREE-YEAR GOAL: <i>Ensure fiscal stability</i></b>						
WHEN	WHO	WHAT	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
1. At the April 28, 2020 City Council meeting	City Manager	Recommend to the City Council any changes to the Position Control List and Budget for City finance functions.		X		Kim is staying. Revised job descriptions to focus finance duties in Kim's position. Moved Kim's desk into office to allow quiet finance focused work environment. Karen and part time position will handle non-finance related work load. Duties transitioned and staff working from home. PT position on hold due to COVID related budget impacts and working from home.
2. At the May 26, 2020 City Council meeting	City Manager	Report to the City Council the results and potential actions of the Cannabis Business Audits.		X		Karen working with HdL. HdL processing audits.
3. At the June 23, 2020 City Council meeting	City Manager	Present to the City Council for consideration a Two-Year Budget.		X		Staff prepared two year budget. Budget committee meeting May 21. Staff will present to Council in June.
4. At the August 25, 2020 City Council meeting	City Manager	Report to the City Council on the feasibility of a contract grant writer.		X		Mayor has provided a potential candidate.

<p>FUTURE: At the November 2020 City Council meeting</p>	<p>City Manager</p>	<p>Present to the City Council for action the disposition of the Federal LLC debt.</p>				
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**THREE-YEAR GOAL: Update the City's General Plan, beginning with the Housing Element**

WHEN	WHO	WHAT	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
1. By May 1, 2020	City Manager	Present to the City Council the status on the consolidation of background materials for developers.		X		Staff preparing structured due diligence for development teams. COVID-19 has paused this work.
2. At the August 25, 2020 City Council meeting	City Manager	Present to the City Council an update on potential funding sources (e.g., grants, cost-sharing) for updating the General Plan.		X		Staff submitted grant application for \$65k in LEAP funds. Staff working with AMBAG to apply for additional regional grant funds.
3. By September 1, 2020	City Manager and consultant Denise Duffy	Hold a Housing Element Study Session for the City Council and Planning Commission, including consideration of an Emergency Shelter overlay, with public input.				

**THREE-YEAR GOAL: *Develop City-owned properties sustainably with public input***

WHEN	WHO	WHAT	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
1. At the March 24, 2020 City Council meeting	City Manager	Present a contract for solar panel installation on City Hall for Council consideration.	X			Council approved contract. Staff holding contract award until COVID-19 financial impact is better understood.
2. At the April 28, 2020 City Council meeting	City Council	Consider accepting an escrow account and funds, and a contract with Witson Engineers, concerning South Boundary Road.		X		FORA board and City Council approved escrow terms. FORA board approved \$8.8M for project. Staff working with FORA to open accounts and transfer funds. FORA approved MOA for project transfer on May 14. City Council considering on May 26.
3. At the May 26, 2020 City Council meeting	City Manager	Present an agreement with Marina Coast Water District (MCWD) for provision of water service to the City's Former Fort Ord property to the City Council for consideration.		X		Council considering agreement on May 26 <sup>th</sup> .
4. At the June 23, 2020 City Council meeting	City Manager, working with the City Attorney	Present a Joint Powers Authority (JPA) agreement for Habitat Conservation Plan (HCP) oversight to the City Council for consideration.			X	HCP EIR being finalized for FORA board approval. HCP endowment funds to be distributed to jurisdictions according to FORA Board approved distribution. Council considering agreement on May 26 for fund transfer. JPA will be discussed among land-use jurisdictions.
5. At the June 23, 2020 City Council meeting	City Manager	Present to the City Council for action an amended agreement with California Native Plants Society.		X		City continuing to try to meet with CNPS to ascertain their desires.

6. At the June 23, 2020 City Council meeting	City Manager, working with the City Attorney	Ensure that the owner of Del Rey Oaks Gardens is compliant with their conditional use permit and lease.	X	Staff sent Mr. Mori non-compliance letter in July 2019. Planning staff met with Mr. Mori on March 1 <sup>st</sup> to discuss CUP application. Staff contacted Mr. Mori on April 14 <sup>th</sup> to urge compliance. Staff met again with Mr. Mori in early May and found partial compliance with CUP. Mr. Mori has contacted City staff to move forward with Planning Commission review.
7. At the August 25, 2020 City Council meeting	City Manager	Present to the City Council the status of water allocation for the former RV storage lot.	X	Staff preparing to present to planning commission for public discussion.
8. At the August 25, 2020 City Council meeting	City Manager	Present an Exclusive Negotiating Agreement for the former Fort Ord property with developers for City Council consideration.		On hold due to COVID related economic pressures.
9. At the August 25, 2020 City Council meeting	City Manager	Provide an update on the Spring 2020 and Spring 2021 street projects.	X	Spring 2020 slurry seal contract on hold pending assessment of COVID-19 measures on City budget.
FUTURE: At the September 22, 2020 City Council meeting	City Manager	Present to the City Council for action Community Facilities District and Development Impact Fees for all City-owned properties.		

**THREE-YEAR GOAL: *Enhance the City's effectiveness and efficiency***

WHEN	WHO	WHAT	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
1. At the August 25, 2020 City Council meeting and yearly thereafter	City Manager and the IT consultant	Evaluate our IT security posture and, if needed, make recommendations for improvement.		X		



# CITY OF DEL REY OAKS

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## STAFF REPORT

**TO:** Honorable Mayor and Member of the City Council

**FROM:** Dino Pick, City Manager

**DATE:** May 26, 2020

**SUBJECT:** Approve an Amended Resolution Adopting a List of Projects for FY 2020-21 Funded by SB1

**RECOMMENDATION:**

Adopt an amended resolution of the City of Del Rey Oaks "Adopting a List of Projects for FY 2020-21 funded by SB1: The Road Repair and Accountability Act of 2017."

**DISCUSSION:**

The funding from SB1 will help the City of Del Rey Oaks maintain and rehabilitate streets and roads throughout the City this year and many similar projects into the future. In order to receive SB1 funding this resolution is required. The scope of work that the City intends to do is now identified on the document.

**FISCAL IMPACT:**

The City of Del Rey Oaks will receive an estimate of \$32,750.00 in Road Maintenance and Repair funding in FY 2020-21 from SB1.

**CONCLUSION:**

Staff recommends that Council adopt Amended Resolution 2020-03, to continue in the road repair and maintenance and rehabilitation throughout the City of Del Rey Oaks.

**ATTACHMENTS:**

1. Amended Resolution No.2020-03

Respectfully Submitted,

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Dino Pick  
City Manager

**AMENDED  
RESOLUTION NO. 2020-03**

**RESOLUTION ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2020-21 FUNDED BY  
SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

**WHEREAS**, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

**WHEREAS**, SB 1 includes accountability and transparency provisions that will ensure the residents of our City of Del Rey Oaks are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

**WHEREAS**, the City of Del Rey Oaks must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

**WHEREAS**, the City of Del Rey Oaks, will receive an estimated \$32,750.00 in RMRA funding in Fiscal Year 2020-21 from SB 1; and

**WHEREAS**, this is the fourth year in which the City of Del Rey Oaks is receiving SB 1 funding and will enable the City of Del Rey Oaks to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

**WHEREAS**, the City of Del Rey Oaks has undergone a public process to ensure public input into our community's transportation priorities/the project list; and

**WHEREAS**, the City of Del Rey Oaks used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

**WHEREAS**, the funding from SB 1 will help the City of Del Rey Oaks maintain and rehabilitate streets and roads throughout the City of Del Rey Oaks this year and many similar projects into the future; and

**WHEREAS**, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City of Del Rey Oaks' streets and roads are in good condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into excellent/good condition; and

**WHEREAS**, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive benefits statewide.

**NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND** by the City Council of the City of Del Rey Oaks, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2020-21 Road Maintenance and Rehabilitation Account revenues:

**Design and construct a street slurry package, Del Rey Oaks residential and commercial streets, estimated useful life is 15-20 years, estimated completion June 2021.**

**Project Title: Street Slurry Package**

**Project Description: Slurry seal maintenance of streets around the City.**

**Project Location: Del Rey Gardens and Calle Del Oaks.**

**Estimated Project Schedule: Start 04/2021 – Completion 06/2021**

**Estimated Project Useful Life: 15-20 years**

3. The following previously proposed and adopted projects may also utilize Fiscal Year 2020-21 Road Maintenance and Rehabilitation Account revenues in their delivery. With the relisting of these projects in the adopted fiscal year resolution, the City of Del Rey Oaks is reaffirming to the public and the State our intent to fund these projects with Road Maintenance and Rehabilitation Account revenues:

**Design and construct a street reconstruction package, Del Rey Oaks residential and commercial streets, estimated useful life is 15-20 years, estimated completion June 2021.**

**Project Title: Street Reconstruction and Overlay Package**

**Project Description: Pavement Rehabilitation and Repair which includes patching, etc etc.**

**Project Location: Area of Portola Drive.**

**Estimated Project Schedule: Start 07/2020 – Completion 09/2020**

**Estimated Project Useful Life: 15-20 years**

**PASSED AND ADOPTED** by the City Council of the City of Del Rey Oaks, State of California this 26 day of May, 2020, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

Attest

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Danial D. Pick, City Clerk

Signed

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Alison Kerr, Mayor

## ORDINANCE 303

### URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL REY OAKS RELATING TO A TEMPORARY MORATORIUM ON EVICTING TENANTS, AND DECLARING THE ORDINANCE TO BE AN URGENT MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

#### FINDINGS

- A. On March 4, 2020, the Governor of the State of California, Gavin Newsom, declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 (“COVID-19”); and
- B. On March 6, 2020, Monterey County Administrative Officer Charles McKee issued a proclamation declaring a local emergency related to the outbreak of COVID-19; and
- C. On March 16, 2020, California Governor Gavin Newsom declared in Executive Order N-28-20 that any preemption of local police powers related to California Civil Code § 1940 et seq. or § 1954.25 et seq. were suspended as it relates to local jurisdictions enacting moratoria on residential and commercial evictions. The suspension of state preemption over local police powers are in effect through May 31, 2020, unless extended; and
- D. On March 17, 2020, the County of Monterey ordered County residents to shelter in place beginning March 18, 2020 and lasting until April 8, 2020; and
- E. Due to directives from federal, state, and local health officials, residents have been advised to avoid public gatherings and to stay at home to prevent the spread of this disease.
- F. The City and its residents have been impacted by the health crisis of this global pandemic. Sporting events, concerts, plays, and conferences have been cancelled. School closures have occurred and may continue. Employees have been advised to work at home. As a result, restaurant and retail business has significantly declined and residents have been impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age children. As the virus spreads, workers may have to stay home for extended periods.
- G. Many tenants have experienced sudden income loss, and further income impacts are anticipated. The loss of wages caused by the effects of COVID-19 may impact tenants’ ability to pay rent when due, leaving tenants vulnerable to eviction.
- H. During this state of emergency, and in the interests of protecting the public health and preventing transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. Prohibiting evictions on a temporary basis is needed until the spread of the virus can be minimized and the emergency restrictions lifted.
- I. Nothing in this Ordinance waives a tenant’s obligations to pay back rent owed once this Ordinance is no longer effective.
- J. On March 24, 2020 the City Council adopted an urgency ordinance temporarily prohibiting evictions due to nonpayment of rent by residential and commercial tenants during the COVID-19 emergency.
- K. The COVID-19 emergency remains ongoing and the State of Emergency declared by Governor Newsom related to COVID-19 remains in effect.

- L. Due to the ongoing impact of COVID-19, the City Council wishes to extend the moratorium on evictions due to nonpayment of rent by residential and commercial tenants during the COVID-19 emergency until August 31, 2020.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Del Rey Oaks, California as follows:

**SECTION 1. Incorporation of Recitals.** The foregoing Recitals are adopted as findings of the City Council as though set forth fully herein.

**SECTION 2. Uncodified.** This Ordinance shall not be codified.

**SECTION 3. Temporary Moratorium on evictions due to nonpayment of rent by residential and commercial tenants during the COVID-19 emergency.**

- A. **Supersedes Ordinance 301.** This urgency Ordinance shall replace and supersede City of Del Rey Oaks Ordinance No. 301.
- B. **Duration.** This Ordinance, which shall be effective immediately upon adoption, shall automatically expire at midnight on August 31, 2020, unless extended by the City Council following a lawful extension of Executive Order N-28-20 as may be ordered by the Governor of the State of California.
- C. **Moratorium on Residential Evictions.** Unless necessary for the health and safety of tenants, neighbors, or the landlord, no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant, in accordance with this Ordinance, demonstrates that the inability to pay rent is due to the Coronavirus Disease 2019 (COVID-19), the state of emergency regarding COVID-19, or following government COVID-19 precautions or directives.
1. To take advantage of the protections afforded tenants, a tenant must do all the following:
    - (a) Notify the landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment;
    - (b) Provide the landlord with verifiable documentation to support the assertion of a covered reason for delayed payment; and
    - (c) Pay the portion of rent that the tenant is able to pay.
  2. "Covered reason for delayed payment" means a tenant's loss of income due to any of the following:
    - (a) tenant was sick with COVID-19 or caring for a household or family member who is sick with COVID-19;
    - (b) tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, or government directives related to COVID-19;

(c) tenant's compliance with the direction or recommendation from a government agency to stay home, self-quarantine, or avoid congregating with others during the state of emergency; or

(d) tenant's need to miss work to care for a home-bound school-age child.

3. If a tenant complies with the requirements above, a landlord shall not serve a notice pursuant to California Code of Civil Procedure sections 1161 and 1162, file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise endeavor to evict the tenant for nonpayment of rent.

**D. Moratorium on Commercial Evictions.** Unless necessary for the health and safety of tenants, neighbors, or the landlord, no landlord shall endeavor to evict a commercial tenant for nonpayment of rent if the tenant, in accordance with this Ordinance, demonstrates that the inability to pay rent is due to a slowdown in business related to COVID-19, the state of emergency regarding COVID-19, or following government COVID-19 precautions or directives.

1. To take advantage of the protections afforded tenants, a tenant must do all the following:
  - (a) Notify the landlord in writing before the day rent is due that the tenant has a covered reason for delayed payment;
  - (b) Provide the landlord with verifiable documentation to support the assertion of a covered reason for delayed payment; and
  - (c) Pay the portion of rent that the tenant is able to pay.
2. "Covered reason for delayed payment" means the tenant experienced a loss of business income that renders tenant unable to pay rent due to financial impacts resulting from COVID-19, or government directives related to COVID-19.

**E. Moratorium on Other Evictions and Ejectments.** No statutory cause of action that could be used to evict or otherwise eject a residential or commercial tenant or occupant of residential real property after foreclosure shall be brought during the duration of this Ordinance where the borrower demonstrates that the inability to make required payments is due to COVID-19, the state of emergency regarding COVID-19, or following government COVID-19 precautions or directives. For the purposes of this Section D "statutory causes of action" includes, without limitation, those found at Civil Code of Procedure 725a et seq., and Civil Code section 5700-5740.

**F. Late Fees.** A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance. A landlord may not seek rent that is delayed for the reasons stated in this Ordinance through the eviction process.

**G. Definition of "in writing."** For purposes of this Ordinance, "in writing" includes email or text communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text.

**H. Confidentiality of Tenant Information.** Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the commercial tenant's claim.

- I. **120-Day Payback Period.** Nothing herein shall relieve the tenant of liability for the unpaid rent after expiration of this Ordinance. Tenants afforded eviction protection under this Ordinance shall have up to 120 days after the termination date of this Ordinance to pay their landlord all unpaid rent. During that 120-day period, the protections against eviction provided for herein shall apply for such tenants.

**SECTION 4. Emergency Declaration.** The City Council declares this Ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to Government Code section 36937(b). The facts constituting the emergency are as follows:

Individuals, and their families, affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks. It is essential to prevent the transmission of COVID-19 by the unnecessary displacement of tenants. To protect the public health, safety, and welfare, the City must act to prevent eviction of residential tenants who are unable to pay rent due to wage losses, or commercial tenants who are unable to pay rent due to business losses or hardships, caused by the effects of COVID-19.

**SECTION 5. Severability.** If any provision, section, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

**SECTION 6. Environmental Determination.** Adoption and implementation of this Ordinance is exempt from the provisions of the California Environmental Quality Act Guidelines pursuant to section 15061(b)(3) as there is no possibility the Ordinance may have a significant effect on the environment.

**SECTION 7. Publication.** The City Clerk is directed to cause this Ordinance to be published in the manner required by law.

**SECTION 8. Enforcement.** This Ordinance shall be enforced as are other provisions of the Del Rey Oaks Municipal Code, which may include, without limitation, enforcement pursuant to Chapters 1.16 and 1.19.

PASSED, APPROVED, AND ADOPTED as an emergency ordinance by the City Council of the City of Del Rey Oaks, California, at its regular meeting held on the 28th day of May 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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ALISON KERR, Mayor

ATTEST:

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DANIAL PICK, City Clerk



# CITY OF DEL REY OAKS

650 CANYON DEL REY RD. · DEL REY OAKS, CALIFORNIA 93940  
PHONE (831) 394-8511 · FAX (831) 394-6421

## Staff Report

**DATE:** May 26, 2020  
**TO:** Honorable Mayor and City Council  
**FROM:** Dino Pick, City Manager  
**SUBJECT:** Agreement with Marina Coast Water District

**CEQA:** This action does not constitute a project within the meaning of Section 15378(a) of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly. If this action is found to be a project under CEQA, it is exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

### Recommendation

Consider an Agreement with Marina Coast Water District for the provision of potable and non-potable water to the City's former Fort Ord properties.

### Background

On September 21, 1993, the U.S. Government, represented by the U.S. Army, and the Monterey County Water Resources Agency (MCWRA) entered into an agreement ("1993 Fort Ord Annexation Agreement") whereby Fort Ord would be annexed into MCWRA Zones 2 and 2A and be allocated 6,600 AFY of groundwater for use on Fort Ord lands. The U.S. Government paid the MCWRA a \$7,400,000 annexation fee.

Under a 1998 Water/Wastewater Facilities Agreement between the Fort Ord Reuse Authority (FORA) and Marina Coast Water District (MCWD), MCWD is the exclusive provider of water and wastewater collection services within the former Fort Ord, now designated as MCWD's Ord Community Service Area. (Note: MCWD does not currently provide wastewater collection services within those areas within the Cities of Seaside and Del Rey Oaks, which are served by the Seaside County Sanitation District.) The 1998 Agreement terminates on June 30, 2020.

On October 23, 2001, the U.S. Government through the Secretary of the Army made an economic development conveyance by quitclaim of the following assets to FORA, and the next day, on October 24, 2001, FORA deeded those very same assets to MCWD: (1) all of Fort Ord's water and sewer infrastructure; (2) under the 1993 Fort Ord Annexation Agreement, 4,871 AFY of the Army's 6,600 AFY of MCWRA groundwater allocation with the Army reserving 1,729 AFY; and (3) 2.22 MGD of the Army's prepaid wastewater treatment capacity under the 1993 Fort Ord Annexation Agreement.

On July 2, 2019, the Local Agency Formation Commission of Monterey County-approved MCWD annexation of lands within MCWD's Ord Community Service Area, which then currently received MCWD's both water and sewer collection services or which had received land use approvals from the applicable land use jurisdiction was completed. City's lands within the Ord Community Service Area were not annexed because those lands are provided sewer collection services by the Seaside County Sanitation District (SCSD) and not MCWD.

### **Summary & Discussion**

The purpose of this Agreement is to recognize the existing rights and obligations of the City of Del Rey Oaks regarding the provision of potable water and recycled water. The Agreement affirms that the Parties agree with the applicable terms and conditions of the 1993 Fort Ord Annexation Agreement, the FORA potable and recycled water allocations under the Base Reuse Plan (as set forth in FORA Resolution 07-01 for potable water, and FORA Resolution 07-10 for recycled water), as stated in the 1993 Fort Ord Annexation Agreement. The Agreement also recognizes the terms and conditions are subject to compliance with all applicable laws including, but not limited to, the California Environmental Quality Act and the Sustainable Groundwater Management Act , and any Groundwater Action.

Nothing in the proposed Agreement commits either party to a course of action with regard to use of water, or limits Council's discretion or authority in the future to make decisions regarding water.

City and MCWD staffs have coordinated regarding this Agreement. Pending consideration and approval by City Council, MCWD staff will refer the Agreement to the MCWD Board for approval. Monterey County and the City of Marina staffs are preparing to take their respective agreements to their Board and Council in the next several weeks.

### **Fiscal Impacts**

This item has no fiscal impact.

### **Recommended Action**

Approve an Agreement with Marina Coast Water District for the provision of potable and non-potable water to the City's former Fort Ord properties.

### **ATTACHMENTS:**

1. Agreement with Marina Coast Water District

Respectfully Submitted,

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Dino Pick

City Manager

## **New Ord Community Water Services Agreement between City of Del Rey Oaks and Marina Coast Water District**

This Agreement is entered into as of the Effective Date of July 1, 2020, by and between **City of Del Rey Oaks** ("City"), and the **Marina Coast Water District** ("MCWD"), with reference to the following facts:

### **Recitals**

A. On September 21, 1993, the U.S. Government, represented by the U.S. Army, and the Monterey County Water Resources Agency (MCWRA) entered into an agreement (1993 Fort Ord Annexation Agreement) whereby Fort Ord would be annexed into MCWRA Zones 2 and 2A and be allocated 6,600 AFY of groundwater for use on Fort Ord lands, and the U.S. Government paid MCWRA a \$7,400,000 annexation fee.

B. The Fort Ord Reuse Authority (FORA) is a regional agency established under Government Code Sections 67650, et seq., to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army to the governing local jurisdictions pursuant to the Fort Ord Reuse Plan adopted under Government Code Section 67675

C. Under the 1998 Water/Wastewater Facilities Agreement between FORA and MCWD, MCWD is the exclusive provider of water and wastewater collection services within the former Fort Ord, now designated as MCWD's Ord Community Service Area, except that MCWD does not currently provide wastewater collection services within those areas within the Cities of Seaside and Del Rey Oaks, which are served by the Seaside County Sanitation District. Paragraph 9.3, Term, of the 1998 Water/Wastewater Facilities Agreement as amended states, "This Agreement shall have a term coincident with the legal existence of FORA." FORA's legal existence is scheduled to terminate on June 30, 2020, pursuant to Government Code Section 67700.

D. On October 23, 2001, the U.S. Government through the Secretary of the Army made an economic development conveyance by quitclaim the following assets to FORA and the next day on October 24, 2001, FORA deeded those very same assets to MCWD: (1) all of Fort Ord's water and sewer infrastructure; (2) under the 1993 Fort Ord Annexation Agreement, 4,871 AFY of the Army's 6,600 AFY of MCWRA groundwater allocation with the Army reserving 1,729 AFY; and (3) 2.22 MGD of the Army's prepaid wastewater treatment capacity under the 1993 Army-Monterey Regional Water Pollution Control Agency (MRWPCA) Agreement.

E. On April 8, 2016, MRWPCA and MCWD entered into that certain Pure Water Delivery and Supply Project Agreement, as amended, wherein MRWPCA agreed, among other things, to produce a minimum of 600 AFY of purified recycled water (also known as advanced treated water) with the ability to produce a maximum day demand of 1.37 MGD for MCWD under Phase 1 and to later produce an additional 827 AFY of purified recycled water under Phase 2 on terms specified in the agreement. The FORA Base Reuse Plan has a water augmentation target of 2,400 AFY. This combined 1,427 AFY of purified recycled water would meet all but 973 AFY of the 2,400 AFY water augmentation target.

F. The Fort Ord Water Augmentation Program costs were to be covered by funds collected under FORA's Community Development Fund taxes; however, FORA is scheduled to terminate on June 30, 2020, so starting July 1, 2020, water augmentation costs will be collected by MCWD.

G. On July 2, 2019, the Local Agency Formation Commission of Monterey County-approved MCWD annexation of lands within MCWD's Ord Community Service Area, which then currently received MCWD's both water and sewer collection services or which had received land use approvals from the applicable land use jurisdiction was completed. City's lands within the Ord Community Service Area were not annexed because those lands are provided sewer collection services by the Seaside County Sanitation District (SCSD) and not MCWD.

H. This Agreement shall not authorize either Party to take any specific action with regard to the potable and recycled water that is the subject of this Agreement. Likewise, this Agreement shall not limit the City's discretion with regard to the use of the potable and recycled water discussed in this Agreement in the future.

### **Definitions**

- Allocation or Allocations shall mean potable water or recycled water allocations as the context indicates as set forth in the Section 1 table of this Agreement.
- Del Rey Oaks (DRO) Service Area shall mean the area within which MCWD will provide potable water and recycled water services to the City.
- Groundwater Action shall mean any final legally binding determination by a court or regulatory or administrative agency having jurisdiction over groundwater that would directly or indirectly change the potable water Allocations set forth in Section 1. A regulatory or administrative agency may include, but not be limited to, the State Water Resources Control Board (SWRCB), Regional Water Quality Control Board, Monterey County, Monterey County Water Resources Agency, and any groundwater sustainability agency (GSA) having jurisdiction over the groundwater in question. Groundwater Actions include, but are not limited to, groundwater adjudications conducted in accordance with Code of Civil Procedure Section 830, et seq., protection of groundwater quality pursuant to Water Code Sections 2100 – 2102, GSA actions pursuant to the adopted groundwater sustainability plan for the applicable groundwater subbasin. Groundwater Action shall also mean the approval of new well permits that will pump potable, brackish or other types of groundwater, which will adversely impact the availability of potable water for MCWD and/or the pumping of existing or new wells that adversely impacts the availability of potable water for MCWD.
- Land Use Jurisdiction (or LUJ), shall mean a FORA land use jurisdiction, which consists of the Cities of Marina, Monterey, Seaside, and Del Rey Oaks; the County of Monterey; California State University, Monterey Bay; California State Parks and Recreation; and University of California Monterey Bay Education, Science, and Technology Center. The Army is not a LUJ.
- Monterey Regional Water Pollution Control Agency (MRWPCA) is now known as Monterey One Water (M1W). Both City and MCWD are joint powers agency members of M1W.

- Ord Community Service Area shall mean the area within which MCWD provides water and recycled water services, and where applicable sewer collection services, to lands within the former Fort Ord.
- Party or Parties to this Agreement shall mean the City and the Marina Coast Water District.
- Potable water shall mean potable groundwater.
- SGMA shall mean the Sustainable Groundwater Management Act, Water Code Sections 10720, et seq.

### **Purpose**

The purpose of this Agreement is to recognize the existing rights and obligations of the City and MCWD regarding the provision of potable water and recycled water by MCWD to the City. Subject to the limitations, restrictions, and funding obligations described in this Agreement, MCWD intends to offer those services to every LUJ receiving potable groundwater Allocations and/or recycled water Allocations from FORA pursuant to the Base Reuse Plan on substantially similar terms and conditions as are contained in this Agreement, recognizing that each LUJ has different Allocations from FORA, have redevelopment plans specifically tailored for that LUJ, and LUJs served by the Seaside County Sanitation District do not contribute sewer flows for the Ord recycled water Allocation.

### **Key Service Terms**

1. The Parties agree with the applicable terms and conditions of the 1993 Fort Ord Annexation Agreement. The Parties agree to the FORA potable and recycled water Allocations under the Base Reuse Plan as set forth in FORA resolution 07-01 for potable water and FORA resolution 07-10 for recycled water as immediately set forth below and as may be amended by FORA prior to its termination, subject to change in accordance with Sections 2, 3, 4, and 5 of this Agreement:

## Allocations<sup>1</sup>

Land Use Jurisdiction or Use Type	Potable Water AFY	Recycled Water AFY	Total Water AFY
City of Marina (Ord Community)	1,340.0	345.0	1,685.0
City of Monterey	65.0	0.0	65.0
City of Seaside <sup>2</sup>	1,012.5	453.0	1,465.5
County of Monterey	720.0	134.0	854.0
CSUMB (CSU Trustees)	1,035.0	87.0	1,122.0
City of Del Rey Oaks	242.5	280.0	522.5
State Parks and Recreation Dept	44.5	0.0	44.5
U.S. Army <sup>3</sup>	1,562.0	0.0	1,562.0
UCMBEST (UC Regents)	230.0	60.0	290.0
Assumed Line Loss	348.5	68.0	416.5
<b>TOTAL ALL (ORD)</b>	<b>6,600.0</b>	<b>1,427.0</b>	<b>8,027.0</b>

2. MCWD's Authority to Enforce the Section 1 Allocations. City agrees that MCWD shall have the authority to enforce compliance by LUJs with the Section 1 Allocations. In the event that any LUJ's approved developments or water uses exceed the LUJ's approved Allocation, MCWD shall have the authority to decline to issue any water connection permits for any over-allocation until that LUJ brings its water Allocation into compliance. MCWD shall also update the Section 1 Allocations when there are changes to any Allocation due to Section 4, Section 5, or some other cause.

3. No Guarantee. City agrees that the above Potable Water Allocations and Recycled Water Allocations are not guaranteed to be supplied to the City by MCWD; however, MCWD will endeavor to supply the City's Allocations in accordance with the terms of this Agreement.

4. Reductions in Available Potable Water or Recycled Water. In the event of a Groundwater Action or other cause resulting in less than the amount of Potable Water or Recycled Water being available to MCWD to meet the above stated non-Army jurisdictions' Allocations, then MCWD would reduce the available Potable and/or Recycled Water Allocations in direct proportion to the Allocations set forth in the then current Section 1 table unless all of the LUJs agree to a different Allocation reduction formula or method. MCWD has no authority to reduce the Army's reserved Potable Water Allocation.

<sup>1</sup> The water supply sources for the 973 AFY of additional potable and/or recycled water are not included in the above table and they have not yet been identified and developed under Phase 3 described below.

<sup>2</sup> Under Article 2.a of Amendment No. 1 dated October 23, 2001, the Army agreed to reserve only 1,691 AFY, or 38 AFY less than the amount actually reserved by the Army in the October 23, 2001 deed. The 38 AFY was to be transferred to FORA and then to MCWD. FORA was to allocate the 38 AFY to the City of Seaside for the benefit of now Bay View Mobile Home Park subject to use limitations prescribed in Amendment No. 1 to be administered by the City of Seaside pursuant to its land use jurisdiction. MCWD has requested FORA to correct this oversight with the Army. Until the deeds are corrected, the City of Seaside's groundwater Allocation should be reduced by 38 AFY and the Army's reserved amount should be increased by 38 AFY.

<sup>3</sup> This is the amount of the 1993 MCWRA groundwater Allocation that the Army reserved for Federal Government uses and is not a FORA Allocation.

For example, if as a result of a Groundwater Action, MCWD needs to reduce the total Potable Water Allocations by 10%, then the City of Del Rey Oaks' Allocation would be reduced from 242.5 AFY to 218.25 AFY unless all of the LUJs agree to a different Allocation reduction formula or method, such as the result of a transfer under Section 5.

5. Transfers or Leases of Allocations between Willing LUJs. Any two or more LUJs may agree to transfer or lease Potable Water or Recycled Water Allocations on terms agreeable to the involved LUJs, subject to MCWD's approval (a) as to whether any infrastructure improvements or changes would be required to implement any such transfer or lease and (b) of a written agreement with the involved LUJs, including but not limited to, as to how all such infrastructure costs are to be paid, as to any resulting operational changes or service limitations, and as to what changes should be made to the Section 1 Allocations.

6. Description of post-FORA RUWAP Phases 1 through 4.

Phase 1	600 AFY of PWM advanced treated water
Phase 2	827 AFY of PWM advanced treated water
Phase 3	927 AFY of yet to be determined potable and/or recycled water
Phase 4	Additional potable and/or recycled water needed by LUJs

a. Phases 1, 2, and 3 are intended to develop the water supply needed to meet FORA's 2007 Potable and Recycled Water Allocations described in Section 1 for the FORA Base Reuse Plan redevelopment projects over approximately the next 15 years. Those redevelopment projects are listed in MCWD's 2020 Master Plans. Phase 4 is any additional water needed by MCWD after Phases 1 – 3 to meet water demands within the Ord Community service area.

b. Phase 1 of the Regional Urban Water Augmentation Project ("RUWAP") will provide 600 AFY of Pure Water Monterey ("PWM") advanced treated water. Under the Pure Water Delivery and Supply Project Agreement dated April 8, 2016, as amended, between MRWPCA and MCWD, MCWD will receive up to 600 AFY of advance treated water.

c. When funded and constructed, Phase 2 of the RUWAP will provide 827 AFY, or a total 1,427 AFY of PWM advanced treated water from Phases 1 and 2 for the Ord Community and be allocated in accordance with Section 1 above.

d. Phase 3 of the RUWAP is for 973 AFY, the remaining balance of the 2,400 AFY Water Augmentation Target under the FORA Base Reuse Plan.

e. Phase 4 of the RUWAP would be additional water supplies over and above the 2,400 AFY to be supplied under Phases 1, 2, and 3. The Phase 4 water sources and projects have yet to be identified, planned, and developed. Uses for this water could include, but are not limited to, water needed to meet increased water demand within the Ord Community service area, for new development, and to firm up and protect Potable groundwater supplies.

7. MCWD agrees to develop and secure the water supply sources necessary to supply the water for the Potable Allocations and the Recycled Water Allocations, subject to compliance

with all applicable laws including, but not limited to, CEQA and SGMA. In the event of a Groundwater Action or other cause that limits MCWD's extraction of groundwater to less than the total Potable Allocations, MCWD commits to pursuing a replacement water supply in accordance with this Agreement.

a. Any project by MCWD to develop or secure new or replacement water supply sources under this Agreement shall be subject to a process of thorough public review and input and all necessary and appropriate approvals. That process must also include environmental review under CEQA before MCWD may consider approving the project; and the project may require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this Agreement commits, or shall be deemed to commit, MCWD or any other governmental body to approve or implement any project to develop or secure new water supplies, and they may not do so until environmental review of the project as required under CEQA has been completed. Accordingly, all references to new water supply projects in this Agreement shall mean the proposed project subject to future environmental review and consideration by MCWD. MCWD and any other public agency with jurisdiction over any part of the project shall have the absolute discretion before approving the project to: (i) make such modifications to the project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the project; (iv) balance the benefits of the project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the project.

b. MCWD agrees to develop and provide other, additional, new water supplies as part of RUWAP Phase 4 or later phases as requested by City provided that MCWD can obtain sufficient rights in the new water supply source, a funding source to develop the new water supply has been secured, and the environmental review for the new supply as required under CEQA has been completed.

c. The Parties agree to work with the other LUJs for RUWAP Phase 4 and later phases to optimize economies of scale and scope in meeting the needs of all the parties that are participating in the applicable work and the needs of the Central Marina service area.

8. MCWD will not be required to proceed with the development of a new or replacement water supply (a) until a funding source and a rate structure to recover all costs are identified, secured, and approved by MCWD; (b) environmental review of the project as required under CEQA has been completed; (c) compliance with SGMA and any other applicable law reasonably appear to be achievable; and (d) MCWD can obtain sufficient rights in the new or replacement water supply source.

9. Unutilized Federal Government Potable Water Allocation and Wastewater Treatment Capacity.

a. City agrees that the 38 AFY of the Army's potable water Allocation described in the footnote 2 to the Section 1 Allocations table of this Agreement shall be transferred by the Army

to MCWD to be included in the City of Seaside's potable water Allocation.

b. City agrees that MCWD shall have the first right of refusal to any other potable water Allocation released by the Army. MCWD agrees to reallocate any such additional water on an equitable basis subject to agreement of all of the LUJs, provided that if all of the LUJs cannot agree, then MCWD will reallocate proportionately based upon the then current potable water Allocations in Section 1, subject to securing a funding source to develop the new water supply and the environmental review for the new supply as required under CEQA has been completed.

c. City agrees that MCWD shall have the first right of refusal to any sewer treatment capacity released by the Army.

10. Water User Advisory Committee. The Parties agree that regular coordination meetings will be held between MCWD and the LUJs who sign a New Ord Community Services Agreement.

11. Rights-of-Way/Easements for MCWD Water Infrastructure.

a. City agrees to provide the necessary rights-of-way/easements within its jurisdictional boundaries to MCWD without charge to MCWD in order for MCWD to provide potable and/or recycled water services to customers within the City's jurisdictional boundaries. Water Code Section 31060, et seq.

b. In accordance with Government Code Section 6103.6, City may recover staff time costs to process the rights-of-way/easements and to inspect any MCWD right-of-way work within its jurisdictional boundaries.

c. Where a right-of-way or easement is oversized to accommodate a larger pipeline or other infrastructure to serve customers outside of the City's jurisdictional boundaries, then City may receive reasonable compensation for the oversizing.

### **Dispute Resolution**

12. Dispute Resolution

a. Dispute resolution procedure. If any dispute arises between the Parties as to the proper interpretation or application of this Agreement, the Parties shall resolve the dispute in accordance with this section.

b. Duty to meet and confer. If any dispute under this Agreement arises, the Parties shall first meet and confer, in an attempt to resolve the matter. Each Party shall make all reasonable efforts to provide to the other Party all the information that the Party has in its possession that is relevant to the dispute, so that both Parties will have ample information with which to reach a decision.

c. Mediation and Voluntary Binding Arbitration.

(1) If the dispute is not resolved within sixty (60) days after the first meeting under Subsection 12.b, then any Party may notify the other Party that the notifying Party elects to submit the dispute to mediation. If the other Party agree to submit the dispute to mediation, then the Parties will jointly select a mediator. The terms of mediation shall be set by agreement of the Parties and the mediator.

(2) If the dispute is not resolved by meeting and conferring, and mediation does not occur or is unsuccessful, any Party may serve the other Party with a request for binding arbitration by a single neutral arbitrator. The request must set forth the nature of the dispute and the claim or relief sought.

(3) If the other Party to the dispute does not agree to submit the dispute to binding arbitration, then the other Party shall serve written notice of that to the Party requesting binding arbitration. Alternatively, the Parties may agree to not submit the dispute to binding arbitration.

(4) If the Parties agree to submit the matter to binding arbitration, the Parties will jointly select a single arbitrator. If the Parties cannot agree on a person to serve as the arbitrator, the dispute shall be submitted to one neutral arbitrator selected from a list of at least three neutral arbitrators proposed by mutual agreement of the Parties. Each candidate shall have at least five (5) years' experience with the same or similar type disputes as the dispute or disputes at issue, unless the Parties agree otherwise. The Parties agree to select the arbitrator by alternate strikes. The Party who served the request for binding arbitration shall strike first. If the Parties are unable to agree on a single arbitrator, then the Parties shall request the Presiding Judge of the Monterey County Superior Court to appoint an arbitrator who has the above minimum required experience. The cost of the arbitrator shall be shared equally among the Parties. Unless otherwise agreed by the Parties, the arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules & Procedures ("Rules"), but not necessarily under the auspices of JAMS. The Parties agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the arbitrator, and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery will be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein unless the Parties agree otherwise. The Parties hereby consent to the jurisdiction of the applicable Superior Court for the confirmation, correction or vacation of any arbitration award, except that nothing in this Agreement is intended to prevent any disputing Party from filing a motion under Code of Civil Procedure Section 394. The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator will have no power to award punitive damages or other damages not measured by the Party's actual damages against any Party. This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to arbitrate sufficient to vest jurisdiction in a court with respect to that issue. The arbitrator's award will be deemed final, conclusive and binding to the fullest extent allowed by California law, and may be entered as a final judgment in court.

13. Lawsuit in lieu of Binding Arbitration. If the Parties do not agree to submit the dispute to binding arbitration, then any Party may file a lawsuit in a court with jurisdiction over the dispute within ninety

(90) calendar days of the date of the notice or agreement under Subsection 12.c.(3) above. Nothing in this Agreement is intended to prevent any disputing Party from filing a motion under Code of Civil Procedure Section 394.

### **General Provisions**

14. **Assignment.** No Party may sell, transfer, or assign any of its right or interest under this Agreement, in whole or in part, without prior written consent of the other Party.

15. **Amendment.** This Agreement or any provision hereof may be changed, waived, or terminated only by a writing signed by both Parties.

16. **No Waiver.** No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.

17. **Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended thusly, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.

18. **Entire Agreement.** This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.

19. **Choice of Law.** This Agreement will be construed in accordance with the laws of the State of California.

20. **Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.

21. **Headings.** The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

22. **Notices.** Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the

extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to all other Parties in compliance with this section):

**If delivered to City:**

**If delivered to MCWD:**

23. No Third-Party Beneficiaries. Except for the Parties and their respective successors and assigners, nothing in this Agreement, whether express or implied, is intended to confer any rights on any person or entity whatsoever.

24. No Breach of Other Agreements. Each Party warrants that the Party's execution and performance of this Agreement will not result in the breach of any other agreement to which that Party is a party, or to which that Party is otherwise subject or bound.

25. No Party Drafter. No Party to this agreement shall be considered its drafter. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

26. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties.

IN WITNESS WHEREOF, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

Exhibit A: MCWD's DRO Water Service Area

NOTE: ON EXHIBIT A, ONLY THE DRO WATER SERVICE AREA WILL BE HIGHLIGHTED.



# CITY OF DEL REY OAKS

650 CANYON DEL REY RD. • DEL REY OAKS, CALIFORNIA 93940  
PHONE (831) 394-8511 • FAX (831) 394-6421

**DATE:** May 26, 2020

**TO:** Honorable Mayor and City Council

**FROM:** Dino Pick, City Manager

**SUBJECT:** Memorandum of Agreement Regarding Transfer of Funds and Project Responsibility for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements

**CEQA:** This action does not constitute a project within the meaning of Section 15378(a) of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly, and is not a "project" pursuant to Section 15378(b)(5). If this Resolution is found to be a project under CEQA, it is exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

## **RECOMMENDATION:**

Approve Resolution 2020-10 (attachment A) authorizing the City Manager to execute a Memorandum of Agreement (MOA) (attachment B) to support the transfer of the South Boundary Roadway and the Intersection at General Jim Moore Boulevard improvements to the City of Del Rey Oaks.

## **BACKGROUND/DISCUSSION:**

Due to FORA's pending sunset on June 30, 2020, it is necessary to transfer project responsibility and funding for South Boundary Road improvements from FORA to the City. Meetings were held between the City and FORA to discuss the transfer in February and March 2020.

At the April 30, 2020 FORA Board Meeting, the Board received a report on the status of FORA's efforts to transition three on-going CIP projects and one General Fund project to the underlying jurisdictions of the Cities of Del Rey Oaks, Marina and Seaside, and Monterey County. During that meeting the funds approved in the 2019/2020 Mid-Year General and GIP Budget update were authorized for transfer. The approval and establishment of the

{AJL-00990426;1}

2019/2020 Mid-Year Budget was a critical step to facilitate the transfer of funds to support these projects.

As identified in the April 30, 2020 FORA Board Report, an MOA between FORA and each recipient of funds is required to be executed prior to fund transfer. FORA has been working with each of the jurisdictions to identify the appropriate terms and conditions to be captured in each MOA. These MOAs will enable the transition of projects from FORA by: defining each party's responsibilities; outlining the requirements for transfer of authorized funds; acknowledging the transition of lead agency status to the jurisdictions where applicable; coordinating the transfer of project related data, information and reporting; and closing out and/or reassigning contracts as appropriate.

With regard to the Memorandum of Agreement Regarding Funding to be provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements, the following is a summary of key provisions:

- The City of Del Rey Oaks will undertake management of the improvements to South Boundary Roadway and the intersection at General Jim Moore Boulevard as currently designed with the funds transferred from FORA pursuant to the MOA. .
- FORA will: 1) fund two escrow holding accounts - one for the estimated construction costs of South Boundary Roadway Improvements for Seven Million Two Hundred Sixty Nine Thousand Eight Hundred Thirteen Dollars (\$7,269,813), and one for the estimated construction costs of the Intersection at General Jim Moore Boulevard for One Million Fifty Six Thousand One Hundred Sixty Eight Dollars (\$1,056,168); and 2) transfer to the City of Del Rey Oaks the combined design services estimate for the Improvements of Five Hundred Eighteen Thousand Five Hundred Sixty Four Dollars (\$518,564).
- FORA will assign the Whitson contract work associated with the design of the improvements to the City.
- The City will assume responsibility for any further necessary environmental analysis, review, or approvals, and for the implementation and supervision of any mitigation measures or monitoring program adopted in connection with any environmental approvals for the improvements, as well as any required coordination with the City of Monterey or any other governmental entities.

MOA Status: The FORA board approved the draft MOA on May 14, 2020.

{AJL-00990426;1}

**FISCAL IMPACT:**

Approval of the MOA will allow the transfer of \$8,844,545 to the City.

**APPROVED**

---

Dino Pick, City Manager

**ATTACHMENTS:**

- A. Resolution 20-10 : Authorizing City Manager to execute an MOA Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements or in substantially similar forms containing such modifications as the City Manager may deem necessary or appropriate to carry out the purposes of the MOAs.
  
- B. Memorandum of Agreement Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements

**Resolution No. 2020-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL REY OAKS  
APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF  
AGREEMENT WITH REGARD TO THE SOUTH BOUNDARY ROADWAY AND THE INTERSECTION  
AT GENERAL JIM MOORE BOULEVARD IMPROVEMENTS**

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

WHEREAS, the existence of the Fort Ord Reuse Authority (“FORA”) is scheduled to terminate in accordance with state law on June 30, 2020 (“FORA’s Termination Date”).

WHEREAS, it is not feasible for FORA to complete all of the plans, building removal work, repairs, and improvements originally conceived in connection with FORA’s General Fund and Capital Improvements Programs before FORA’s Termination Date.

WHEREAS, the City of Del Rey Oaks is willing to undertake current efforts by FORA regarding relocation and/or reconfiguration of the existing intersection of General Jim Moore Boulevard with South Boundary Road and an upgrade of that portion of South Boundary Road located between its intersection with General Jim Moore Boulevard.

WHEREAS, the City of Del Rey Oaks is also willing to undertake responsibility for any further necessary environmental analysis, review, or approvals, implementation and supervision of any mitigation measures or monitoring program adopted in connection with any environmental approvals for the improvements, and any required coordination with the City of Monterey or any other governmental entities.

WHEREAS, FORA entered into a professional services contract dated November 17, 2017 with Whitson Engineers, Inc. (“Whitson”) for engineering services in connection with the contemplated improvements, which contract was subsequently amended four (4) times (and as so amended may be referred to herein as the “Whitson Contract”). Whitson’s work under the Whitson Contract has not yet been completed.

WHEREAS, with the consent of Whitson, FORA is willing to assign the Whitson Contract to the City of Del Rey Oaks.

WHEREAS, the actions contemplated in this Resolution do not constitute a project within the meaning of Section 15378(a) of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly, and is not a “project” pursuant to Section 15378(b)(5). If this Resolution is found to be a project under CEQA, it is exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

NOW THEREFORE BE IT RESOLVED the City Council of Del Rey Oaks hereby resolves as follows:

1. The foregoing recitals are true and correct.
2. The City Council hereby approves the Memorandum of Agreement, and authorizes and directs the City Manager to execute it, and deliver it to the Fort Ord Reuse Authority on behalf of City of Del Rey Oaks in such forms, or in substantially similar forms containing such modifications as the City Manager may approve as necessary or appropriate to carry out the purposes of the Memoranda of Agreement.
3. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City of Del Rey Oaks, to do any and all things and take any and all actions, which he may deem necessary or advisable as contemplated by the Memorandum of Agreement or otherwise in order to effectuate the transfer of the funds and where applicable the assignment of the contracts as contemplated by the Memorandum of Agreement.
4. This Resolution shall take effect immediately.

INTRODUCED AND ADOPTED ON May 26, 2020 by the City Council of Del Rey Oaks by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVE:

---

Alison Kerr, Mayor

ATTEST:

---

Danial D. Pick, City Clerk

**MEMORANDUM OF AGREEMENT  
REGARDING FUNDING TO BE PROVIDED FOR  
THE SOUTH BOUNDARY ROADWAY AND THE INTERSECTION AT GENERAL  
JIM MOORE BOULEVARD IMPROVEMENTS**

This Memorandum of Agreement ("MOA") is made and entered into effective as of \_\_\_\_\_ 2020, (the "Effective Date") by and between the Fort Ord Reuse Authority ("FORA"), a California public agency, and the City of Del Rey Oaks (the "City"), a California general law city. FORA and the City are sometimes referred to herein in the singular as a "Party" and collectively as the "Parties."

**Recitals**

A. The "Improvements" consist of (i) relocation and/or reconfiguration of the existing intersection of General Jim Moore Boulevard with South Boundary Road and (ii) an upgrade of that portion of South Boundary Road located between its intersection with General Jim Moore Boulevard to 200 feet east of its intersection with Rancho Saucito Road.

B. FORA entered into a professional services contract dated November 17, 2017 with Whitson Engineers, Inc. ("Whitson") for engineering services in connection with the contemplated Improvements, which contract was subsequently amended four (4) times (and as so amended may be referred to herein as the "Contract"). Whitson's work under the Contract has not yet been completed.

C. FORA is scheduled to terminate in accordance with state law on June 30, 2020 ("FORA's Termination Date"). It is not possible to complete the Improvements before FORA's Termination Date and accordingly FORA will not undertake the Improvements. However, the City wishes to undertake the Improvements following FORA's sunset and FORA is willing to make the below-described funding available to the City, each on all of the terms and conditions set forth in this MOA.

D. FORA's Capital Improvement Program for fiscal years 2018/2019 and 2019/2020 includes the Improvements. FORA's Board of Directors (the "Board") has recently approved and committed to reserving the amount of Seven Million Two Hundred Sixty-Nine Thousand Eight Hundred Thirteen Dollars (\$7,269,813) to be available to cover the currently estimated construction and related costs of the South Boundary Roadway elements of the Improvements (to be deposited into an escrow account established with Fidelity National Title, Inc. as escrow holder); One Million Fifty-Six Thousand One Hundred Sixty-Eight Dollars (\$1,056,168) to be available to cover the currently estimated construction and related costs of the Intersection at General Jim Moore Boulevard elements of the Improvements (to be deposited into a separate escrow account established with Fidelity National Title, Inc. as escrow holder); and Five Hundred Eighteen Thousand Five Hundred Sixty-Four Dollars (\$518,564) to be available to cover the combined design services estimate for the Improvements (to be transferred to the City). Accordingly, the Parties now wish to enter into this MOA to provide for the aggregate amount of Eight Million Eight Hundred Forty-Four Thousand Five Hundred Forty-Five Dollars

(\$8,844,545) to be deposited into escrow accounts and transferred to the City as outlined above (which funds may collectively be referred to as the "Improvement Funds").

E. Inasmuch as FORA will not be carrying out the Improvements, but rather will only make the Improvement Funds available to the City as provided in this MOA, responsibility for any further necessary environmental analysis, review, or approvals, implementation and supervision of any mitigation measures or monitoring program adopted in connection with any environmental approvals for the Improvements, coordination with the City of Monterey or any other governmental entities, and defense of any action brought to challenge completion of the Improvements, environmental approvals relating thereto, or any failure of the City to timely and fully carry out all responsibilities as lead agency for the Improvements in compliance with all applicable laws shall be that of the City and not of FORA.

### **Agreement**

In consideration of the mutual terms, covenants and conditions contained herein the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated into this MOA by this reference.
  
2. **FORA's Obligations.** Within seven (7) calendar days of the full signing of this MOA, FORA will deposit Seven Million Two Hundred Sixty-Nine Thousand Eight Hundred Thirteen Dollars (\$7,269,813) and One Million Fifty-Six Thousand One Hundred Sixty-Eight Dollars (\$1,056,168) into the escrow accounts described above and transfer and pay to the order of the City Five Hundred Eighteen Thousand Five Hundred Sixty-Four Dollars (\$518,564). The City agrees to accept from FORA, the aggregate amount of Eight Million Eight Hundred Forty-Four Thousand Five Hundred Forty-Five Dollars (\$8,844,545), as so deposited into escrow accounts and paid to the City in full satisfaction of any obligation of FORA to provide funding for the Improvements. With the consent of Whitson, FORA will assign the Contract to the City.
  
3. **City's Obligations.** With the consent of Whitson, the City will accept assignment of the Contract from FORA. The City may in its discretion use the Improvement Funds to complete the Improvements or any portion thereof; provided, however, that the, City may not use the Improvement Funds for any other purpose. If the City enters into any agreements for the completion of the Improvements or any portion thereof and uses any of the Improvement Funds to pay for such work, those agreements shall include requirements to pay prevailing wages in accordance with state law and the FORA Master Resolution. To the extent that the Improvement Funds are insufficient to fully cover completion of the Improvements, the City will be responsible for paying or arranging for the payment of any excess costs. From and after the full signing of this MOA, the City shall timely and fully carry out all responsibilities as lead agency for the Improvements in compliance with all applicable laws.

4. **Notification to State Clearinghouse.** Promptly following the full signing of this MOA, the Parties shall cooperate in providing appropriate notification to the California Office of Planning and Research's State Clearinghouse that FORA is not carrying out the Improvements and that the City has assumed the role of lead agency for the Improvements.
  
5. **Term.** The term of this MOA shall begin on the Effective Date and continue until FORA's Termination Date, unless terminated earlier as provided herein; provided, however, that the City's obligations to (a) use the Improvement Funds solely for completion of the Improvements or a portion thereof, as set forth in Section 3 above and (b) distribute unexpended funds in accordance with the terms of this MOA if the Improvements are not timely completed, as set forth in Section 10 below shall remain in full force and effect until final completion of the Improvements as evidenced by the recording of Notices of Completion in the Official Records of Monterey County.
  
6. **Accounting and Records.** FORA (until FORA's Termination Date) and the City shall each maintain and account for the funds related to the Improvements. Promptly following the full signing of this MOA, FORA will coordinate with the City to identify goals and needs with respect to information transfer and to develop a program to implement the same before FORA's Termination Date. FORA will exercise good faith and commercially reasonable efforts to provide the City with copies of available and appropriate documents and records pertaining to the Improvements which have reasonably been requested by the City in writing.
  
7. **Parties' Representatives.** This MOA shall be coordinated between the Parties through the City's Manager and FORA's Executive Officer.
  
8. **Reserved.**
  
9. **Indemnification.** Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees.
  
10. **Termination.** If through any cause either Party fails to fulfill in a timely and proper manner its obligations under this MOA, or violates any of the terms or conditions of this MOA or applicable Federal or State laws and regulations, the non-breaching Party may terminate this MOA upon seven (7) calendar days written notice to the breaching Party. In the event that the Improvements have not been completed within ten (10) years after the Effective Date of this MOA, then any funds remaining unexpended as of that date shall be distributed as follows: Twenty percent (20%) may be retained by the City and twenty percent (20%) shall be distributed to each of the County of Monterey and the Cities of Marina, Monterey, and Seaside.
  
11. **Applicable Law.** This MOA shall be construed and interpreted under the laws of the State of California.

12. **Severability.** In the event any part of this MOA is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such part shall be deemed severed from the remainder of the MOA and the remaining provisions shall continue in full force without being impaired or invalidated in any way.

13. **Assignment.** Neither Party may assign this MOA or any part hereof, without written consent and prior approval of the other Party and any assignment without said consent shall be void and unenforceable.

14. **Amendment.** No amendment, modification, alteration, or variation of the terms of this MOA shall be valid unless made in writing and signed by authorized representatives for the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties thereto.

15. **Time of the Essence.** Time is of the essence for each and every provision of this MOA.

16. **Notices.** Any notice required or permitted under this MOA, shall be in writing and shall be deemed served on the date personally delivered or three (3) business days after being sent by certified mail, return receipt requested, addressed as follows, unless otherwise notified in writing of a change of address:

To the City: City Manager  
City of Del Rey Oaks  
650 Canyon Del Rey Boulevard  
Del Rey Oaks, CA 93940

To FORA: Executive Officer  
Fort Ord Reuse Authority  
920 2nd Avenue, Suite A  
Marina, CA 93933

17. **Authority.** Each Party represents and warrants to the other Party that it is authorized to execute, deliver and perform this MOA, and the terms and conditions hereof are valid and binding obligations of the Party making this representation.

18. **Compliance with Laws.** The Parties agree to comply with all applicable local, state and federal laws and regulations. The City further agrees to comply with all applicable public works contracting requirements.

19. **Venue.** Both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Monterey County, California.

20. **Survival.** All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this MOA shall survive any such expiration or termination.

21. **Relationship of the Parties.** It is understood that this MOA is entered into by and between two public entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.
22. **Third-Party Beneficiaries.** In order to provide a mechanism for enforcement of the City's obligations set forth in clauses (a) and (b) of Section 5 above after FORA's Termination Date, the County of Monterey and the Cities of Marina, Monterey and Seaside are each hereby made an intended third-party beneficiary of this MOA.
23. **Reserved.**
24. **Interpretation.** This MOA, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.
25. **Counterparts.** This MOA may be signed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The signature page of this MOA or any Amendment may be executed by way of a manual or authorized signature. Delivery of an executed counterpart of a signature page to this MOA or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOA or any Amendment.
26. **Reserved.**
27. **Entire Agreement.** This MOA contains the entire understanding between the Parties and supersedes any prior written or oral understandings and agreements regarding the subject matter of this MOA. There are no representations, agreements, arrangements or understandings, or written, between the Parties relating to the subject matter of this MOA which are not fully expressed herein.

The Parties have executed this MOA on the date(s) written below:

FORT ORD REUSE AUTHORITY

CITY OF DEL REY OAKS

\_\_\_\_\_  
Joshua Metz  
Executive Officer

\_\_\_\_\_  
Dino Pick  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Authority Counsel

\_\_\_\_\_  
City Attorney



# CITY OF DEL REY OAKS

650 CANYON DEL REY RD. · DEL REY OAKS, CALIFORNIA 93940  
PHONE (831) 394-8511 · FAX (831) 394-6421

**DATE:** May 26, 2020

**TO:** Honorable Mayor and City Council

**FROM:** Dino Pick, City Manager

**SUBJECT:** Joint Community Facilities Agreement to transfer CFD funds from the Fort Ord Reuse Authority to the City of Del Rey Oaks

**CEQA:** This Action is not a project within the meaning of Section 15378(a) of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly, and is not a “project” pursuant to Section 15378(b)(5). If this Resolution is found to be a project under CEQA, it is exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

## **RECOMMENDATION:**

Adopt Resolution 20-09: Approving and Authorizing the Execution and Delivery of a Joint Community Facilities Agreement (JCFA) with the Fort Ord Reuse Authority (FORA) and Approving Related Actions.

## **BACKGROUND/DISCUSSION:**

The FORA Board and Administrative Committees met as the Habitat Management Committee to determine the way forward regarding the habitat management and the disposition of Habitat Conservation Plan (HCP) endowment funds collected through the FORA Community Facilities District (CFD). The JCFA provides for the conveyance of CFD funds set aside for habitat management to underlying land use jurisdictions, as approved by the FORA Board at its April 17, 2020 Board Meeting. A JCFA (Attachment A) was approved at the FORA board meeting on May 14, 2020. The JCFAs contain provisions to address the following primary issues:

1. Acknowledgment that, after FORA's sunset, the underlying land use jurisdictions will be responsible for habitat management within their own territories.
  2. Allocation and delivery to the underlying land use jurisdictions of unexpended
- {AJL-00990426;1}

CFD funds set aside by FORA for habitat management.

3. Transferred funds are to be held by the recipient in a segregated account used exclusively for payment of the costs of habitat management and related expenses.

The attached Resolution to approve the JCFA (Attachment B) also specifies percentages for the allocation of Habitat Funds for each of the recipients, which were originally authorized by FORA Board direction on April 17, 2020.

The May 14, 2020 FORA board packet is also attached (Attachment C) for reference.

**FISCAL IMPACT:**

The City of Del Rey Oaks would receive approximately \$750,000 from FORA.

**ATTACHMENTS:**

- A. Joint Community Facilities Agreement
- B. Resolution 20-09: Approving and Authorizing the Execution and Delivery of Joint Community Facilities Agreement with FORA.
- C. FORA Agenda item packet, May 14, 2020

Respectfully Submitted,

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Dino Pick  
City Manager

## JOINT COMMUNITY FACILITIES AGREEMENT

This Joint Community Facilities Agreement (this "**Agreement**") is made by and between the Fort Ord Reuse Authority ("**FORA**") and the City of Del Rey Oaks California (the "**Participating Agency**") with reference to the following facts and objectives.

**A.** In 2002, FORA established the Fort Ord Reuse Authority Basewide Community Facilities District (the "**CFD**"), pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 *et seq.*), as amended (the "**Act**") for the purpose of collecting special taxes under the Act to finance, among other things, the construction of certain roadway improvements, transit improvements, water and storm drain improvements, other public facilities, and for costs related to habitat management within the CFD or otherwise incident to or required by reason of the development of property within or adjacent to the CFD, all as more particularly described in that Notice of Special Tax Lien recorded on May 22, 2002 as Document No. 2002048932 in the office of the County Recorder of the County of Monterey, California. FORA subsequently earmarked a portion of the special taxes so collected to finance the services described in Exhibit A attached hereto and incorporated herein by this reference (the "**Habitat-Related Services**"), resulting in accumulated funds having an approximate aggregate current unexpended balance of \$ \_\_\_\_\_ (the "**Habitat Funds**").

**B.** FORA is scheduled to terminate on June 30, 2020 ("**FORA's Termination Date**") in accordance with the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.*), as amended. This Agreement is necessary to provide for the orderly transition of governmental finances in connection with the termination of FORA. Prior to FORA's Termination Date, FORA plans to allocate, divide, and distribute to each of the Participating Agency and certain other public entities having habitat management responsibilities within the former Fort Ord and which enter into a joint community facilities agreement with FORA a portion of the then unexpended Habitat Funds in accordance with the formula set forth in Exhibit B attached hereto and incorporated herein by this reference. The Participating Agency's allocated portion of such unexpended Habitat Funds may be referred to herein as the "**Allocated Funds**."

**C.** The parties hereto expect that the Participating Agency will provide some of the Habitat-Related Services, particularly those that pertain to real property within the Participating Agency's territorial limits (the "**Covered Services**").

**D.** FORA and the Participating Agency now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the use of that portion of the Habitat Funds allocated to the Participating Agency for its use in connection with the provision of the Covered Services, all as more particularly set forth below.

NOW, THEREFORE, based on the foregoing and in consideration of the mutual terms, covenants and conditions contained in this Agreement and for other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1. Delivery and Segregation of Allocated Funds.** Prior to FORA's Termination Date, FORA shall deliver the Allocated Funds to the Participating Agency. The Allocated Funds, together with any earnings thereon, shall be held by the Participating Agency in an account separate and apart from any other account maintained by the Participating Agency (the "**Allocated Funds Account**"). Funds in the Allocated Funds Account shall be used exclusively for payment of the costs of the Covered Services. Other than by providing the Allocated Funds, FORA shall have no obligation to pay for any of the costs of the Covered Services. It will be the responsibility of the Participating Agency to pay, or arrange for the payment of, any costs of the Covered Services in excess of the funds available in the Allocated Funds Account.

**Section 2. Mitigation Monitoring and Reporting.** Following FORA's Termination Date, the Participating Agency shall be solely responsible for carrying out any mitigation monitoring and reporting or other similar requirements associated with the Covered Services.

**Section 3. Limited Obligations.** All obligations of FORA under and pursuant to this Agreement shall be limited to the amounts it provides for deposit into the Allocated Funds Account. No member of FORA's board of directors or any officer, employee, representative, or agent of FORA shall in any event be personally liable hereunder.

**Section 4. Term.** The term of this Agreement shall begin on the full signing of this Agreement by the parties and continue until FORA's Termination Date; provided, however, that the Participating Agency's obligations hereunder shall remain in full force and effect until the exhaustion of all amounts in the Allocated Funds Account by proper expenditure thereof by the Participating Agency to pay the costs of the Covered Services. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

**Section 5. Agreement of Public Benefit.** By their respective approvals of this Agreement, FORA and the Participating Agency have each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in assuring the provision of financing for a portion of the costs of the Covered Services in furtherance of the purposes of the Act.

**Section 6. Partial Invalidity.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

**Section 7. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto

**Section 8. Third-Party Beneficiaries.** In order to provide a mechanism for enforcement of the Participating Agency's obligations under this Agreement after FORA's

Termination Date, the County of Monterey and the Cities of Marina, Monterey and Seaside are each hereby made an intended third-party beneficiary of this Agreement.

**Section 9. Amendment.** This Agreement may be amended at any time but only in writing signed by each party hereto.

**Section 10. Cooperation.** Each of the parties agrees to use reasonable and good faith efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with any and all other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement including signing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to carry out the intent and purpose of this Agreement.

**Section 11. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement.

**Section 12. Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in such State.

**Section 13. Interpretation.** This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

**Section 14. Execution in Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. Faxed, photocopied or e-mailed signatures shall be deemed originals for all purposes. This Agreement shall be effective as to each party when that party has executed and delivered a counterpart hereof.

**Section 15. Authority.** Each party represents and warrants to the other that it is authorized to execute, deliver and perform this Agreement, and the terms and conditions hereof are valid and binding obligations of the party making this representation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written beneath their respective signatures below.

**FORTORDREUSE AUTHORITY**

\_\_\_\_\_ **OF** \_\_\_\_\_

By: -----  
Josh Metz, Executive Officer

By: .....  
\_\_\_\_\_

Dated: \_\_\_\_\_, 2020

Dated: \_ \_ \_ \_ \_ 2020

ATTEST:

ATTEST:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Authority Counsel

\_\_\_\_\_  
[City Attorney/County Counsel]

## EXHIBIT A

### DESCRIPTION OF THE HABITAT-RELATED SERVICES

Habitat Management within or in the vicinity of the CFD, or otherwise incident to or required by reason of development of the property within and adjacent to the CFD.

For the purposes of this Agreement, "**Habitat Management**" includes, without limitation, all work and activities to study and review environmental impacts and mitigation measures, as well as legal and overhead costs pertaining thereto.

**EXHIBIT B**

**FORMULA FOR ALLOCATION OF UNEXPENDED HABITAT FUNDS**

County of Monterey	79.9%
City of Marina	7.9%
City of Seaside	7.4%
City of Del Rey Oaks	4.5%
City of Monterey	<u>0.3%</u>
TOTAL	100%

**RESOLUTION NO. 2020-09**

**A RESOLUTION OF THE CITY OF DEL REY OAKS CITY COUNCIL APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF JOINT COMMUNITY FACILITIES AGREEMENT WITH THE FORT ORD REUSE AUTHORITY AND APPROVING RELATED ACTIONS**

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

WHEREAS in 2002, the Fort Ord Reuse Authority ("FORA") established the Fort Ord Reuse Authority Basewide Community Facilities District (the "CFD"), pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 533'11 *et seq.*), as amended (the "Act") for the purpose of collecting special taxes under the Act to finance, among other things, the construction of certain roadway improvements, transit improvements, water and storm drain improvements, other public facilities, and for costs related to habitat management (including, without limitation, all work and activities to study and review environmental impacts and mitigation measures, as well as legal and overhead costs pertaining thereto) within the CFD or otherwise incident to or required by reason of the development of property within or adjacent to the CFD, all as more particularly described in that Notice of Special Tax Lien recorded on May 22, 2002 as Document No. 2002048932 in the office of the County Recorder of the County of Monterey, California. FORA subsequently earmarked a portion of the special taxes so collected to finance habitat management (collectively, the "Habitat-Related Services").

WHEREAS the existence of the Fort Ord Reuse Authority ("FORA") is scheduled to terminate in accordance with state law on June 30, 2020 ("FORA's Termination Date").

WHEREAS the special taxes collected through the CFD and earmarked for Habitat-Related Services will not have been fully expended by FORA's Termination Date.

WHEREAS from and after FORA's Termination Date, each of the Cities of Del Rey Oaks, Marina, Monterey, and Seaside will be responsible for the provision of Habitat-Related Services in designated portions of the former Fort Ord that are within their individual territorial limits and the County of Monterey will be responsible for the provision of Habitat-Related Services in designated portions of the unincorporated territory of the County of Monterey located within the former Fort Ord.

WHEREAS FORA desires to make certain funding available to the County of Monterey and the Cities of Del Rey Oaks, Marina, Monterey, and Seaside to support the continued provision of Habitat-Related Services within their respective territories. FORA's Board of Directors (the "Board") determined at its April 17, 2020 meeting that the percentage of the unexpended special taxes collected through the CFD and earmarked for Habitat-Related services to be transferred to the respective jurisdictions upon their entry into Joint Community Facilities Agreements with FORA will be as follows:

County of Monterey	79.9%
City of Marina	7.9%
City of Seaside	7.4%
City of Del Rey Oaks	4.5%
City of Monterey	<u>0.3%</u>
TOTAL	100%

WHEREAS CEQA Findings. This Resolution is not a project within the meaning of Section 15378(a) of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly, and is not a "project" pursuant to Section 15378(b)(5). If this Resolution is found to be a project under CEQA, it is exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

NOW THEREFORE the Council hereby resolves as follows:

1. The foregoing recitals are true and correct.
2. The Council hereby approves the form of the Joint Community Facilities Agreement, authorizes and directs the City Manager to execute it, and deliver it to the Fort Ord Reuse Authority. The percentage of the unexpended special taxes collected through the CFD and earmarked for Habitat-Related services shall be transferred as set forth in this Resolution.
3. The City Manager is hereby authorized and directed to do any and all things and take any and all actions, which he may deem necessary or advisable as contemplated by the Joint Community Facilities Agreement or otherwise in order to effectuate the transfer of the funds as contemplated by the Joint Community Facilities Agreements.
4. This Resolution shall take effect immediately.

INTRODUCED AND PASSED at a regular meeting of the Del Rey Oaks City council July held on May 26, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVE:

---

Alison Kerr, Mayor

ATTEST:

---

Danial D. Pick, City Clerk



# CITY OF DEL REY OAKS

650 CANYON DEL REY RD. • DEL REY OAKS, CALIFORNIA 93940  
PHONE (831) 394-8511 • FAX (831) 394-6421

The Honorable Gavin Newsom  
Governor of California  
State Capitol  
Sacramento, CA 95814

May 26, 2020

**RE: Monterey County COVID-19 Variance Attestation**

Dear Governor Newsom:

The City of Del Rey Oaks fully supports Monterey County's attestation of readiness criteria, outlined by the CDPH, to allow for further progression into Stage 2 of the Governor's Pandemic Roadmap.

We recognize that the purpose of this attestation is to permit Monterey County to demonstrate the ability to protect the public and essential workers and to progress further into Stage 2 by reopening additional businesses and workplaces.

We appreciate that during the COVID-19 pandemic, Dr. Edward Moreno, Monterey County Health Officer, has demonstrated public health leadership and implemented community mitigation strategies that have helped Monterey County flatten the curve.

Monterey County is actively monitoring infection through epidemiology, implementing containment measures, protecting essential workers, increasing testing and contact tracing capacities, monitoring hospitals capacity and plans for surge, and protecting vulnerable populations.

The City supports the continued need to protect vulnerable populations, continue social distancing, and monitor indicators that may trigger the need to reinstate more restrictive measures.

At the same time, it is important to find a balance that allows for some businesses to reopen while ensuring the community's health. Monterey County's plan to proceed with a variance to allow more businesses and workplaces to open is good for our community.

Sincerely,

Alison Kerr, Mayor

cc: Monterey County Supervisors



**Monterey County Health Department  
Public Health Bureau  
Current as of May 18, 2020**

**COVID-19 Milestones/Indicators:**

Variance #2			
Readiness for Variance Indicator	Benchmark or Goal	Current Status	Met
Epidemiologic Stability of COVID-19	Stable or decreasing number of patients hospitalized for COVID-19 by a 7-day average of daily percent change in the total number of hospitalized confirmed COVID-19 patients of ≤5% OR no more than 20 total confirmed COVID-19 patients hospitalized on any single day over the past 14 days.	Average percent change in COVID-19 hospitalization census over last 7 days is 0%. Maximum daily number of hospitalized COVID-19 cases in last 14 days is 9 patients.	Yes
	Last 14-day cumulative incidence rate of <25 per 100,000, OR last 14 day test positivity rate of <8%	Cumulative Incidence Rate in Last 14 Days: 23.5 per 100,000 (103 cases, Monterey County DOF Population of 437,662). 14 day Test Positivity Rate: 5.6% (101 positives / 1,799 tests)	Yes
Protection of Stage I Essential workers	Links to or copies of distributed guidance for employers and essential critical infrastructure workers on how to structure the physical environment to protect essential workers		Compiling, in progress
	Availability of supplies (disinfectant, essential protective gear) to protect essential workers and		Compiling, in progress



**Monterey County Health Department  
Public Health Bureau  
Current as of May 18, 2020**

	description of how availability is assessed		
Testing Capacity	Minimum daily capacity to test 1.5 per 1,000 residents (651 tests per day for Monterey County). Must provide number of tests conducted in last week.	Current minimum daily testing capacity is 1.6 per 1,000 residents (682 tests per day). 1,358 tests were performed in the last 7 days.	Yes
	Testing availability for at least 75% of residents (30 minutes driving time for urban areas and 60 minutes for rural)	Testing sites in Watsonville, Monterey, Salinas, Greenfield, King City, and Paso Robles. Assuming all of ZIP codes for Big Sur, Bradley, San Ardo, San Miguel, Jolon, Lockwood, San Lucas, and Carmel Valley are >60 minutes from testing site, >90% of Monterey County residents are within 30 minutes urban and 60 minutes rural driving times.	Yes, but needs to be confirmed in GIS
	COVID-19 Surveillance Plan		In Development
Containment Capacity	At least 15 staff per 100,000 population trained and available for contact tracing (65 trained for Monterey County)	44 trained and available, additional staff identified for training	No, but have plan to meet target
	Availability to temporarily shelter at least 15% of homeless residents (ability to shelter 369 homeless residents). Must describe plans to support individuals in	EOC housing capacity available and in development is 409	Yes with addition of shelter plan to include sanitizing group



**Monterey County Health Department  
Public Health Bureau  
Current as of May 18, 2020**

	temporary housing including access to a separate bathroom or process to sanitize bathrooms between uses.		restrooms after each use
Hospital Capacity	County hospitals have capacity to accommodate COVID-19 patients at a volume of $\geq 35\%$ of their baseline average daily census across all acute care hospitals	Average daily census for past 7 days = 417. 35% surge of baseline average daily = 563. Current total licensed bed capacity = 829.	Yes
	Hospitals have a robust plan to protect hospital workforce with PPE		Obtaining from hospitals
Vulnerable Population	Skilled nursing facilities have >14 day supply of PPE on hand with established process for ongoing procurement from non-state supply chain	75% of SNFs reporting 15+ day supply of all types of PPE,	No, but can show progress and plan to improve remaining 25%
	Plan to prevent & mitigate COVID-19 in SNFs. SNF have consulted with LHJ and L&C on SNF's COVID-19 mitigation plans as required in AFL 20-52 issued 5/11/2020		Yes, written plan in development
Sectors and Timelines	Plans for moving through Stage 2 including which sectors and spaces to be opened, in what order, when, and how differs from the state plan		In development
Triggers for Adjusting Modifications	Metrics used to as triggers to slow or tighten Stage 2 modifications including frequency of measurement and specific actions triggered by metric changes		In development

# VARIANCE TO STAGE 2 OF CALIFORNIA'S ROADMAP TO MODIFY THE STAY-AT-HOME ORDER



COVID-19 VARIANCE ATTESTATION FORM

FOR Insert County Name Here

**May 18, 2020**

## **Background**

On March 4, 2020, Governor Newsom proclaimed a State of Emergency because of the threat of COVID-19, and on March 12, 2020, through Executive Order N-25-20, he directed all residents to heed any orders and guidance of state and local public health officials. Subsequently, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing all residents to heed the State Public Health Officer's Stay-at-Home order which requires all residents to stay at home except for work in critical infrastructure sectors or otherwise to facilitate authorized necessary activities. On April 14<sup>th</sup>, the State presented the Pandemic Roadmap, a four-stage plan for modifying the Stay-at-Home order, and, on May 4<sup>th</sup>, announced that entry into Stage 2 of the plan would be imminent.

Given the size and diversity of California, it is not surprising that the impact and level of county readiness for COVID-19 has differed across the state. On May 7<sup>th</sup>, as directed by the Governor in Executive Order N-60-20, the State Public Health Officer issued a local variance opportunity through a process of county self-attestation to meet a set of criteria related to county disease prevalence and preparedness. This variance allowed for counties to adopt aspects of Stage 2 at a rate and in an order determined by the County Local Health Officer. Note that counties desiring to be stricter or move at a pace less rapid than the state did not need a variance.

In order to protect the public health of the state, and in light of the state's level of preparedness at the time, more rapid movement through Stage 2 as compared to the state needed to be limited to those counties which were at the very lowest levels of risk. Thus, the first variance had very tight criteria related to disease prevalence and deaths as a result of COVID-19.

Now, 11 days after the first variance opportunity announcement, the state has further built up capacity in testing, contact tracing and the availability of PPE. Hospital surge capacity remains strong overall. California has maintained a position of stability with respect to hospitalizations. These data show that the state is now at a higher level of preparedness, and many counties across the state, including those that did not meet the first variance criteria are expected to be, too. For these reasons, the state is issuing a second variance opportunity for certain counties that did not meet the criteria of the first variance attestation. This next round of variance is for counties that can attest to meeting specific criteria indicating local stability of COVID-19 spread and specific levels of county preparedness. The criteria and procedures that counties will need to meet in order to attest to this second variance opportunity are outlined below. It is recommended that counties consult with

cities, tribes and stakeholders, as well as other counties in their region, as they consider moving through Stage 2

## Local Variance

A county that has met the criteria in containing COVID-19, as defined in this guidance or in the guidance for the first variance, may consider modifying how the county advances through Stage 2, either to move more quickly or in a different order, of California's roadmap to modify the Stay-at-Home order. Counties that attest to meeting criteria can only open a sector for which the state has posted sector guidance (see [Statewide industry guidance to reduce risk](#)). Counties are encouraged to first review this document in full to consider if a variance from the state's roadmap is appropriate for the county's specific circumstances. If a county decides to pursue a variance, the local health officer must:

1. Notify the California Department of Public Health (CDPH), and if requested, engage in a phone consultation regarding the county's intent to seek a variance.
2. Certify through submission of a written attestation to CDPH that the county has met the readiness criteria (outlined below) designed to mitigate the spread of COVID-19. Attestations should be submitted by the local health officer, and accompanied by a letter of support from the County Board of Supervisors, as well as a letter of support from the health care coalition or health care systems in said county.<sup>1</sup> In the event that the county does not have a health care coalition or health care system within its jurisdiction, a letter of support from the relevant regional health system(s) is also acceptable. The full submission must be signed by the local health officer.

All county attestations, and submitted plans as outlined below, will be posted publicly on CDPH's website.

CDPH is available to provide consultation to counties as they develop their attestations and COVID-19 containment plans. Please email Jake Hanson at [Jake.Hanson@cdph.ca.gov](mailto:Jake.Hanson@cdph.ca.gov) to notify him of your intent to seek a variance and if needed, request a consultation.

County Name: \_\_\_\_\_

County Contact: \_\_\_\_\_

Public Phone Number: \_\_\_\_\_

## Readiness for Variance

The county's documentation of its readiness to modify how the county advances through Stage 2, either to move more quickly or in a different order, than the California's roadmap to modify the Stay-at-Home order, must clearly indicate its preparedness according to the criteria below. This will ensure that individuals who are at heightened risk, including, for example, the elderly and those with specific co-morbidities, and those residing in long-term

<sup>1</sup> If a county previously sought a variance and submitted a letter of support from the health care coalition or health care systems but did not qualify for the variance at that time, it may use the previous version of that letter. In contrast, the County Board of Supervisors must provide a renewed letter of support for an attestation of the second variance.

care and locally controlled custody facilities and other congregate settings, continue to be protected as a county progresses through California's roadmap to modify the Stay-at-Home order, and that risk is minimized for the population at large.

As part of the attestation, counties must provide specifics regarding their movement through Stage 2 (e.g., which sectors, in what sequence, at what pace), as well as clearly indicate how their plans differ from the state's order.

As a best practice, if not already created, counties will also attest to plan to develop a county COVID-19 containment strategy by the local health officer in conjunction with the hospitals and health systems in the jurisdiction, as well as input from a broad range of county stakeholders, including the County Board of Supervisors.

It is critical that any county that submits an attestation continue to collect and monitor data to demonstrate that the variances are not having a negative impact on individuals or healthcare systems. Counties must also attest that they have identified triggers and have a clear plan and approach if conditions worsen to reinstitute restrictions in advance of any state action.

**Readiness Criteria**

To establish readiness for a modification in the pace or order through Stage 2 of California's roadmap to modify the Stay-at-Home order, a county must attest to the following readiness criteria and provide the requested information as outlined below:

- **Epidemiologic stability of COVID-19.** A determination must be made by the county that the prevalence of COVID-19 cases is low enough to be swiftly contained by reintroducing features of the stay at home order and using capacity within the health care delivery system to provide care to the sick. Given the anticipated increase in cases as a result of modifying the current Stay-At-Home order, this is a foundational parameter that must be met to safely increase the county's progression through Stage 2. The county must attest to:
  - Demonstrated stable/decreasing number of patients hospitalized for COVID-19 by a 7-day average of daily percent change in the total number of hospitalized confirmed COVID-19 patients of <+5% **-OR-** no more than 20 total confirmed COVID-19 patients hospitalized on any single day over the past 14 days.

Provide county information

- o 14-day cumulative COVID-19 positive incidence of <25 per 100,000 -OR- testing positivity over the past 7 days of <8%.

NOTE: State and Federal prison inmate COVID+ cases can be excluded from calculations of case rate in determining qualification for variance. Staff in State and Federal prison facilities are counted in case numbers. Inmates, detainees, and staff in county facilities, such as county jails, must continue to be included in the calculations.

Facility staff of jails and prisons, regardless of whether they are run by local, state or federal government, generally reside in the counties in which they work. So, the incidence of COVID-19 positivity is relevant to the variance determination. In contrast, upon release, inmates of State and Federal prisons generally do not return to the counties in which they are incarcerated, so the incidence of their COVID-19 positivity is not relevant to the variance determination. While inmates in state and federal prisons may be removed from calculation for this specific criteria, working to protect inmates in these facilities from COVID-19 is of the highest priority for the State.

- o Counties using this exception are required to submit case rate details for inmates and the remainder of the community separately.

Provide county information

- **Protection of Stage 1 essential workers.** A determination must be made by the county that there is clear guidance and the necessary resources to ensure the safety of Stage 1 essential critical infrastructure workers. The county must attest to:
  - o Guidance for employers and essential critical infrastructure workplaces on how to structure the physical environment to protect essential workers. Please provide, as a separate attachment, copies of the guidance(s).

Provide title of guidance document attached

- o Availability of supplies (disinfectant, essential protective gear) to protect essential workers. Please describe how this availability is assessed.

Provide county information

- **Testing capacity.** A determination must be made by the county that there is testing capacity to detect active infection that meets the state's most current [testing criteria](#), (available on CDPH [website](#)). The county must attest to:
  - o Minimum daily testing capacity to test 1.5 per 1,000 residents, which can be met through a combination of testing of symptomatic individuals and targeted surveillance. Provide the number of tests conducted in the past week. A county must also provide a plan to reach the level of testing that is required to meet the testing capacity levels, if the county has not already reached the required levels.

Provide county information

- o Testing availability for at least 75% of residents, as measured by the presence of a specimen collection site (including established health care providers) within 30 minutes driving time in urban areas, and 60 minutes in rural areas. Please provide a listing of all specimen collection sites in the county and indicate if there are any geographic areas that do not meet the criteria and plans for filling these gaps if they exist. If the county depends on sites in adjacent counties, please list these sites as well.

Provide county information

- o Please provide a COVID-19 Surveillance plan, or a summary of your proposed plan, which should include at least how many tests will be done, at what frequency and how it will be reported to the state, as well as a timeline for rolling out the plan. The surveillance plan will provide the ability for the county to understand the movement of the virus that causes COVID19 in the community through testing. [CDPH has a community sentinel surveillance system that is being implemented in several counties. Counties are welcome to use this protocol and contact [covCommunitySurveillance@cdph.ca.gov](mailto:covCommunitySurveillance@cdph.ca.gov) for any guidance in setting up such systems in their county.]
- o

Provide county information

- **Containment capacity.** A determination must be made by the county that it has adequate infrastructure, processes, and workforce to reliably detect and safely isolate new cases, as well as follow up with individuals who have been in contact with positive cases. The county must attest to:
  - o Enough contact tracing. There should be at least 15 staff per 100,000 county population trained and available for contact tracing. Please describe the county's contact tracing plan, including workforce capacity, and why it is sufficient to meet anticipated surge. Indicate which data management platform you will be using for contact tracing (reminder that the State has in place a platform that can be used free-of-charge by any county).

Provide county information

- o Availability of temporary housing units to shelter at least 15% of county residents experiencing homelessness in case of an outbreak among this population requiring isolation and quarantine of affected individuals. Please describe the county's plans to support individuals, including those experiencing homelessness, who are not able to properly isolate in a home setting by providing them with temporary housing (including access to a separate bathroom, or a process in place that provides the ability to sanitize a shared bathroom between uses), for the duration of the necessary isolation or quarantine period. Rooms acquired as part of Project Roomkey should be utilized.

Provide county information

- **Hospital capacity.** A determination must be made by the county that hospital capacity, including ICU beds and ventilators, and adequate PPE is available to handle standard health care capacity, current COVID-19 cases, as well as a potential surge due to COVID-19. If the county does not have a hospital within its jurisdiction, the county will need to address how regional hospital and health care systems may be impacted by this request and demonstrate that adequate hospital capacity exists in those systems. The county must attest to:
  - o County (or regional) hospital capacity to accommodate COVID-19 positive patients at a volume of at a minimum surge of 35% of their baseline average daily census across all acute care hospitals in a county. This can be accomplished either through adding additional bed capacity or decreasing hospital census by reducing bed demand from non-COVID-19 related hospitalizations (i.e., cancelling elective surgeries). Please describe how this surge would be accomplished, including surge census by hospital, addressing both physical and workforce capacity.

Provide county information

- o County (or regional) hospital facilities have a robust plan to protect the hospital workforce, both clinical and nonclinical, with PPE. Please describe the process by which this is assessed.

Provide county information

- **Vulnerable populations.** A determination must be made by the county that the proposed variance maintains protections for vulnerable populations, particularly those in long-term care settings. The county must attest to ongoing work with Skilled Nursing Facilities within their jurisdiction and describe their plans to work closely with facilities to prevent and mitigate outbreaks and ensure access to PPE:
  - o Describe your plan to prevent and mitigate COVID-19 infections in skilled nursing facilities through regular consultation with CDPH district offices and with leadership from each facility on the following: targeted testing and patient cohorting plans; infection control precautions; access to PPE; staffing shortage contingency plans; and facility communication plans. This plan shall describe how the county will (1) engage with each skilled nursing facility on a weekly basis, (2) share best practices, and (3) address urgent matters at skilled nursing facilities in its boundaries.

Provide county information

- o Skilled nursing facilities (SNF) have >14-day supply of PPE on hand for staff, with established process for ongoing procurement from non-state supply chains. Please list the names and contacts of all SNFs in the county along with a description of the system the county must track PPE availability across SNFs.

Provide county information

- **Sectors and timelines.** Please provide details on the county's plan to move through Stage 2. These details should include which sectors and spaces will be opened, in what sequence, on what timeline. Please specifically indicate where the plan differs from the state's order. Any sector that is reflective of Stage 3 should not be included in this variance because it is not allowed until the State proceeds into Stage 3. For additional details on sectors and spaces included in Stage 2, please see <https://covid19.ca.gov/industry-guidance/> for sectors open statewide and <https://covid19.ca.gov/roadmap-counties/> for sectors available to counties with a variance.

Provide county information

- **Triggers for adjusting modifications.** Please share the county metrics that would serve as triggers for either slowing the pace through Stage 2 or tightening modifications, including the frequency of measurement and the specific actions triggered by metric changes. Please include your plan, or a summary of your plan, for how the county will inform the state of emerging concerns and how it will implement early containment measures.

Provide county information

• **COVID-19 Containment Plan**

Please provide your county COVID-19 containment plan or describe your strategy to create a COVID-19 containment plan with a timeline.

Provide county information

While not exhaustive, the following areas and questions are important to address in any containment plan and may be used for guidance in the plan’s development. This containment plan should be developed by the local health officer in conjunction with the hospitals and health systems in the jurisdiction, as well as input from a broad range of county stakeholders, including the County Board of Supervisors. Under each of the areas below, please indicate how your plan addresses the relevant area. If your plan has not yet been developed or does not include details on the areas below, please describe how you will develop that plan and your timeline for completing it.

Testing

- Is there a plan to increase testing to the recommended daily capacity of 2 per 1000 residents?
- Is the average percentage of positive tests over the past 7 days <8% and stable or declining?
- Have specimen collection locations been identified that ensure access for all residents?
- Have contracts/relationships been established with specimen processing labs?
- Is there a plan for community surveillance?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

Contact Tracing

- How many staff are currently trained and available to do contact tracing?
- Are these staff reflective of community racial, ethnic and linguistic diversity?
- Is there a plan to expand contact tracing staff to the recommended levels to accommodate a three-fold increase in COVID-19 cases, presuming that each case has ten close contacts?
- Is there a plan for supportive isolation for low income individuals who may not have a safe way to isolate or who may have significant economic challenges as a result of isolation?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

Living and Working in Congregate Settings

- How many congregate care facilities, of what types, are in the county?
- How many correctional facilities, of what size, are in the county?
- How many homelessness shelters are in the county and what is their capacity?
- What is the COVID-19 case rate at each of these facilities?
- Is there a plan to track and notify local public health of COVID-19 case rate within local correctional facilities, and to notify any receiving facilities upon the transfer of individuals?
- Do facilities have the ability to adequately and safely isolate COVID-19 positive individuals?
- Do facilities have the ability to safely quarantine individuals who have been exposed?
- Is there sufficient testing capacity to conduct a thorough outbreak investigation at each of these facilities?
- Do long-term care facilities have sufficient PPE for staff, and do these facilities have access to suppliers for ongoing PPE needs?
- Do facilities have policies and protocols to appropriately train the workforce in infection prevention and control procedures?
- Does the workforce have access to locations to safely isolate?
- Do these facilities (particularly skilled nursing facilities) have access to staffing agencies if and when staff shortages related to COVID-19 occur?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

### Protecting the Vulnerable

- Do resources and interventions intentionally address inequities within these populations being prioritized (i.e. deployment of PPE, testing, etc.)?
- Are older Californians, people with disabilities, and people with underlying health conditions at greater risk of serious illness, who are living in their own homes, supported so they can continue appropriate physical distancing and maintain wellbeing (i.e. food supports, telehealth, social connections, in home services, etc.)?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

### Acute Care Surge

- Is there daily tracking of hospital capacity including COVID-19 cases, hospital census, ICU census, ventilator availability, staffing and surge capacity?
- Are hospitals relying on county MHOAC for PPE, or are supply chains sufficient?
- Are hospitals testing all patients prior to admission to the hospital?
- Do hospitals have a plan for tracking and addressing occupational exposure?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

### Essential Workers

- How many essential workplaces are in the county?
- What guidance have you provided to your essential workplaces to ensure employees and customers are safe in accordance with state/county guidance for modifications?
- Do essential workplaces have access to key supplies like hand sanitizer, disinfectant and cleaning supplies, as well as relevant protective equipment?
- Is there a testing plan for essential workers who are sick or symptomatic?  
Is there a plan for supportive quarantine/isolation for essential workers?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

### Special Considerations

- Are there industries in the county that deserve special consideration in terms of mitigating the risk of COVID-19 transmission, e.g. agriculture or manufacturing?
- Are there industries in the county that make it more feasible for the county to increase the pace through Stage 2, e.g. technology companies or other companies that have a high percentage of workers who can telework?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

### Community Engagement

- Has the county engaged with its cities?
- Which key county stakeholders should be a part of formulating and implementing the proposed variance plan?
- Have virtual community forums been held to solicit input into the variance plan?
- Is community engagement reflective of the racial, ethnic, and linguistic diversity of the community?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

### Relationship to Surrounding Counties

- Are surrounding counties experiencing increasing, decreasing or stable case rates?
- Are surrounding counties also planning to increase the pace through Stage 2 of California's roadmap to modify the Stay-at-Home order, and if so, on what timeline? How are you coordinating with these counties?
- What systems or plans are in place to coordinate with surrounding counties (e.g. health care coalitions, shared EOCs, other communication, etc.) to share situational awareness and other emergent issues.
- How will increased regional and state travel impact the county's ability to test, isolate, and contact trace?

Provide summary for this section and attach complete plan or describe your strategy for developing this section of your plan.

In addition to your county's COVID-19 VARIANCE ATTESTATION FORM, please include:

- Letter of support from the County Board of Supervisors
- Letter of support from the local hospitals or health care systems. In the event that the county does not have a hospital or health care system within its jurisdiction, a letter of support from the relevant regional health system(s) is also acceptable.
- County Plan for moving through Stage 2

All documents should be emailed to Jake Hanson at [Jake.Hanson@cdph.ca.gov](mailto:Jake.Hanson@cdph.ca.gov).

I \_\_\_\_\_, hereby attest that I am duly authorized to sign and act on behalf of \_\_\_\_\_. I certify that \_\_\_\_\_ has met the readiness criteria outlined by CDPH designed to mitigate the spread of COVID-19 and that the information provided is true, accurate and complete to the best of my knowledge. If a local COVID-19 Containment Plan is submitted for \_\_\_\_\_, I certify that it was developed with input from the County Board of Supervisors/City Council, hospitals, health systems, and a broad range of stakeholders in the jurisdiction. I acknowledge that I remain responsible for implementing the local COVID-19 Containment Plan and that CDPH, by providing technical guidance, is in no way assuming liability for its contents.

I understand and consent that the California Department of Public Health (CDPH) will post this information on the CDPH website and is public record.

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Position/Title \_\_\_\_\_

Date \_\_\_\_\_

## City of Del Rey Oaks City Council Activity Report

For May 26, 2020 Council Meeting

Louise Goetzelt

1. No United Veterans Council of Monterey County at the end of April.
2. No Ft Ord Area Retired Soldiers Council meeting in May. The Retiree Appreciation Day activities that were scheduled for Jul 2, have been cancelled. They are looking for a later date in September or October.
3. Northern Salinas Valley Mosquito Abatement District (NVSMAD) board met via Zoom on May 12.
  - a. There has been an increase in mosquito activity in north county around Elkhorn Slough. This is mostly attributed to a 100-acre increase in restored wetlands.
  - b. A drone to replace the one damaged has been received. Most of the cost was covered by insurance.
  - c. Efforts on the new building continue. Briefing was given by the architect. The change of project engineering company approved by the board last month has significantly speeded up the design and plans process.
  - d. West Nile: There have been no reports; HOWEVER, there have not been many dead birds reported, and therefore testing is lacking. If a dead bird is found without an obvious cause of death, contact the NSVMAD, the SPCA for Monterey County, or the West Nile Hotline (877-WNV-BIRD (877-968-2473) (on-line form at [http://www.westnile.ca.gov/report\\_wnv.php](http://www.westnile.ca.gov/report_wnv.php)) for possible testing.
  - e. The board received a briefing on and approved the 2020-2021 budget.
4. Association of Monterey Bay Area Governments (AMBAG) board met via "GoToWebinar" on May 13.
  - a. AMBAG and Monterey Bay Community Power (MBCP) have Memorandums of Understandings (MOU's) concerning Greenhouse Gases inventories and Air Resources. MBCP also announced \$1.2 million to be used for electric school buses for local districts.
  - b. The board approved the 2020-2021 Overall Work Program and Budget. Due to the current situation, an anticipated 3.5% employee cost of living (COLA) increase was cancelled. Employees were understanding.
  - c. We received a briefing on the Draft Approach for the Allocation of Regional Early Action Planning Funding (REAP). AMBAG will receive about \$7.9 mil. AMBAG will retain 3% to cover administrative costs. The follow distribution is proposed to the five counties that make up the Central Coast Housing Working Group: AMBAG \$3,651,516 (for Monterey and Santa Cruz Counties); San Benito County: \$315,812; San Luis Obispo County: \$1,421,465 and Santa Barbara County \$2,304,579. Once approved, sub-allocations will be made to local jurisdictions based on population or geographic equity.

AMBAG's proposed approach is to allocate \$3,300,000 to the local jurisdictions within Monterey and Santa Cruz Counties according to jurisdiction size, consistent with thresholds in HCD's LEAP program. Remaining funds (\$351,516) would be used to prepare the 6th Cycle RHNA methodology and allocation updates and other regional planning activities. Maximum grant amounts to be set according to 2019 population estimates. For a city the size of DRO, this would be a grant of about \$65,000.

Of interest also, is what these funds can be used for:

Infrastructure planning to support new housing and new residents

- Technical assistance in improving housing permitting processes, tracking systems and planning tools
- Feasibility studies to identify the best housing sites
- Establishing housing trust funds for affordable housing
- Temporary staffing or consultants for housing planning activities
- 6th Cycle Housing Elements
- Other actions which accelerate housing production

Once the plan is approved by the AMBAG board (hopefully in June, cities can begin the application process. The funds must be expended by 2023.

5. Copies of the basic agendas are provided. Copies of briefings are available upon request

Respectfully submitted: Louie Goetzelt

# AMBAG

## Board of Directors Agenda

Association of Monterey Bay Area Governments  
P.O. Box 2453, Seaside, California 93955-2453  
Phone: (831) 883-3750  
Fax: (831) 883-3755  
Email: [info@ambag.org](mailto:info@ambag.org)



### Meeting Via GoToWebinar

**DATE: May 13, 2020**

**TIME: 6:00 PM**

Please register for the AMBAG Board of Directors meeting at  
<https://attendee.gotowebinar.com/register/8837073326527948559>

The AMBAG Board of Directors meeting will NOT be held at the Marina Library, Community Room, 190 Seaside Circle, Marina, CA 93933 as originally scheduled in light of Governor Newsom's State of Emergency declaration regarding the COVID-19 outbreak and in accordance with Executive Order N-29-20 and the shelter in place directive. The meeting will be conducted via GoToWebinar. The AMBAG Board of Directors will participate in the meeting from individual remote locations. We apologize in advance for any technical difficulties.

Members of the public will need to attend the meeting remotely via GoToWebinar.

Persons who wish to address the AMBAG Board of Directors on an item to be considered at this meeting are asked to submit comments in writing at [info@ambag.org](mailto:info@ambag.org) by 5:00 PM, Tuesday, May 12, 2020. The subject line should read "Public Comment for the May 13, 2020 Board of Directors Meeting". The agency clerk will read up to 3 minutes of any public comment submitted.

To participate via GoToWebinar, please register for the May 13, 2020 AMBAG Board of Directors meeting using the following link: <https://attendee.gotowebinar.com/register/8837073326527948559>

You will be provided dial-in information and instructions to join the meeting.

If you have any questions, please contact Ana Flores, Senior Executive Assistant at [aflores@ambag.org](mailto:aflores@ambag.org) or at 831-883-3750.

- 
1. CALL TO ORDER
  2. ROLL CALL
  3. ORAL COMMUNICATIONS FROM THE PUBLIC ON ITEMS NOT ON THE AGENDA  
(A maximum of three minutes on any subject not on the agenda)
  4. ORAL COMMUNICATIONS FROM THE BOARD ON ITEMS NOT ON THE AGENDA

# AGENDA

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## 5. COMMITTEE REPORTS

- A. **Executive/Finance Committee**  
**Recommended Action: INFORMATION**  
**-President McShane**

Receive oral report.

## 6. EXECUTIVE DIRECTOR'S REPORT

- Recommended Action: INFORMATION**  
**-Maura Twomey, Executive Director**

## 7. CONSENT AGENDA

- Recommended Action: APPROVE**

**Note:** Actions listed for each item represents staff recommendation. The Board of Directors may, at its discretion, take any action on the items listed in the consent agenda.

- A. **Draft Minutes of the March 11, 2020 AMBAG Board of Directors Meeting**  
**-Ana Flores, Senior Executive Assistant**

Approve the draft minutes of the March 11, 2020 AMBAG Board of Directors meeting. (Page 5)

- B. **AMBAG Regional Clearinghouse Monthly Newsletter**  
**-Will Condon, Planner**

Accept the clearinghouse monthly newsletter. (Page 11)

- C. **Central Coast Highway 1 Climate Resiliency Study**  
**-Heather Adamson, Director of Planning**

Accept the update on the Climate Resiliency Study for the Central Coast Highway 1 Corridor from State Route 183 to Salinas Road including the rail line in this corridor. (Page 25)

- D. **Formal Amendment No. 13 to the Monterey Bay Metropolitan Transportation Improvement Program (MTIP): FFY 2018-19 to FFY 2021-22**  
**-Sasha Tepedelenova, Associate Planner**

Approve Formal Amendment No. 13 to the Monterey Bay Metropolitan Transportation Improvement Program (MTIP): FFY 2018-19 to FFY 2021-22. (Page 27)

# AGENDA

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- E. **Financial Update Report**  
-Errol Osteraa, Director of Finance & Administration

Accept the financial update report which provides an update on AMBAG's current financial position and accompanying financial statements. (Page 39)

**8. ITEMS REMOVED FROM CONSENT CALENDAR FOR DISCUSSION AND POSSIBLE ACTION**

**9. ADMINISTRATION**

- A. **Draft FY 2020-21 Monterey Bay Region Overall Work Program (OWP) and Budget**  
**Recommended Action: APPROVE**  
-Heather Adamson, Director of Planning

Approve the Draft FY 2020-21 Monterey Bay Region OWP and Budget. (Page 45)

**10. PLANNING**

- A. **Draft Approach for the Allocation of Regional Early Action Planning Funding**  
**Recommended Action: INFORMATION**  
-Heather Adamson, Director of Planning

Discuss the draft approach for the allocation of the AMBAG Regional Housing Planning (REAP) Funding. (Page 57)

**11. ADJOURNMENT**

**REFERENCE ITEMS:**

- A. 2020 Schedule of Meetings (Page 61)  
B. Acronym Guide (Page 63)

**NEXT MEETING:**

The 2020 AMBAG Board of Directors meeting locations are subject to change and may be held remotely in light of Governor Newsom's State of Emergency declaration regarding the COVID-19 outbreak and in accordance with Executive Order N-29-20 and the shelter in place directives.

**Date:** June 10, 2020

**Location:** Marina Library Community Room  
190 Seaside Circle, Marina, 93933

**Executive/Finance Committee Meeting:** 5:00 PM

**Board of Directors Meeting:** 6:00 PM

# AGENDA

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If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 USC Sec. 12132), and the federal rules and regulations adopted in implementation thereof. If you have a request for disability-related modification or accommodation, including auxiliary aids or services, contact Ana Flores, AMBAG, 831-883-3750, or email [aflores@ambag.org](mailto:aflores@ambag.org) at least 48 hours prior to the meeting date.



**821<sup>st</sup> REGULAR MEETING OF  
THE  
BOARD OF TRUSTEES**

342 Airport Blvd  
Salinas, CA 93905

**\*\*Join us by Zoom\*\***

<https://us02web.zoom.us/j/86896104667?pwd=akZjcGJuRXBod1o5Tlg3UktlRUxuZz09>

For more ways to connect please go to bottom of the page

**~AGENDA~**

**May 12, 2020**

**12:00 P.M. Noon**

*Accessible Public Meetings: Upon request, Northern Salinas Valley Mosquito Abatement District will provide written agenda materials in appropriate alternative formats, to enable individuals with disabilities to participate in public meetings. Please send a written request, including your name, mailing address, phone number and a brief description of the requested materials and preferred alternative format or auxiliary aid or service at least thirty (30) days before the meeting. Requests should be sent to: Northern Salinas Valley Mosquito Abatement District, 342 Airport Blvd. Salinas, CA 93905.*

**1. CALL TO ORDER:**

**2. ROLL CALL—ESTABLISHMENT OF QUORUM**

**Chair Jeff Cecilio – County of Monterey, Vice Chair Don Cranford – County of Monterey, Secretary Nancy Amadeo – City of Marina, Carl Hansen – County of Monterey, Mary Ann Carbone – City of Sand City, Jim Tashiro – City of Salinas, Diane deLorimier – City of Monterey, Jason Campbell – City of Seaside, Alissa Kispersky, Alternate – City of Seaside, Louise Goetzelt - City of Del Rey Oaks**

**3. PUBLIC INPUT (Limited to 3 minutes)**

*The consent calendar includes routine items that can be approved with a single motion and vote. A member of the Board of Trustees may request that any item be pulled from the Consent Calendar for separate consideration.*

**4. CONSENT CALENDAR:**

- A. APPROVAL OF THE MINUTES: April 14, 2020**
- B. PAYROLL WARRANTS: April 2020 \$87,114.02**
- C. COMMERCIAL WARRANTS: April 2020 \$154,300.47**
- D. UMPQUA BANK: March 2020 \$2,610.62 (Included in Commercial Warrants)**
- E. TIME DISTRIBUTION: April 2020**
- F. BALANCESHEET: April 2020**
- G. SCHEDULE OF EXPENDITURES: April 2020**

5. **OTHER BUISNESS:**

- A. Sonia Ortega from SCI Consulting to present FY 20/21
- B. Construction Update from Hayashida Architects

6. **ACTION ITEMS:**

- A. Approve Resolution 1920-04

**RESOLUTION OF THE BOARD OF TRUSTEES  
OF THE NORHTERN SALINAS VALLEY MOSQUITO ABATEMENT DISTRICT  
INTENTION TO CONTINUE ASSESSMENTS FOR FISCAL YEAR 2020-21, PRELIMINARILY APPROVING THE  
ENGINEER'S REPORT, AND PROVIDING FOR NOTICE OF HEARING  
FOR THE NORHTERN SALINAS VALLEY MOSQUITO ABATEMENT DISTRICT,  
MOSQUITO AND DISEASE CONTROL ASSESSMENT**

- B. Approve Resolution 1920-05

**RESOLUTION OF THE BOARD OF TRUSTEES  
CERTIFYING COMPLIANCE WITH RESPECT TO STATE TO THE LEVYING  
OF GENERAL AND SPECIAL TAXES, ASSESSMENTS, AND PROPERTY RELATED  
FEES AND CHARGES**

- C. Approve Five year Contract with Bianchi Kasavan & Pope LLP
- D. Approve Policy 3080 Digital Signatures

7. **MONTHLY AND OPERATIONS REPORT: Ken Klemme, District Manager/Biologist**

10. **TRUSTEE COMMENTS:**

*Adjournment to June 9, 2020 at noon.*

**IMPORANT NOTICE REGARDING COVID-19 AND TELECONFERENCED MEETINGS:**

Based on the mandates by the Governor in Executive Order 33-20 and the County Public Health Officer to shelter in place and the guidance from the CDC, to minimize the spread of the coronavirus, please note the following changes to the District's ordinary meeting procedures:

- The District offices are **not** open to the public at this time.
- The meeting will be conducted via teleconference using Zoom. (See Executive Order 29-20)
- All members of the public seeking to observe and/or to address the local legislative body may participate in the meeting telephonically or otherwise electronically in the manner described below.

**HOW TO OBSERVE THE MEETING: Telephone:** Listen to the meeting live by calling Zoom at **(669) 900-6833**

Join Zoom Meeting

<https://us02web.zoom.us/j/86896104667?pwd=akZjcGJuRXBod1o5Tlg3UktlRUxuZz09>

Meeting ID: 868 9610 4667

Password: 546460

One tap mobile

+16699006833,,86896104667#,,1#,546460# US (San Jose)

+13462487799,,86896104667#,,1#,546460# US (Houston)

**HOW TO SUBMIT PUBLIC COMMENTS:**

**Before the Meeting:** Please email your comments to [info@montereycountymosquito.com](mailto:info@montereycountymosquito.com), write "Public Comment" in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. If you would like your comment to be read aloud at the meeting (not to exceed three minutes at staff's cadence), prominently write "Read Aloud at Meeting" at the top of the email. All comments received before 12:00 PM the day of the meeting will be included as an agenda supplement on the District's website under the relevant meeting date and provided to the Trustees at the meeting.

Comments received after this time will be treated as contemporaneous comments.

**Contemporaneous Comments:** During the meeting, the Board President or designee will announce the opportunity to make public comments and identify the cut off time for submission. Please email your comments to [info@montereycountymosquito.com](mailto:info@montereycountymosquito.com), write "Public Comment" in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. Once the public comment period is closed, all comments timely received will be read aloud at the meeting (not to exceed three minutes at staff's cadence). Comments received after the close of the public comment period will be added to the record after the meeting.

**STAMP | ERICKSON**  
Attorneys at Law

Monterey, California  
T: (831) 373-1214

May 1, 2020

Via email

Jane Parker, Chair  
Board of Directors  
Fort Ord Reuse Authority

Subject: Plant Reserve 1North, CNPS contracts, and proposed projects for South Boundary Road and General Jim Moore Boulevard

Dear Chair Parker and members of the FORA Board of Directors:

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS) in this matter. CNPS is and has been steadfastly committed to the habitat protected by contract between CNPS, FORA and Del Rey Oaks (DRO) and also by CEQA mitigation. CNPS writes this letter to emphasize certain facts regarding the South Boundary Road widening and realignment project, the General Jim Moore project, and the proposed intersection or roundabout project at South Boundary Road and General Jim Moore Boulevard. The environmental assessment/initial study (EA/IS) certified by FORA in 2010 stated that the habitat preserve area is “adjacent to the Del Rey Oaks Resort” which was to be developed adjacent to the northern boundary of the habitat parcel. The EA/IS maps show that the proposed South Boundary Road realignment would put a wide multi-lane roadway directly through the habitat area. FORA did not consult with CNPS prior to adopting the EA/IS.

This letter focuses on the requirement that before FORA can proceed with its South Boundary Road project FORA must successfully negotiate with CNPS to agree “to relocate a currently identified habitat preserve area further south.” (2010 EA/IS, p. 3-2.) If FORA cannot renegotiate the location then FORA cannot proceed with the realignment and widening project as approved and must pursue other options. This requirement was stated in FORA’s EA/IS. This letter reaffirms that CNPS has not agreed to relocate the habitat preserve area.

Executive Summary

CNPS reaffirms its comments regarding the map presented by FORA to CNPS in December 2019. The map showed the proposed South Boundary Road project and what FORA proposed as new boundaries of Plant Reserve 1North. CNPS expressed concerns and opposition to the new boundaries at the time, CNPS has expressed them since then, and CNPS does so again in this letter.

Historic overview: the habitat reserve parcel.

In 1998 and 1999, Plant Reserve 1North was protected by an agreement between FORA, Del Rey Oaks and CNPS. The agreement was executed in 1998 and

modified by negotiated written agreement in 1999. Terms of the contract include as follows:

- The contract requires “the permanent protection” of the habitat, and that “the area will be protected from fragmentation and degradation in perpetuity.”
- The contract expressly states that “the boundaries must avoid road widening that would affect the reserve” and that “any future widening which would affect the habitat would require renegotiation of this agreement.”
- “No development would be permitted in the plant reserve.”
- The agreement specified that a buffer must ensure no impacts on the plant reserve from the future development to the north of the dirt road that is at the northern boundary of what came to be called parcel E29a.1.

The FORA-DRO-CNPS contract is based on and reinforced in part by CEQA mitigation 3 of the final EA/IS for the General Jim Moore Boulevard project, then called the North-South Road/Highway 218 Improvements Project. Mitigation 3 was amended and strengthened in direct response to CEQA comments from the CNPS in a letter dated December 4, 1998. Mitigation 3 addressed preservation of “maritime chaparral habitat, located in the vicinity of the northeast corner of North-South Road and South Boundary Road, along with an adequate buffer to assure that golf course drainage will not impinge on the habitat, shall be preserved in perpetuity as a CNPS native plant area” and that “Requirements for this mitigation area are specified as follows. The habitat area shall be protected from fragmentation and degradation in perpetuity. No spraying or irrigation drainage shall be directed toward the habitat area. No development shall be permitted in the plant reserve . . .”

In 2003, as part of the process to transfer lands, the Army released a document called Finding of Suitability for Early Transfer, called a FOSET, in draft form. FOSET-003 was finalized in July 2004. FOSET-003 transferred some Army land to FORA, including land that was intended for Del Rey Oaks. What the Army had called “parcel E29a” was a large parcel located north of South Boundary Road. FOSET-003 transferred the bulk of parcel E29a to FORA. Knowing of the FORA-DRO-CNPS agreement and the mitigation, the Army carved out from parcel E29a the habitat reserve area at the northeast corner of South Boundary Road and General Jim Moore Boulevard corner. The small parcel was named parcel E29a.1, and it was not included in the FOSET-003 transfer. FOSET-003 specifically addresses the small parcel when it describes the “habitat reserve area” that was not part of the FOSET-003 transfer. FOSET-003 directly addresses the habitat reserve area at three different pages of the FOSET-003 document, as follows:

- “Included within Parcel E29a is a 5-acre habitat reserve area that is not included in this transfer.” (FOSET-003, p. 1.)
- The large parcel E29a “includes a habitat area that is not part of the transfer.” (FOSET-003, Table 1, row 1.)
- FOSET-003 site map Plate 1 shows the E29a parcel and the carved-out smaller parcel that later came to be called E29a.1. Plate 1 places the label “habitat area” on the entire parcel E29a.1. Plate 1 is attached to this letter as Exhibit A.

A U.S. Army Corps of Engineers report dated August 2004 documents a walkabout of the “5-acre parcel known as ‘DRO Habitat Area’.” The memo attached to the report refers to the “5 acre DRO Group Habitat area” and the attached map is labeled “Habitat site walk” and has a yellow outline around the “habitat area” that was parcel E29a.1. The map also labeled the parcel on the aerial photograph as “Habitat Area.” The 2004 report is attached to this letter as Exhibit B.

The document database for the Fort Ord cleanup parcel describes parcel E29a.1 as 4.66 acres and that the “Parcel Name” is “Habitat Reserve Area.” The database is accessible online at <https://fortordcleanup.com/documents/administrative-record/>.

In 2010, FORA certified an environmental document for the South Boundary Road widening project that expressly acknowledges the fully protected status of the reserve.

In 2010 FORA prepared and certified the above-referenced EA/IS for the FORA South Boundary Road realignment and widening project. The realigned road would go directly through the protected habitat area. The EA/IS requires that FORA must “renegotiate” the location of the habitat reserve area with CNPS before FORA can proceed with the South Boundary Road project, and if FORA cannot renegotiate the location then FORA cannot proceed with the project. The EA/IS language reflects the terms in the FORA-CNPS contract that require “the permanent protection” of the habitat, that the reserve “area will be protected from fragmentation and degradation in perpetuity,” that “the boundaries must avoid road widening that would affect the reserve,” that “any future widening which would affect the habitat would require renegotiation of this agreement,” and that “No development would be permitted in the plant reserve.” The EA/IS language also reflects the adopted CEQA mitigation 3 of the General Jim Moore Boulevard project. There is no dispute that a renegotiated agreement is required before FORA can proceed with the road widening project. FORA did not consult with CNPS before FORA prepared and adopted the EA/IS.

In 2018 and 2019, FORA again confirmed the terms and intent of the FORA-DRO-CNPS contract when FORA made specific written and oral statements to the Monterey County Superior Court.

In the brief dated November 2018 that FORA filed as part of the CEQA litigation involving South Boundary Road, FORA counsel Jon Giffen and Crystal Gaudette stated the FORA position as follows:

- “The EA/IS also addresses and provides for Project impacts upon the “reserve” created by agreement between FORA and the California Native Plant Society (CNPS), generally recognizing that the proposed project alignment can only proceed if a modification to the reserve can be negotiated with CNPS.”
- The modification to the reserve and the renegotiated contract was a “mitigation.”
- “[T]he CNPS preserve must remain untouched unless the agreement regarding that preserve is successfully renegotiated.”

On February 11, 2019, FORA counsel Crystal Gaudette represented to Superior Court Judge Marla O. Anderson in open court as follows:

- The FORA EA/IS “says squarely that FORA is going to have to reach an agreement with the California Native Plant Society or – and that’s the purpose of alternative two, that if it can’t, then it [FORA] would proceed with the second alternative project analyzed under the Initial Study.”

These statements and others show the position of and understanding by FORA that a modification to the agreement must be negotiated with CNPS in order for the proposed road realignment to proceed.

In December 2019 FORA made material misrepresentations when FORA proposed a new location of Plant Reserve 1North.

FORA did not attempt to contact CNPS regarding the South Boundary Road project for many years. When CNPS learned of the FORA approvals of the South Boundary Road, the CNPS president contacted the FORA Board of Directors in writing and in person at board meetings starting in 2017. FORA did not meaningfully respond until 2019.

In a letter from FORA to CNPS dated December 2, 2019, FORA made various inaccurate and self-serving claims, including that the reserve boundaries are shown in the EA/IS figure 2-3 and EA/IS sheet C8 for the South Boundary Road realignment. (Dec. 2, 2019 ltr., p. 5.) Not so. They show the proposed boundaries, as evidenced by context and other records. Figure 2-3 and sheet C8 do not show the current boundaries. The new FORA claim is not consistent with a proposal in the same December 2, 2019 letter that shows a proposed drawing of the relocated reserve labeled “HABITAT AREA NEW PARCEL,” which states that the area would be a new

location. The new claim also is inconsistent with representations made in the EA/IS and other records that the habitat reserve is located “adjacent to the Del Rey Oaks Resort,” which means that the reserve boundaries include the northerly portion of parcel E29a.1 which is the area that is adjacent to the Del Rey Oaks resort site. If the reserve were located where FORA newly claimed in December 2019, then there would have been no need to “relocate” the reserve to the south as the 2010 EA/IS mandates. The new FORA claim also is inconsistent with the FORA-DRO-CNPS agreements, the CEQA mitigations, the written and oral representations of FORA counsel, the public records of Del Rey Oaks, FORA and the Army, and other records. Let there be no mistake: The proposal in the EA/IS was for a proposed relocation of the plant reserve. FORA sought a relocation in order to allow FORA to construct the FORA-preferred road widening and realignment. The proposed relocated boundaries were not discussed with CNPS at the time of the EA/IS and were not presented and agreed to by CNPS then or at any point since then. To the contrary, CNPS has repeatedly expressed its opposition to the proposed “relocated” boundaries and has expressed its opposition in writing and in meetings with FORA and DRO officials.

To make matters worse, FORA recently has demonstrated that the South Boundary Road project construction would have significant biological impacts even if the reserve were to be “relocated” as FORA has proposed. The map at page 6 of the FORA letter dated December 2, 2019 shows a proposal for a relocated reserve labeled “HABITAT AREA NEW PARCEL” that FORA claims would be 2.25 acres. (The pages of the FORA letter are not numbered; the map is the penultimate page of the letter proper. The map is attached to this letter as Exhibit C.) The map shows a “HABITAT AREA NEW PARCEL” with red diagonal lines. The map shows two overlays on the red area: a construction work impact area of 11,588 square feet in blue overlay and a grading impact area of 12,224 square feet in green overlay. The construction impacts in blue and the grading impacts in green would directly affect at least 0.55 acres, according to the FORA information, including the habitat and the rare and protected species known to occur in the blue and green areas.

CNPS has not agreed to a “relocation” of Plant Reserve 1North.

CNPS has not and does not agree to a relocation of the reserve as proposed by the “new parcel” boundaries presented by FORA. In the spirit of cooperation, CNPS has explained its concerns on the matter, and again here CNPS states that its reasons include and are not limited to the following.

- Relocating the reserve would be inconsistent with the FORA-DRO-CNPS contract terms and the General Jim Moore Boulevard project mitigation 3 requirements for “permanent” protection, that “The habitat area shall be protected from fragmentation and degradation in perpetuity,” and that “No development shall be permitted in the plant reserve.”

- The proposed size of 2.25 acres is a materially smaller area than the historic maps and references by the Army, Del Rey Oaks and FORA to the habitat area/reserve. The historic records discussing the habitat area refer to an area that is larger than 2.25 acres. The actual size of the proposed reserve would be at most 1.7 acres, rather than 2.25 acres, as explained below.
- At least a quarter of what FORA has proposed as the “new parcel” would be irreparably harmed by the project. FORA has admitted there would be development in the reserve; construction and grading are development. FORA says there would be construction impacts and grading impacts in and on at least 0.55 acres of the proposed 2.25 acre reserve. That would reduce the habitat reserve to 1.7 acres at most, due to the unlikely assumption that the remaining area would be unharmed by the project grading, construction, and operation. A 1.7 acre reserve is not consistent with the specific language of the 1998 and 1999 agreements and of CEQA mitigation 3 for the General Jim Moore project. The agreement and mitigation specified that the reserve would be at least 2.0 acres that would be “permanently protected and “protected from fragmentation and degradation in perpetuity” and that “no development would be permitted in the plant reserve.”
- The proposed smaller size and proposed relocated boundaries would violate the contract term in which FORA committed to “No further fragmentation and degradation in perpetuity” of the reserve. The FORA proposal would cause further fragmentation of the reserve, including the reduction in the total area of the habitat and the decrease of the interior:edge ratio.
- CNPS officials in their expert opinions have stated that:
  - The habitat area is unique for many reasons including slope, soils, orientation, proximate habitat and plants, wildlife, wind direction, and other reasons that biologists do not fully understand. The habitat is found in that particular location for particular reasons. A habitat area cannot be “relocated” like a house or a road. Planting rare native plants never has results as successful as when the native plants grow naturally of their own accord.
  - The proposed construction impacts and grading impacts would have significant and permanent harmful impacts on the plant reserve, even if CNPS were to agree to the proposed relocated area, which CNPS does not. These and other project impacts would degrade and fragment the habitat.

- The proposed project construction and grading would cause significant and permanent impacts of removing an existing knoll at the center of the undeveloped habitat reserve parcel and thus changing the habitat integrity forever. The proposal would require a large amount of grading and cuts that would not be replaced with the same soil, slope and orientation as currently exists.
- The December 2, 2019 proposal shows materially different and potentially misleading topography from previous plans of the parcel which show two knolls and other topography relevant to the habitat. (E.g., EA/IS sheet C8.) This is a serious omission.
- The FORA development proposals have failed to understand the topography and the extent of the potential and likely impacts to the habitat as a result of the proposed grading and other construction impacts.
- The realignment project would destroy the known species of Monterey spineflower and California Endangered Seaside bird's beak at the site. The impacts to sandmat manzanita, coast live oak and other plants typical of uncommon Maritime Chaparral habitat also would be severe. In particular, Seaside bird's beak is a hemi-parasitic plant that taps other plants for nutrients in ways that are poorly understood. These inter-plant relationships are extremely difficult to recreate.
- The proposed relocation of the reserve would cause significant and harmful impacts and changes to the drainage, forestation, and undergrowth of the habitat area.
- The proposed large amount of grading would cause significant and harmful impacts. The removal of native soils damages the soil structure and soil biology, specifically the mycorrhizal relationships between soil fungi and native plant species, particularly manzanitas, which rely on mycorrhizae to augment water and nutrient uptake. Several species of manzanitas occur in the protected habitat in Plant Reserve 1North. Replacement of the soil is not adequate mitigation to restore soil biology.
- The FORA-DRO-CNPS contract requires a buffer zone to avoid impacts on the habitat of the adjacent development to the north, proposed in the past as a resort and golf course. No such buffer has been proposed for the South Boundary Road widening and realignment project, even though the road project would be adjacent to the reserve as proposed, and it is foreseeable that the construction, development, pesticides, herbicides, rodenticides,

vehicular traffic emissions and dust, and other impacts would cause significant adverse harm to the habitat area.

- A “relocation” of the reserve as proposed by FORA would require FORA and Del Rey Oaks to approve a renegotiated contract and, in CNPS officials’ opinion, the FORA proposals for relocation of the existing protected habitat would have significant and unmitigated biological impacts, for all the reasons stated above. Thus, any approval by FORA and Del Rey Oaks of a modified contract would require a prior environmental document under CEQA detailing the impacts of the new smaller and different site boundaries, and mitigating the impacts, along with other CEQA issues. This analysis and mitigation was not part of the 2010 EA/IS.

CNPS urges FORA and Del Rey Oaks to consider a project that realigns South Boundary Road to the north, either along or north of the existing dirt road that runs along the approximate northern boundary of parcel E29a.1. A northerly realignment is feasible, it could be successful in avoiding impacts to the protected habitat to the south of the dirt road, and it could be consistent with the language and intent of the FORA-DRO-CNPS contracts.

#### Summary.

CNPS emphasizes that CNPS has not agreed to a modification to the reserve, that no agreement with FORA has been reached regarding any “relocation” of the reserve, and that FORA’s proposals to date are inconsistent with the purposes of the reserve, the binding agreements and the CEQA mitigations. FORA cannot deliver an approved South Boundary Road project to Del Rey Oaks. Even if CNPS were to agree to a boundary modification, which CNPS has not agreed to, approval of any such modification would be a discretionary act by FORA and Del Rey Oaks and thus would require prior compliance with CEQA to investigate, disclose, analyze and mitigate the significant and potentially significant environmental impacts of the boundary change.

#### Offer to meet.

CNPS offers to meet with you with the goal of resolving this matter. FORA controls the schedule. CNPS does not control the schedule. If you would like to meet, please contact me at [erickson@stamplaw.us](mailto:erickson@stamplaw.us).

#### Request.

CNPS asks FORA to rescind its approvals of the EA/IS and the South Boundary Road project. If in the future an agency wants to pursue an alternative road project, that agency would be the project proponent and as should comply with CEQA and all contracts with CNPS. CNPS asks for the courtesy of a written response.

CNPS to Jane Parker, Chair, Fort Ord Reuse Authority Board of Directors  
May 1, 2020  
Page 9

Thank you.

Sincerely,

STAMP | ERICKSON

*/s/ Molly Erickson*

Molly Erickson

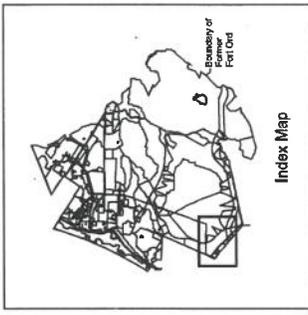
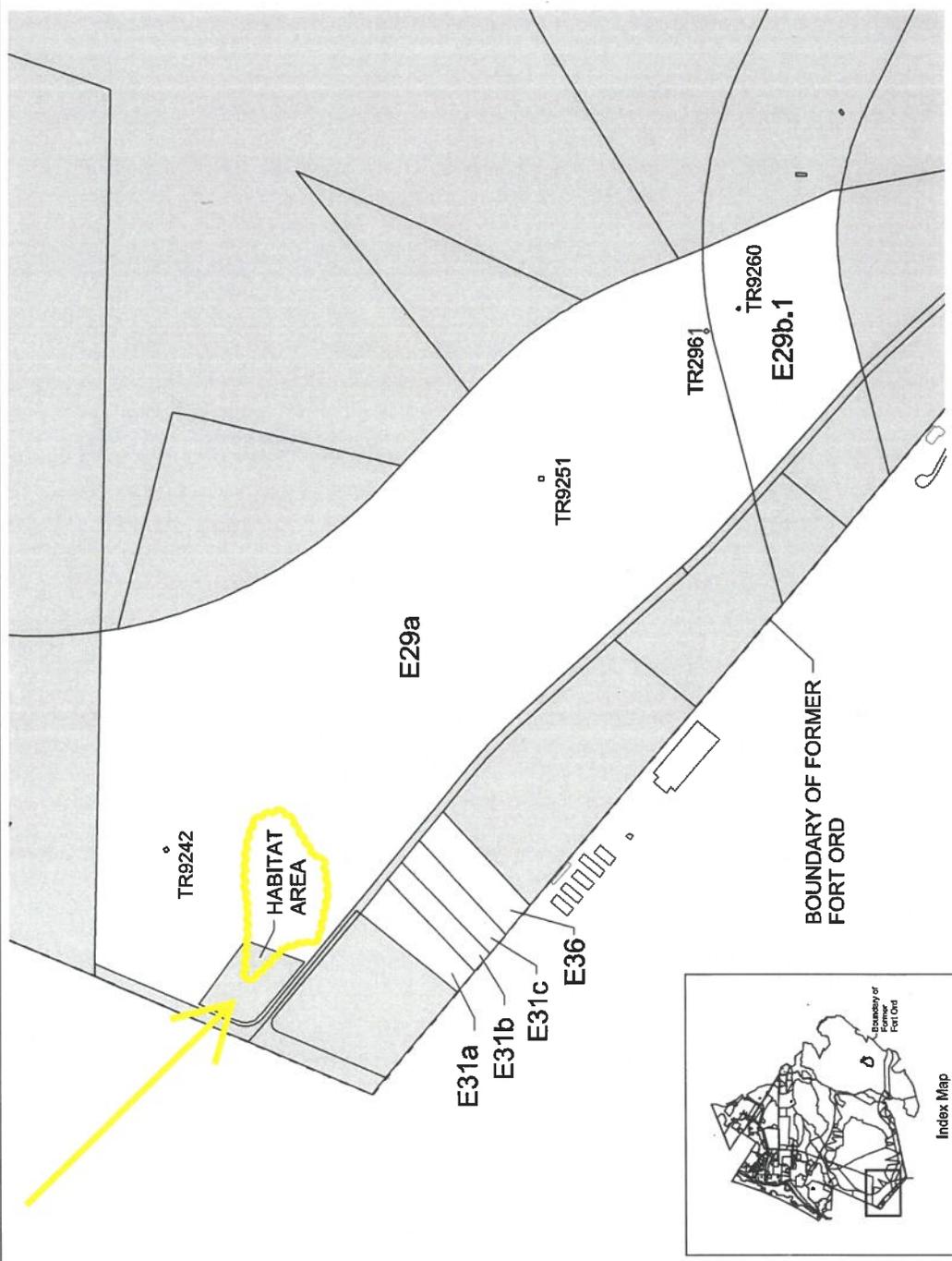
Attachments: Exhibits A, B and C, as described above, highlighted in pertinent parts

cc: Mayor Kerr and members of the city council, Del Rey Oaks  
Kate McKenna, Executive Officer, LAFCO of Monterey County  
Debbie Hale, Executive Director, Transportation Agency of Monterey County

### Exhibit A to May 1, 2020 letter

#### EXPLANATION

-  Transfer Parcel with Number
-  Not Part of this Transfer
-  9951 Building with ID Number



**Location Map**  
 Del Rey Oaks FOSSET  
 Former Fort Ord  
 Monterey, California

DRAWN BY: JCF  
 JOB NUMBER: 52703 00134

APPROVED: 

DATE: 10/00

REVISED DATE: 6/03

PLATE 1

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



**DEPARTMENT OF THE ARMY**  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO  
ATTENTION OF:

**AUG 03 2004**

CESPK-PM

MEMORANDUM FOR Ms. Gail Youngblood, Fort Ord Office, Army Base Realignment and Closure,  
Monterey, CA 93944

SUBJECT: **Del Rey Oaks 5-acre Parcel Walkabout**

1. REFERENCES:

- a. U.S. Army Corps of Engineers (USACE), Sacramento District, 2001. Site Del Rey Oaks Group After Action Report Geophysical Sampling, Investigation and Removal, Former Fort Ord, Monterey, California. Final. Prepared by USA Environmental, Inc., April.
- b. U.S. Army Corps of Engineers (USACE), 2000. Unexploded Ordnance (UXO) Support During Hazardous, Toxic, and Radioactive Waste (HTRW) and Construction Activities. EP 75-1-2. Prepared by U.S. Army Engineering and Support Center, Huntsville, November.
- c. Parsons, 2004. Del Rey Oaks Walk about Memorandum for Record. August.

2. At the request of the US Army Corps of Engineers, Sacramento District, Parsons conducted a "walkabout – A Schonstedt assisted visual reconnaissance" over a **5-acre parcel known as "DRO Habitat Area"** on 7 June 2004. The walkabout was limited to accessible areas only (**attached map**). Additional details can be found on attached letter from Parsons, 3 August 2004. The area is contained within the Impact Area which was previously used for ordnance training operations. During the walkabout no military munitions (MM) or debris (MD) were found. As result, under EP-75-1-2, the subject area can be categorized as a low probability area to encounter Unexploded Ordnance (UXO). EP-75-1-2 requires the following: (1) a UXO team consisting of a minimum of two qualified UXO personnel (one UXO Technician III and one UXO Technician II) to support construction activities including oversight and monitoring, (2) OE recognition training for all construction workers performing ground disturbing activities, and (3) on-site UXO safety briefings prior to initiation of any ground disturbing activities. The U.S. Army should make necessary arrangements for disposal of any ordnance found in the subject area.

Exhibit B to May 1, 2020 letter  
p. 2 of 4

CESPK-PM

SUBJECT: Del Rey Oaks 5-acre Parcel Walkabout

3. The U.S. Army should evaluate ground disturbing activities performed at the subject site after work is completed to determine if additional ordnance safety measures are required.
4. If you have any questions, please contact Mr. Juan Koponen, Project Manager, at (831) 884-9925 ext. 233 or Mr. Clinton Huckins at (831) 884-9925 ext 226.



George Siller  
Program Manager  
U.S. Army Corps of Engineers,  
Sacramento District

CC (w/encls):  
PM-M (George Siller) (Juan Koponen)  
CO-Monterey (Clinton Huckins)

# PARSONS

Building 4522 - 8th Avenue & Joe Lloyd Way • Ord Military Community, CA 93944

3 August 2004

## MEMORANDUM FOR RECORD, Revised

A site walkabout was performed in accessible areas of the 5 acre DRO Group Habitat area on June 7<sup>th</sup>, 2004. Areas under accessible tree canopies and small pathways with low to moderate growth vegetation were investigated.

The personnel conducting the site walkabout consisted of two UXO QC personnel, one swept accessible areas with a Schonstedt GA52Cx flux-gate magnetometer and the second person carried a Leica Global Positioning System which documented the path walked and checked with the Schonstedt magnetometer. All 12 anomalies encountered were investigated and determined to be Range Related Debris (RRD) consisting of c-ration cans, wire, and assorted miscellaneous scrap. No Military Munitions (MM) or Munitions Debris (MD) were encountered.

As illustrated on the attached site walkabout map, access was restricted due to extremely dense vegetation.

The table shown below lists the MM/MD items that were encountered outside the 5 acre Habitat parcel during prior DRO Group Military Munitions removal action conducted in CY 2000.

OE Type	QTY	Depth	Weight	Nomenclature	Condition	RIA Code	GRID
MD	1	1	0	Rocket, 2.36inch, practice, M7	Expended	0	33 E
MD	0	0	1	FRAGMENTS, UNKNOWN	Expended	0	33 I
MD	0	0	1	FRAGMENT, UNKNOWN	Expended	0	35 I
UXO	1	4	0	Grenade, hand, smoke, M18 series	UXO	1	40 G

The US Army Corps of Engineers requires that construction support be provided on sites where the probability of encountering UXO is low. These requirements are established in EP 75-1-2, Unexploded Ordnance (UXO) Toxic, and Radioactive Waste (HTRW) and Construction Activities, 20 November 2000.

Based on information from previous removal actions in the surrounding area, the level of construction support should include the following: (1) UXO safety support during construction activities including oversight and monitoring, (2) OE recognition training, and (3) on-site UXO safety briefings prior to initiation of any on-site intrusive activities.

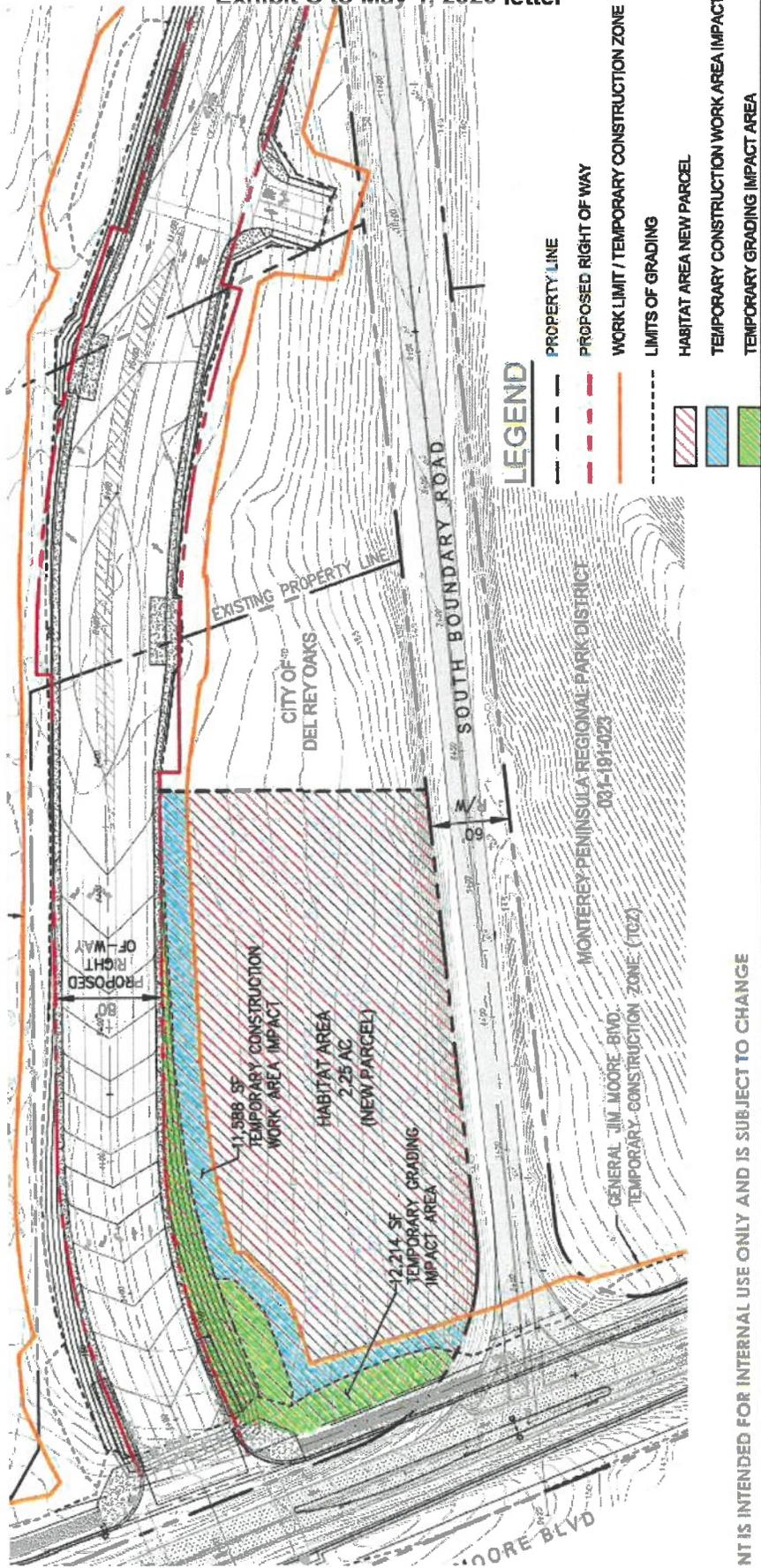
Any questions regarding this site walkabout can be addressed by contacting Mike Coon (831) 884-2306 or Andreas Kothleitner (831) 884-2313.

Regards,

Gary Griffith



Exhibit C to May 1, 2020 letter



NT IS INTENDED FOR INTERNAL USE ONLY AND IS SUBJECT TO CHANGE



CALIFORNIA  
NATIVE PLANT SOCIETY

Monterey Bay Chapter, 10000 Del Rey Oaks Blvd., Suite 100, Del Rey Oaks, CA 94028

Jane Parker, Chair

May 13, 2020

Board of Directors, Fort Ord Reuse Authority

**SUBJECT:** Notice of Breach of Contract of the FORA-Del Rey Oaks-CNPS Contract and Request for Mediation; Failure by FORA to implement Mitigation 3 of the North-South Road/Highway 218 project.

Dear Chair Parker and Members of the Board of Directors:

The Monterey Bay Chapter of the California Native Plant Society (MB-CNPS) has repeatedly stated to FORA and the City of Del Rey Oaks that the MB-CNPS protests the current proposal to realign and widen South Boundary Road and create a new intersection at General Jim Moore Boulevard. The Environmental Assessment/Initial Study for this proposal was certified by FORA in 2010 – the EA/IS included language that noted CNPS had to agree to any road alignment that impacted Plant Reserve 1 North. MB-CNPS has repeatedly stated that Plant Reserve 1 North must be protected in its entirety and that we do not agree to the realignment of South Boundary Road as currently proposed and approved by FORA. We have not received a response to our May 1, 2020 letter to FORA and its attachments.

Regarding Item 7.a.3, on the May 14, 2020 Agenda for the FORA Board Meeting, Memorandum of Agreement Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements – the MB-CNPS **PROTESTS** the transfer of road improvement funding to the City of Del Rey Oaks without the unequivocal assurance that proposed road improvements **WILL NOT IMPACT IN ANY WAY the 4.58-ACRE PLANT RESERVE 1 NORTH.**

As stated in our May 1, 2020 letter to FORA from MB-CNPS attorney Molly Erickson:

“CNPS is and has been steadfastly committed to the habitat protected by contract between CNPS, FORA and Del Rey Oaks (DRO) and also by CEQA mitigation.”

“The environmental assessment/initial study (EA/IS) certified by FORA in 2010 stated that the habitat preserve area is ‘adjacent to the Del Rey Oaks Resort’ which was to be developed adjacent to the northern boundary of the habitat parcel. The EA/IS maps show that the proposed South Boundary Road realignment would put a wide multi-lane roadway directly through the habitat area.”.

“... before FORA can proceed with its South Boundary Road project, FORA must successfully negotiate with CNPS to agree ‘to relocate a currently identified habitat preserve area further south.’ (2010 EA/IS, p. 3-2.) If FORA cannot renegotiate the location then FORA cannot proceed with the realignment and widening project as approved and must pursue other options. This requirement was stated in FORA’s EA/IS.”

*Del Rey Oaks, California*

**The Monterey Bay Chapter of CNPS firmly reiterates that it has not agreed to relocate the 4.58-acre habitat preserve area referred to as Plant Reserve 1 North. FORA and Del Rey Oaks have agreed to the protection of the 4.58-acre parcel. Del Rey Oaks and FORA have destroyed or lost their records that document this contractual agreement and mitigation requirement, as evidenced by their responses to our recent California Public Records Act requests. MB-CNPS has retained these important records. As a separate and independent claim, MB-CNPS is concerned that FORA has failed to assign a successor lead agency for all projects for which FORA previously served as lead agency. This means there is no entity that has been assigned to implement project mitigations previously adopted by FORA. CEQA mandates that mitigations must be carried out. The failure to carry out mitigations is a violation of CEQA. In 1999, FORA approved the Environmental Assessment/Initial Study, adopted mitigations, and approved the North-South Road/Highway 218 Improvements project. FORA constructed the improvements project and FORA has not yet implemented all adopted mitigations, including Mitigation 3, which was in direct response to the comment letter MB-CNPS provided on the project EA/IS and for which there is a continuing need. The MB-CNPS EA/IS comment letter on the North/South Road/Highway 218 project led not only to the creation of Plant Reserve 1 North and the CNPS-FORA-DRO Agreement regarding its permanent protection, but also Mitigation 3.**

MB-CNPS is concerned that FORA has made an anticipatory breach of the 1998 agreement between CNPS, FORA and DRO, as modified in 1999. MB-CNPS is concerned that FORA has, or intends to abandon, its responsibilities under the Agreement, specifically including but not limited to the term that "the [protected habitat] area will be protected from fragmentation and degradation in perpetuity," that no "road widening ... would affect the reserve," that "any future widening [that] would affect the habitat would require negotiation of this agreement," and that "no development would be permitted in the plant reserve."

MB-CNPS is concerned that FORA also has, or intends to, abandon its responsibilities under the EA/IS adopted in 2010 for the South Boundary Road project, specifically including but not limited to FORA's apparent new position that the MB-CNPS agreement with FORA and DRO is not a necessary condition precedent for the construction of the South Boundary Road realignment project. MB-CNPS is concerned that FORA's actions show that it has, or intends to, abandon its duties as to these matters as well as the unimplemented project mitigations described above, including Mitigation 3, when FORA is dissolved on June 30. MB-CNPS is concerned that FORA has not and will not assure an adequate assignment to an entity that will step into FORA's shoes and honor FORA'S agreement for the permanent protection of Plant Reserve 1 North, as well as the documented CEQA mitigations.

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.

California Native Plant Society, Monterey Bay Chapter to Fort Ord Reuse Authority  
May 13, 2020  
Page 3

Please contact MB-CNPS Attorney Molly Erickson at (831) 373-1214 no later than May 15, 2020, in order to arrange mediation with a mutually acceptable mediator. FORA's failure to respond will be interpreted by MB-CNPS to be a refusal to mediate.

Sincerely,



Brian LeNeve

President

California Native Plant Society, Monterey Bay Chapter to Fort Ord Reuse Authority  
May 13, 2020  
Page 3

cc: Mayor Kerr, City Manager Pick, and members of the City Council, Del Rey Oaks  
Kate McKenna, Executive Officer, LAFCO of Monterey County  
Debbie Hale, Executive Director, Transportation Agency of Monterey County  
Members of the Board of Directors, Monterey Bay Chapter - CNPS

24591 Silver Cloud Court  
Suite 200  
Monterey, California 93940

Tel (831) 373-7500  
Fax (831) 373-7555

Sender's e-mail:  
jgiffen@kaglaw.net

May 19, 2020

**Via Electronic Mail**

Molly Erickson  
STAMP | ERICKSON  
Attorneys at Law  
erickson@stamplaw.us

Re: South Boundary Roadway Improvement Project

Dear Ms. Erickson,

I write on behalf of the Fort Ord Reuse Authority ("FORA"), in response to your letter dated May 1, 2020 sent on behalf of the California Native Plant Society, Monterey Bay Chapter ("CNPS") regarding the South Boundary Roadway Improvement Project (the "Project"). As you know, FORA is scheduled to sunset on June 30, 2020 and the City of Del Rey Oaks ("DRO") will assume the Lead Agency position with respect to the Project. In advance of such occurring, by this letter, FORA seeks to (1) correct the record regarding the 1998 and 1999 CNPS and FORA agreements regarding the ~2.0 acre habitat reserve located on the northeast corner at the intersection of South Boundary Road and General Jim Moore Boulevard (the "Habitat Area") and (2) document and clarify the attempts by FORA and DRO to work with CNPS in connection with the Project.

**I. The Correct Historic Overview of the Habitat Area**

Your May 1 letter seeks to re-write history by suggesting that CNPS is entitled to a habitat area of 4.66 acres, comprising the entirety of parcel E29a.1 transferred to FORA by the United States Army. There is no support for such a contention. Nor is there support for your related, fallback claim that – to the extent that the CNPS Habitat Area comprises only two acres – such two acres are located at the northern boundary of parcel E29a.1, such that the "South Boundary Road realignment would put a wide multi-lane roadway directly through the habitat area." Rather, FORA and DRO's 1998 and 1999 agreements with CNPS and historical documentation relating to the same delineate clearly the scope of the parties' agreement with respect to the Habitat Area as approximately 2.0 acres in size; located at the intersection of South Boundary Road and General Jim Moore Boulevard; and comprising land within parcel E29a.1 which has been otherwise designated for development.

**A. The 1998 Agreement**

As set forth in my December 2, 2019 letter to you, CNPS's involvement with respect to the Project stems from a 1998 agreement entered between FORA and DRO, on the one hand, and CNPS on the other. In connection with FORA's 1998 consideration and approval of the North-South Road/Highway 218 Improvement Project (now known as General Jim Moore Boulevard),

CNPS expressed concern about that project's impact on a plant reserve located in the area. Following discussions between CNPS, FORA and DRO, the parties entered an agreement (the "1998 Agreement") documented in an April 22, 1998 letter from CNPS to FORA. A copy of this April 22, 1998 letter is attached hereto as Exhibit 1. The letter provides as follows:

"This letter describes an agreement that CNPS offers to the City of Del Rey Oaks/FORA in regards to the road widening project that impinges on Plant Reserve #1 at Fort Ord. The plant reserve is protected by the December 1989 agreement between the Army and CNPS as mitigation for loss of habitat caused by construction. CNPS will accept the habitat loss in exchange for permanent protection of comparable habitat across South Boundary Road.

On previous field trips the representatives of FORA and the City of Del Rey Oaks have agreed to minimize the area of maritime chaparral that will be removed by the proposed North South Road widening. The amount is estimated at 0.2 acres.

...  
**The chapter agrees that preservation of a minimum of two acres of comparable maritime chaparral located approximately at the corner of South Boundary Road and the North-South Road, will compensate for the loss of chaparral, provided there is an adequate buffer to ensure that golf course drainage will not impinge on the habitat, and that the area will be protected from fragmentation and degradation in perpetuity. . . . Any future widening which would effect the habitat, would require renegotiation of this agreement."**

(emphasis added).

The 1998 Agreement in also stated that "[t]he area involved will be documented with photographs by CNPS and markers established by the City of Del Rey Oaks to ensure that there is no misunderstanding about the location or condition of the preserved areas."

In sum, by the terms of the 1998 Agreement, in exchange for FORA's impinging on approximately 0.2 acres of maritime chaparral in connection with the widening of North-South Road (General Jim Moore Boulevard), FORA and DRO agreed with CNPS to preserve an area ten times that size – "a minimum of two acres of comparable maritime chaparral located approximately at the corner of South Boundary Road and the North-South Road [General Jim Moore Boulevard]."

**B. The 1998 Environmental Documentation for the North-South Road/Highway 218 Improvement Project**

In October 1998, FORA released for public comment a draft CEQA document called the "Environmental Assessment/Initial Study for the North-South Road/Highway 218 Improvement Project." As part of that public review process, CNPS sent a letter dated December 4, 1998

providing comments on the same and reiterating the terms of the 1998 Agreement. A copy of this December 4, 1998 letter is attached hereto as Exhibit 2. In pertinent part, the letter stated:

“1) The agreement provides that the two acres **on the northeast corner of the intersection of North-South Road and South Boundary Road** will compensate for the loss of chaparral, provided there is an ‘adequate buffer to assure that golf course drainage will not impinge on the habitat.’ We ask that the quoted material be added to the document. The provision that ‘no spraying or irrigation will be directed toward the habitat area’ is meaningless if the golf course is allowed to come within a few feet of the preserve. 2) The agreement calls for markers to be established by the City of Del Rey Oaks ‘to ensure that there is no misunderstanding about the location and condition of the preserved areas.’ Please add to the mitigations that ‘before any grading is done in carrying out this project, the surveyor from DRO will meet with CNPS representatives in order to pinpoint and mark these locations’; then CNPS will be responsible for photographing the sites.”

(emphasis added). In accordance with CNPS’s comment, the terms of the 1998 Agreement were set forth in the December 1998 environmental documentation for the North-South Road project, providing:

“**A minimum of 2.0 acres of maritime chaparral habitat, located in the vicinity of the northeast corner of North-South Road and South Boundary Road, along with an adequate buffer to assure that golf course drainage will not impinge on the habitat, shall be preserved in perpetuity as a CNPS native plant area.** Markers shall be established by the City of Del Rey Oaks to assure that there is no misunderstanding about the location or condition of the preserved area. Before any grading is done in carrying out this project, the surveyor from Del Rey Oaks will meet with CNPS representatives in order to pinpoint and mark these locations. CNPS will be responsible for photographing the site.”

(emphasis added). The parties’ 1998 Agreement, and contemporaneous environmental documentation of the same, again made clear that the Habitat Area was approximately 2.0 acres in size, located at or around the northeast corner of the intersection of South Boundary Road and General Jim Moore Boulevard.

### **C. The 1999 Modification of 1998 Agreement**

The size and location of the Habitat Area were reiterated six months later, in connection with a renegotiation and modification of the 1998 Agreement that took place between CNPS, FORA and DRO in June and July 1999. On July 1, 1999, CNPS sent a letter documenting the same, with the subject “Modification of Agreement among California Native Plant Society

(CNPS), the Fort Ord Reuse Authority (FORA), and the City of Del Rey Oaks (DRO)” (the “1999 Agreement”). A copy of the 1999 Agreement is attached hereto as Exhibit 3, and states:

“This letter summarizes the June 21, 1999 renegotiation of the April, 1998 agreement (copy attached) among representatives of CNPS, FORA and DRO, regarding the road widening project that impinges on Plant Reserve #1 at the former Fort Ord (Project). Based upon the field trip to the Project site conducted on June 21, 1999 by representatives of the parties and the parties [sic] subsequent discussions, the parties agree as follows:

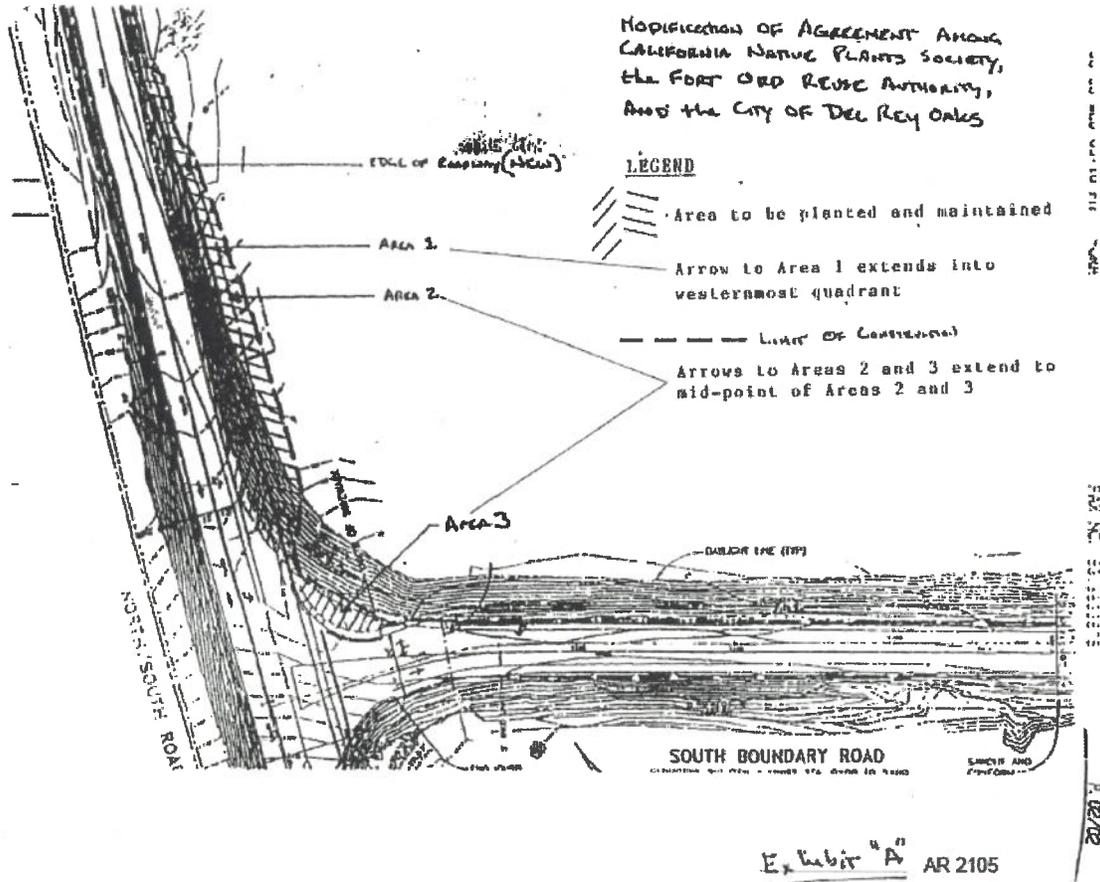
a) The modifications herein to the letter agreement noted above pertain to the **area adjacent to the intersection of North-South Rd. and South Boundary Rd. More particularly, it is the area to the east of North-South Rd. (on the northeasterly side of the intersection) and to the north of South Boundary Rd. (on the northeasterly side of the intersection).**

b) . . . [referencing inclusion of a map identified as Exhibit A] It is expressly understood by the parties that the boundaries shown in Exhibit A are the renegotiated boundaries of the area to be preserved, agreed to by CNPS after FORA agreed to modify the intersection . . . .”

(emphasis added). A copy of “Exhibit A” depicting the Habitat Area at its location “to the east of North-South Rd. (on the northeasterly side of the intersection) and to the north of South Boundary Rd. (on the northeasterly side of the intersection)” is reprinted here:

//

//



The 1999 Agreement further documented FORA’s agreement “to provide to CNPS a videotape showing the areas and markers addressed by this agreement prior to implementation of the [North/South Road] Project,” noting that “[t]his agreement to provide the videotape replaces the April, 1998 agreement by CNPS to document the area with photographs. Pursuant to this agreement, FORA transmitted the said videotape to counsel for CNPS, Jane Haines, as documented by letter dated August 5, 1999. A copy of this August 5, 1999 letter is attached hereto as Exhibit 4. Representatives of FORA have attempted to reach out to Jane Haines to obtain a copy of this videotape, to no avail. CNPS apparently – perhaps conveniently – did not preserve the videotape evidence of the specific location of the Habitat Area, which location CNPS now purports to challenge.

**D. The United States Army’s 2009 Transfer of Parcel E.29a.1 to FORA**

FORA obtained title to the 4.628 acres comprising Parcel E29a.1, within which the Habitat Area is located, via Quitclaim Deed dated July 10, 2009. A copy of this Quitclaim Deed is

attached hereto as Exhibit 5. In pertinent part, Exhibit B to the Quitclaim Deed provides as follows:

**“The Property is within a Habitat Management Plan (HMP) Development Area. No resource conservation requirements are associated with the HMP for these parcels. However, small pockets of habitat may be preserved within and around the Property.”**

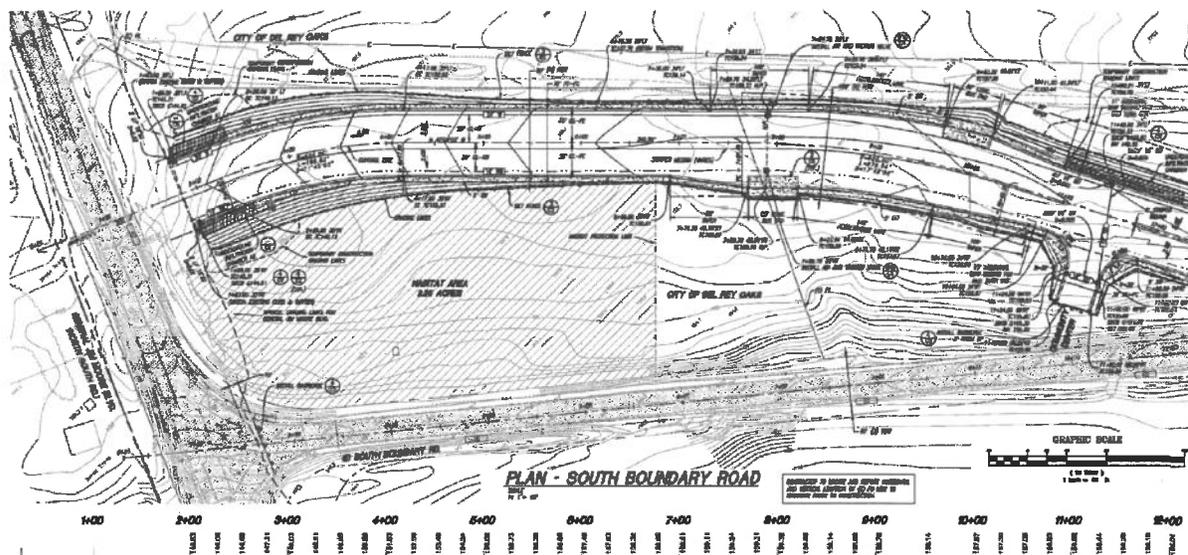
CNPS has provided no authority for its apparent contention that – contrary to the express language in the property deed – the entirety of the 4.628 acres comprising Parcel E29a.1 is to be preserved as habitat area generally or that the entirety of such parcel comprises the CNPS Habitat Area referenced in the 1998 Agreement and 1999 Agreement. Rather, the deed itself notes that this property is slated as a development parcel. While FORA and DRO agreed to preserve ~2.0 acres of such land in connection with the 1998 Agreement and 1999 Agreement, those ~2.0 acres located at the northeast corner of the South Boundary Road and General Jim Moore Boulevard intersection comprise the entirety of the CNPS Habitat Area.

As you well know, the language of the 1998 Agreement and 1999 Agreement are controlling with respect to the size and location of the Habitat Area. California Civil Code Section 1635 provides that “[a]ll contracts, whether public or private, are to be interpreted by the same rules” governing interpretation of contracts. Section 1636 states that “[a] contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” For the purposes of ascertaining the intention of the parties to a contract, Section 1638 provides that “[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” Moreover, “[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible.” Cal. Civ. Code § 1639. Here, the express language of both the 1998 Agreement and the 1999 Agreement make clear that the parties agreed to a Habitat Area that was approximately 2.0 acres in size, located at or around the northeast corner of the intersection of South Boundary Road and General Jim Moore Boulevard. Those agreements are controlling.

**E. Environmental Documentation for the South Boundary Road Project**

The size and general location of the Habitat Area was reiterated in the 2010 environmental documentation for the South Boundary Roadway Improvements. In its description of the “Affected Environment” for the Project at Chapter 4, the EA/IS provides that a “2.25 acre ‘Habitat Area’ is located between the existing and proposed South Boundary Road/General Jim Moore

Boulevard intersections.” EA/IS at 4-2. The EA/IS included a map depicting the South Boundary Roadway and showing the 2.25 acre shaded “Habitat Area” which is reprinted below.



EA/IS at Appendix B, Sheet Number C8. Consistent with the 1998 Agreement and 1999 Agreement, the Habitat Area was shown at the intersection of South Boundary Road and General Jim Moore Boulevard. Moreover, the Project design appears to attempt to sweep the roadway north above the Habitat Area, to avoid any permanent impact on the same.

Notwithstanding, the EA/IS noted in its discussion of Alternative 2, as follows:

“Widening of the South Boundary Road within the alignment as proposed by the project would be largely dependent upon the outcome of negotiations with the California Native Plant Society (CNPS) to relocate a currently identified habitat preserve area further south. CNPS has been designated **approximately 2-acres of land** for a habitat preserve area along General Jim Moore Boulevard, adjacent to the proposed Del Rey Oaks Resort, and approximately where the proposed project would realign South Boundary Road and relocate the South Boundary Road/General Jim Moore Boulevard intersection. Therefore, implementation of the proposed project would require successful negotiations with CNPS to relocate their habitat preserve area to an area south of the currently identified location, which would be adjacent to the existing South Boundary Road alignment (to be abandoned under the proposed project description).”

EA/IS at §3-2.

The EA/IS supports FORA's contention that the Habitat Area is approximately 2.0 acres in size – not the entirety of the 4.628 acres identified as Parcel E29a.1 – and is located at the northeast corner of South Boundary Road and General Jim Moore Boulevard.

The only remaining question, therefore, is whether the 2.25 acre "Habitat Area" at the northeast corner of South Boundary Road and General Jim Moore Boulevard, as depicted in the EA/IS, accurately depicts the location of ~2.0 acres referenced in the 1998 Agreement and 1999 Agreement. Your letter contends that it does not but provides no support for this contention (and CNPS has conveniently misplaced the August 1999 video that FORA provided pursuant to the 1999 Agreement evidencing the precise location). CNPS's failure to provide support for this contention is significant, because – contrary to the statements in your May 1 letter – the record reflects significant outreach by FORA and DRO to CNPS, as it relates to the Habitat Area and the Project.

## **II. The Correct History of FORA/DRO's Outreach Efforts with CNPS**

Your May 1 letter is simply incorrect in suggesting that FORA/DRO have been somehow derelict in refusing to meet with CNPS regarding the Habitat Area and Project. The record reflects otherwise.

As set forth above, the 1998 Agreement and 1999 Agreement document robust discussion, cooperation, and negotiation between and among FORA and DRO, on the one hand, and CNPS on the other hand, regarding the Habitat Area. Both agreements refer to multiple "field trips" taken by representatives of the parties in an effort to "minimize the area of maritime chaparral" impacted by the development of General Jim Moore Boulevard, and provide for the ~2.0 acre Habitat Area to accommodate for the 0.2 acres of maritime chaparral impacted by that project.

FORA did not undertake any significant planning with respect to the South Boundary Roadway until between 2007-2010, when FORA's consultant, Creegan + D'Angelo ("C+D"), together with various expert subconsultants, performed various studies and analyses of the proposed South Boundary Road improvements, including air quality modeling, a biological resources assessment, cultural resources report, geotechnical investigation, and a noise impact analysis. With respect to the Biological Resource Assessment dated August 2009, FORA's expert consultant PMC performed focused plant surveys, including through consultation with CNPS listings of plant species native to California that have low numbers, limited distribution, or are otherwise threatened with extinction. The published Biological Resource Assessment contained thorough analysis and detailed documentation of the potential biological impacts of the proposed Project site, including within the Habitat Area. After analyzing the Project, FORA's expert consultants at PMC determined that "the proposed action/project does not constitute a major state or federal action that could significantly affect the environment," and thus concluded that preparation of an Environmental Impact Report was not necessary. Accordingly, PMC prepared a Finding of No Significant Impact and a proposed Mitigated Negative Declaration and proposed Mitigation Measures and Reporting Plan for the Project.

On May 28, 2010, FORA issued a Notice of Availability and a Notice of Intent to adopt a Mitigated Negative Declaration and Finding of No Significant Impact. PMC, acting on behalf of FORA, properly filed the Notice of Availability and Notice of Intent, together with its Notice of Completion and the EA/IS, with the Governor's Office of Planning and Research, State Clearinghouse. Further, FORA attempted to disseminate the documents by transmitting the Notice of Availability and Notice of Intent and the EA/IS to various federal and state agencies, regional and local agencies, and interested organizations, including CNPS. The Notice of Availability and Notice of Intent was additionally published in the Monterey Herald on May 29, 2010, noting the availability of the EA/IS for public review. Notably, this is the same EA/IS referenced above which depicted the CNPS's 2.25-acre Habitat Area falling just south of the proposed roadway design. At no time during the 31-day review period, or even in the subsequent seven years thereafter, did CNPS raise any concerns with respect to the depicted location of the Habitat Area or the Project.

On August 13, 2010, following FORA's regular public notice procedures, the matter of the South Boundary Road/Gigling Road Project was presented to the FORA Board for approval. The FORA Board considered and took action to approve the CEQA Findings for the Mitigated Negative Declaration developed for the Project, including mitigation measures contained therein; to adopt the Mitigated Negative Declaration; to approve the Mitigation Monitoring and Reporting Program; and to approve the Project Findings. Each of these items was properly set on a public meeting agenda, with a full Board Report published in advance of the meeting. During the August 13, 2010 meeting, public comment was solicited, but none was received, relating to the Project. Again, CNPS never raised a single concern with respect to the depicted location of the Habitat Area or the Project.

Pursuant to CEQA, when a local agency approves a project for which a negative declaration has been prepared, the lead agency must file a Notice of Determination, providing notice of its intent to carry out the project. Accordingly, on August 17, 2010, FORA filed a Notice of Determination, advising the public that FORA had approved the Project. At no time during the 30-day statute of limitations following issuance of the Notice of Determination did CNPS raise any challenges with respect to the Project.

Ultimately, the lack of engagement by CNPS with respect to FORA's 2010 approval of the Project – which Project's environmental documentation reflected the Habitat Area and impacts thereto – is significant because had CNPS believed that the Habitat Area was improperly drawn or if CNPS had any concerns whatsoever with respect to the impact of the Project on the Habitat Area, one would expect that CNPS would have raised such concerns during these multiple public comment periods in 2010. CNPS remained silent.

Following Project approval in 2010, FORA turned its efforts to attempted completion of the Fort Ord Habitat Conservation Plan (HCP) in addition to other higher priority projects. The FORA Board next met regarding the South Boundary Road Project on July 14, 2017, with respect to the impending expiration of the C+D consulting agreement. Between July and November 2017, following a robust solicitation process from various engineering firms for services relating to remaining design work on the Project, the FORA Board approved a change in engineers on the

project, retaining Whitson Engineering to perform design and engineering services with respect to the roadway. As you know, immediately after this Board approval, Keep Fort Ord Wild, whom you represented, filed a Writ Petition in Monterey County Superior Court. KFOW's Writ Petition presented uncertainty with respect to the Project and thus further delayed its progress.

In early 2019 with the South Boundary Road Litigation near finality, FORA resumed its efforts with respect to the Project and began actively reaching out to CNPS to solicit information and discussion relating to the location of the Habitat Area, and the impacts of the Project thereon. On January 18, 2019, FORA invited CNPS to the FORA offices to discuss the Project. During 2018, FORA's expert consultants had conducted pre-construction surveys of the existing conditions at the property, including a topographical survey of the actual conditions, a tree survey, and – consistent with the approved Mitigation Monitoring Response Plan – biological surveys of the property. FORA shared these efforts with representatives of CNPS at the January 18 meeting, with specific reference to the 1998/1999 agreements regarding the Habitat Area. FORA advised that FORA considered the Habitat Area to be located within the 2.25 acres identified in the 2010 EA/IS. During this meeting, Nicole Nedeff, President of CNPS, referred to certain maps of the Habitat Area and surrounding location, and she offered to provide the information to FORA. FORA welcomed such information. In a follow-up correspondence dated January 25, 2019, FORA provided Ms. Nedeff with links to the approved EA/IS, detailed information concerning munitions response requirements, and copies of the biological survey reports as requested by CNPS. FORA further specifically requested that CNPS provide FORA with copies of the maps that CNPS had referenced during the meeting. CNPS apparently failed (or refused) to provide such information, as FORA does not possess any records showing a CNPS response to the January 25 correspondence.

Rather, FORA again reached out to CNPS to follow up on the “mapping and document records . . . concerning the habitat area” on March 4, 2019, and March 21, 2019. At that time, Ms. Nedeff responded without explanation that CNPS had determined not to share information with FORA “until the Keep Fort Ord Wild and FORA litigation regarding South Boundary Road has been ironed out.” The Court issued its Intended Decision denying KFOW's writ petition on March 26, 2019, and the Court rendered judgment in FORA's favor in the South Boundary Road Litigation on May 16, 2019. Even after the resolution of that litigation, CNPS – now with its retained counsel Molly Erickson – were slow to respond to meeting requests, failed to provide information, refused opportunities to walk about the property, and appeared focused on obfuscation and delay, rather than collaborative discussion.

Representatives of FORA, DRO and CNPS were scheduled to meet in early August 2019, but that meeting had to be cancelled because Ms. Nedeff indicated that she was sick. After much prodding to reschedule the meeting, representatives of CNPS, DRO and FORA met on October 11, 2019 to discuss the Project. At that meeting, DRO's City Manager, Dino Pick, solicited information and documentation from CNPS regarding the location of the Habitat Area and offered to walk the area with representatives of CNPS to gain a greater understanding of any concerns that CNPS may have with respect to the Project. CNPS refused on both fronts and offered as a reason for delay that it needed to wait until its next quarterly board meeting before engaging further.

On December 2, 2019, FORA sent CNPS a lengthy letter documenting the history of the Habitat Area and agreements regarding the same; setting forth FORA's interpretation as to the location of the Habitat Area; notifying CNPS of certain temporary impacts to the Habitat Area that may be realized as a result of construction based on the proposed plan modifications to the approved Project; and advising of FORA's intent to restore the area to its original configuration following completion of the Project per the terms of the 1998 Agreement. FORA advised that it was currently in the process of finalizing the South Boundary Road design and that – before it did so – wanted to reach out to CNPS once more to discuss the location of the Habitat Area vis-à-vis the proposed plan modifications. FORA specifically invited CNPS to comment upon the letter and to provide any documentation that CNPS believed was pertinent to the Project, stating “[i]t is FORA's intent to ensure that the terms of 1998 Agreement and 1999 Modification thereto are met, and – for the benefit of this community – to invite CNPS's expertise in the preservation of habitat at this location.”

On December 5, 2019, counsel for FORA called Jane Haines, CNPS's former counsel, to obtain information regarding the video that FORA transmitted to Ms. Haines in August 1999, as documented in the letter attached hereto as Exhibit 4, referenced above. Ms. Haines initially responded that she needed to “call some people” before she could provide information relating to the video. Strangely, she then called back on December 6 stating that she had talked to the individuals she needed to speak with and after considering the inquiry further, she did not recall ever receiving such a videotape.

Finally, representatives of FORA, DRO and CNPS met in person on December 13, 2019 to review the status of the Project and the location of the Habitat Area. Mr. Said of FORA provided an informational PowerPoint presentation identifying the history and background of South Boundary Road planning and outlining a path forward. Attached hereto as Exhibit 6 is a copy of the December 13 presentation. The presentation included graphics that showed the proposed plan modifications to the approved Project. It highlighted plan modifications, including an innovation from previous concepts to separate the pedestrian/bike path facilities from the roadway design, to provide a more natural experience and to reduce the contiguous width of the pavement required for the improvement with the overall goal to try and reduce long-term impacts. FORA suggested that this separation of roadway and pathway might also serve to tie into the regional trail system being planned. As part of the background, FORA stated that pre-construction protocol-level focused plant surveys of the area had been completed and, per CNPS's request, FORA provided CNPS with copies of the same.

The main purpose of the December 13 meeting was to remind participants of the background and explain the proposed modifications of the approved Project in order to initiate discussion. The 1998 Agreement and 1999 Agreement laid out the requirement to establish the parcel boundary, but – except for the documented transmission of the videotape in August 1999 as set forth in Exhibit 4 – FORA could not find any record of the precise location of the Habitat Area referenced in the agreements. FORA's goal of the meeting was to solicit information from CNPS to better understand CNPS issues and their preferred location of the “approximately 2-acre parcel”. After FORA's very illustrative and open presentation of the proposed modifications, FORA

initiated a dialog in attempt to understand what was important to CNPS, and its view of the precise location of the Habitat Area. CNPS representatives highlighted the biodiversity and critical habitat of the area, but CNPS continued to refuse to provide any maps or documents outlining its view of the Habitat Area boundaries. Indeed, Mr. Pick of DRO specifically asked if CNPS could provide any documentation concerning the potential location of the Habitat Area or any information which could help in the dialog. Ms. Nedeff had a hardcopy map of the area that she was looking at during the discussion. When asked what she was looking at and if she could share the information, Ms. Erickson got out of her seat, took the map from Ms. Nedeff and stated that CNPS had no information to share. The meeting was quickly concluded with the verbal commitment by participants to meet again and Mr. Pick with DRO stated that he would take the coordination lead.

FORA, in good faith, tried to get a follow-up meeting with CNPS and DRO, and sent out a Doodle poll request on December 26, 2019 in attempt to identify possible dates for the next meeting. CNPS acknowledged receipt of the meeting request but declined to respond with viable dates for the meeting. Upon FORA's follow-up with DRO, it was agreed that DRO would take the lead on coordinating the outreach with CNPS, given FORA's impending sunset.

Then, on December 31, 2019, FORA responded to a comprehensive Public Records Act request received from your office, seeking deeds and deed restrictions relating to Parcel E29a.1; deed and deed restrictions relating to the parcel north of "the rare plant preserve 1A"; maps or graphic references showing parcel E29a.1; maps, drawings and other graphic depictions of the approved development of General Jim Moore Boulevard; environmental review of the approved expansion/widening of General Jim Moore; communications between FORA and Del Rey Oaks regarding South Boundary Road, and the "plant reserve 1A (aka 1 North)"; and agreements of any kinds relating to "plant reserve 1A, the property to the north of plant reserve 1A, or any aspect of one or both of them." FORA provided more than a thousand pages of responsive documents.

The above history of FORA's outreach efforts with CNPS runs in stark contrast to your May 1 accusation that FORA has neglected to work with CNPS in regard to the Habitat Area and Project. In reality, FORA met its obligations for documenting the location of the Habitat Area per the 1998 Agreement and 1999 Agreement, and – now that CNPS contends that it cannot find such documentation – FORA has attempted to work with CNPS regarding the precise location of the Habitat Area. CNPS's now 12th hour contention that the Habitat Area is more than two times the size that the parties agreed upon is simply not consistent with the 1998/1999 agreements, with the 2010 EA/IS, or with the parties' discussions since then.

### **III. Conclusion**

As you know, FORA is scheduled to sunset in less than two months – on June 30, 2020. In planning for FORA's pending sunset, FORA has been working with DRO to identify the appropriate terms and conditions for the transfer of funding to DRO in support of any improvements to South Boundary Roadway and the Intersection at General Jim Moore Boulevard ("Improvements"), to be documented in a Memorandum of Agreement ("MOA"). On May 14, 2020, the FORA Board met and considered such MOA, with a majority of the FORA Board voting in favor of authorizing the Executive Officer to execute the MOA. Attached hereto as Exhibit 7 is

a copy of the Board Report for Item 7A, which attaches a copy of the proposed MOA between DRO and FORA. In general terms, the MOA provides that FORA will not undertake the construction of Improvements to South Boundary Roadway and the Intersection at General Jim Moore Boulevard. Rather, DRO wishes to undertake these Improvements and FORA is willing to provide funding in support of the Improvements pursuant to the terms in the MOA. The MOA provides the mechanisms for such funding to be made and notes the intended assignment (with the consent of Whitson Engineers Inc.) of existing and open contract work orders with Whitson Engineers associated with the design of the Improvements. Finally, the MOA notes that, inasmuch as FORA will not be carrying out the Improvements, but rather will only make funding available to DRO as provided in the MOA, responsibility for any further necessary environmental analysis, review, or approvals, implementation and supervision of any mitigation measures or monitoring program adopted in connection with any environmental approvals for the Improvements, coordination with the City of Monterey or any other governmental entities, will be that of DRO and not of FORA. The FORA Board will take the requisite second vote on the MOA at its next meeting, currently scheduled for May 22, 2020.

Inasmuch as FORA will take no further role with regards to the Project, FORA requests that CNPS direct all future communications regarding this matter to DRO, which will be the lead agency on the Project going forward. FORA understands that DRO stands at the ready to meet with you.

Very truly yours,

KENNEDY, ARCHER & GIFFEN



Jon R. Giffen

cc: City Manager Dino Pick, Mayor Alison Kerr and members of the city council, Del Rey Oaks  
Kate McKenna, Executive Officer, LAFCO of Monterey County  
Debbie Hale, Executive Director, Transportation Agency of Monterey County

**EXHIBIT 1**

Monterey Bay Chapter  
California Native Plant Society

April 22, 1998

Fort Ord Reuse Authority  
100 12<sup>th</sup> Street  
Building 2880  
Marina, CA 93933

This letter describes an agreement that CNPS offers to the City of Del Rey Oaks/FORA in regards to the road widening project that impinges on Plant Reserve #1 at Fort Ord. The plant reserve is protected by the December 1989 agreement between the Army and CNPS as mitigation for loss of habitat caused by construction. CNPS will accept the habitat loss in exchange for permanent protection of comparable habitat across South Boundary Road.

On previous field trips the representative of FORA and the City of Del Rey Oaks have agreed to minimize the area of maritime chaparral that will be removed by the proposed North South Road widening. The amount is estimated at 0.2 acres of chaparral. This number is approximate. The area affected contains the best example of maritime chaparral in the preserve.

The chapter agrees that preservation of a minimum of two acres of comparable maritime chaparral located approximately at the northeast corner of South Boundary Road and North-South Road, will compensate for the loss of chaparral, provided there is an adequate buffer to assure that golf course drainage will not impinge on the habitat, and that the area will be protected from fragmentation and degradation in perpetuity. The boundaries must avoid road widening that would affect the reserve. Any future widening which would effect the habitat, would require renegotiation of this agreement. In addition, no spraying or irrigation drainage should be directed towards the habitat area. No development would be permitted in the plant reserve.

If the plant reserve should be damaged in a manner contrary to the terms of this agreement, then the City of Del Rey Oaks, the developer, or successor owners will restore the area by replanting with site-specific plant materials to the original configuration. The area involved will be documented with photographs by CNPS and markers established by the City of Del Rey Oaks to assure that there is no misunderstanding about the location or condition of the preserved areas. 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). If the disputed issue is upheld

and work is required to rectify the problem, all required work and consultant time shall be paid by the City, and/or Developer, including CNPS's share of the initial consultation fee, and the work shall take place in the manner recommended by the consultant.

Sincerely Yours'

*Ronald L. Branson M.D.*

Ronald L. Branson, M.D., President

*Mary Ann Matthews*

Mary Ann Matthews, Conservation Chair

*Paul D. Barlett*  
-----  
City of Del Rey Oaks

*April 22, 1998*  
-----

Date

*Richard C. Holman*  
-----  
FORA Representative

*April 23, 1998*  
-----

Date

# California Native Plant Society

Monterey Bay Chapter

EXHIBIT 2

P. O. Box 381  
Carmel Valley, CA 93924  
Dec. 4, 1998

Mr. Jim Arnold  
Fort Ord Reuse Authority  
100 12th St., Bldg. 2880  
Marina, CA 93933

Dear Mr. Arnold:

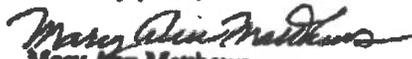
Thank you for sending the copy of the Draft Environmental Assessment/Initial Study for the North-South Road/Highway 218 Improvements Project and for extending the comment time to include this week. After consulting with members of our board, I would like to make the following comments on behalf of the Monterey Bay Chapter of CNPS.

Regarding the impacts on Maritime Chaparral, we support the mitigations based on our agreement of April 14, 1998. However, there are several omissions that need to be corrected. 1) The agreement provides that the two acres on the northeast corner of the intersection of North-South Road and South Boundary Road will compensate for the loss of chaparral, provided there is an "adequate buffer to assure that golf course drainage will not impinge on the habitat." We ask that the quoted material be added to the document. The provision that "no spraying or irrigation will be directed toward the habitat area" is meaningless if the golf course is allowed to come within a few feet of the preserve. 2) The agreement calls for markers to be established by the City of Del Rey Oaks "to assure that there is no misunderstanding about the location of condition of the preserved areas." Please add to the mitigations that "before any grading is done in carrying out this project, the surveyor from DRO will meet with CNPS representatives in order to pinpoint and mark these locations"; then CNPS will be responsible for photographing the sites.

On the wetland impacts, we did not pursue specific mitigations at the time of our agreement because we understood that there were time constraints involving the road funding. Also, most of the wetlands are in the jurisdiction of the Regional Park District (RPD). After examining the EA/IS we are concerned that the area of the RPD Natural Area Expansion, which includes the Native Plant Reserve, lacks firm mitigations to assure at least a 2 to 1 restoration area. Item 4 on p. 28 states that FORA "may implement or fund ... the following activities..." in contrast to the biologists' report, which used the word *shall*. We do note that the document states that a "minimum of 0.5 acres shall be repaired and revegetated..." but with this exception, the language throughout the wetland mitigations is optional. Although it is specified that the various activities are to be acceptable to the Regional Park District, the location of the restored area within wetland habitat is not identified. Upland restoration does not mitigate for loss of wetlands. On proposed plantings "in and around the streamzone/wetland area...in collaboration with a qualified biologist," please add "RPD and CNPS." The two- or three-year monitoring programs proposed for these areas are too short to assure success and also appear to be only optional. We ask that a five-year monitoring program be required for all mitigations involving revegetation. It is also important to draw a distinction between *revegetation*, which is simply planting plants, presumably from an agreed-upon list, and *restoration*, which is planting species that are native to the site in order to reestablish a functioning community. The latter is more difficult, but is essential to meet the mitigation requirements.

Thank you for your attention to these issues. We hope to continue to work with the various entities involved in this project to assure a first-class result.

Sincerely yours,

  
Mary Ann Matthews  
Conservation Chair



Dedicated to the preservation of California native flora

# California Native Plant Society

**EXHIBIT 3**

July 1, 1999

Mr. Michael A. Houlemard, Jr., Executive Officer  
Fort Ord Reuse Authority  
100 12th St., Bldg. 2880  
Marina, CA 93933

Mayor Jack D. Barlich, Mayor  
City of Del Rey Oaks  
650 Canyon Del Rey Road  
Del Rey Oaks, CA

**SUBJECT:** Modification of Agreement among California Native Plant Society (CNPS), the Fort Ord Reuse Authority (FORA), and the City Of Del Rey Oaks (DRO)

This letter summarizes the June 21, 1999 renegotiation of the April, 1998 agreement (copy attached) among representatives of CNPS, FORA and DRO, regarding the road widening project that impinges on Plant Reserve #1 at the former Fort Ord (Project). Based upon the field trip to the Project site conducted on June 21, 1999 by representatives of the parties and the parties subsequent discussions, the parties agree as follows:

- a) The modifications herein to the letter agreement noted above pertain to the area adjacent to the intersection of North-South Rd. and South Boundary Rd. More particularly, it is the area to the east of North-South Rd. (on the northeasterly side of the intersection) and to the north of South Boundary Rd. (on the northeasterly side of the intersection).
- b) The Project shall be constructed as shown on the enclosed map (identified as Exhibit A) with grading to be limited to the area designated as areas 1 and 2 on Exhibit A. It is expressly understood by the parties that the boundaries shown in Exhibit A are the renegotiated boundaries of the area to be preserved, agreed to by CNPS after FORA agreed to modify the intersection as described in paragraph c below.

FORA expressly agrees that the Project will not cause any removal of chaparral adjacent to the north side of South Boundary Rd.

- c) The areas shown as areas 2 and 3 on Exhibit A shall eventually be planted in a manner acceptable to CNPS, at FORA's expense, and maintained for at least five years with native plants such as CNPS-approved chaparral or other CNPS-approved plants on native type soil coming from area 1. If it is not possible for such plants to be planted so as to resist erosion by commencement of the 1999/2000 rainy season, FORA shall ensure that appropriate plantings or other protective measures (jute netting or temporary hydroseed, etc.) are put in place until the long-term planting occurs. That planting shall occur no later than prior to commencement of the 2000/2001 rainy season. All parties agree that it



*Dedicated to the preservation of California native flora*

is the intent of this agreement to preserve the appearance of native chaparral along the northeasterly side of the North-South Road intersection with South Boundary Road in the Project area.

- d) During construction of the Project, the existing fence along South Boundary Rd. shall be kept in place except if removal is necessary for construction purposes the fence shall be replaced by other appropriate temporary protective devices. Upon completion of the work along South Boundary Rd., the fence shall be installed in the location shown on Exhibit A.
- e) FORA agrees to provide to CNPS a videotape showing the areas and markers addressed by this agreement prior to implementation of the Project. This agreement to provide the videotape replaces the April, 1998 agreement by CNPS to document the area with photographs.
- f) Except as described herein, all provisions of the agreement dated April 22, 1998 attached hereto, not in conflict with this agreement, shall remain unchanged and in effect.

This summary of the parties' June 21, 1999 negotiation was originally drafted by FORA and DRO, then modified by CNPS, and subsequently agreed to by all parties. Thus, in the case of uncertainty as to its meaning, it shall not be interpreted against any one party. It may be executed in several counterparts, each of which shall be deemed an original.

Sincerely Yours,

  
Rosemary Donlon, President

Enclosed: Exhibit A (map)

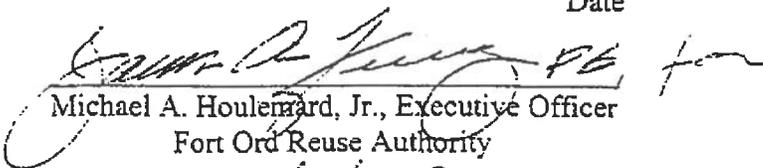
Signatures below constitute concurrence with the terms set forth above:

  
Mary Ann Matthews, Conservation Chair  
California Native Plant Society

\_\_\_\_\_  
Jack D. Barlich, Mayor  
City of Del Rey Oaks

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

  
Michael A. Houlihan, Jr., Executive Officer  
Fort Ord Reuse Authority

8/4/99  
\_\_\_\_\_  
Date

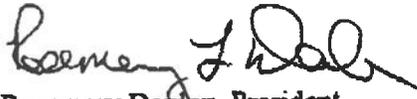
Page 2

is the intent of this agreement to preserve the appearance of native chaparral along the northeasterly side of the North-South Road intersection with South Boundary Road in the Project area.

- d) During construction of the Project, the existing fence along South Boundary Rd. shall be kept in place except if removal is necessary for construction purposes the fence shall be replaced by other appropriate temporary protective devices. Upon completion of the work along South Boundary Rd., the fence shall be installed in the location shown on Exhibit A.
- e) FORA agrees to provide to CNPS a videotape showing the areas and markers addressed by this agreement prior to implementation of the Project. This agreement to provide the videotape replaces the April, 1998 agreement by CNPS to document the area with photographs.
- f) Except as described herein, all provisions of the agreement dated April 22, 1998 attached hereto, not in conflict with this agreement, shall remain unchanged and in effect.

This summary of the parties' June 21, 1999 negotiation was originally drafted by FORA and DRO, then modified by CNPS, and subsequently agreed to by all parties. Thus, in the case of uncertainty as to its meaning, it shall not be interpreted against any one party. It may be executed in several counterparts, each of which shall be deemed an original.

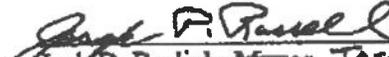
Sincerely Yours,

  
 Rosemary Doulton, President

Enclosed: Exhibit A (map)

Signatures below constitute concurrence with the terms set forth above:

  
 Mary Ann Matthews, Conservation Chair  
 California Native Plant Society

  
 Jack D. Barlich, Mayor     JOSEPH P. RUSSELL  
 City of Del Rey Oaks     VICE MAYOR

\_\_\_\_\_ Date

8/24/98  
 \_\_\_\_\_ Date

\_\_\_\_\_  
 Michael A. Houlemard, Jr., Executive Officer  
 Fort Ord Reuse Authority

\_\_\_\_\_ Date

Monterey Bay Chapter  
California Native Plant Society

April 22, 1998

Fort Ord Reuse Authority  
100 12<sup>th</sup> Street  
Building 2880  
Marina, CA 93933

This letter describes an agreement that CNPS offers to the City of Del Rey Oaks/FORA in regards to the road widening project that impinges on Plant Reserve #1 at Fort Ord. The plant reserve is protected by the December 1989 agreement between the Army and CNPS as mitigation for loss of habitat caused by construction. CNPS will accept the habitat loss in exchange for permanent protection of comparable habitat across South Boundary Road.

On previous field trips the representative of FORA and the City of Del Rey Oaks have agreed to minimize the area of maritime chaparral that will be removed by the proposed North South Road widening. The amount is estimated at 0.2 acres of chaparral. This number is approximate. The area affected contains the best example of maritime chaparral in the preserve.

The chapter agrees that preservation of a minimum of two acres of comparable maritime chaparral located approximately at the northeast corner of South Boundary Road and North-South Road, will compensate for the loss of chaparral, provided there is an adequate buffer to assure that golf course drainage will not impinge on the habitat, and that the area will be protected from fragmentation and degradation in perpetuity. The boundaries must avoid road widening that would affect the reserve. Any future widening which would effect the habitat, would require renegotiation of this agreement. In addition, no spraying or irrigation drainage should be directed towards the habitat area. No development would be permitted in the plant reserve.

If the plant reserve should be damaged in a manner contrary to the terms of this agreement, then the City of Del Rey Oaks, the developer, or successor owners will restore the area by replanting with site-specific plant materials to the original configuration. The area involved will be documented with photographs by CNPS and markers established by the City of Del Rey Oaks to assure that there is no misunderstanding about the location or condition of the preserved areas. 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). If the disputed issue is upheld

and work is required to rectify the problem, all required work and consultant time shall be paid by the City, ar./or Developer, including CNPS's share of the initial consultation fee, and the work shall take place in the manner recommended by the consultant .

Sincerely Yours

*Ronald L. Branson M.D.*

Ronald L. Branson, M.D., President

*Mary Ann Matthews*

Mary Ann Matthews, Conservation Chair

*Paul D. Beal*  
-----  
City of Del Rey Oaks

*April 22, 1998*  
-----

Date

*Paula C. Houkman*  
-----  
FORA Representative

*April 23, 1998*  
-----

Date

MODIFICATION OF AGREEMENT AMONG CALIFORNIA NATIVE PLANTS SOCIETY, THE FORT OGDEN RESEVE AUTHORITY, AND THE CITY OF DEL REY OAKS

LEGEND

- Area to be planted and maintained
- Arrow to Area 1 extends into westernmost quadrant
- LIGHT OF CONSTRUCTION
- Arrows to Areas 2 and 3 extend to mid-point of Areas 2 and 3

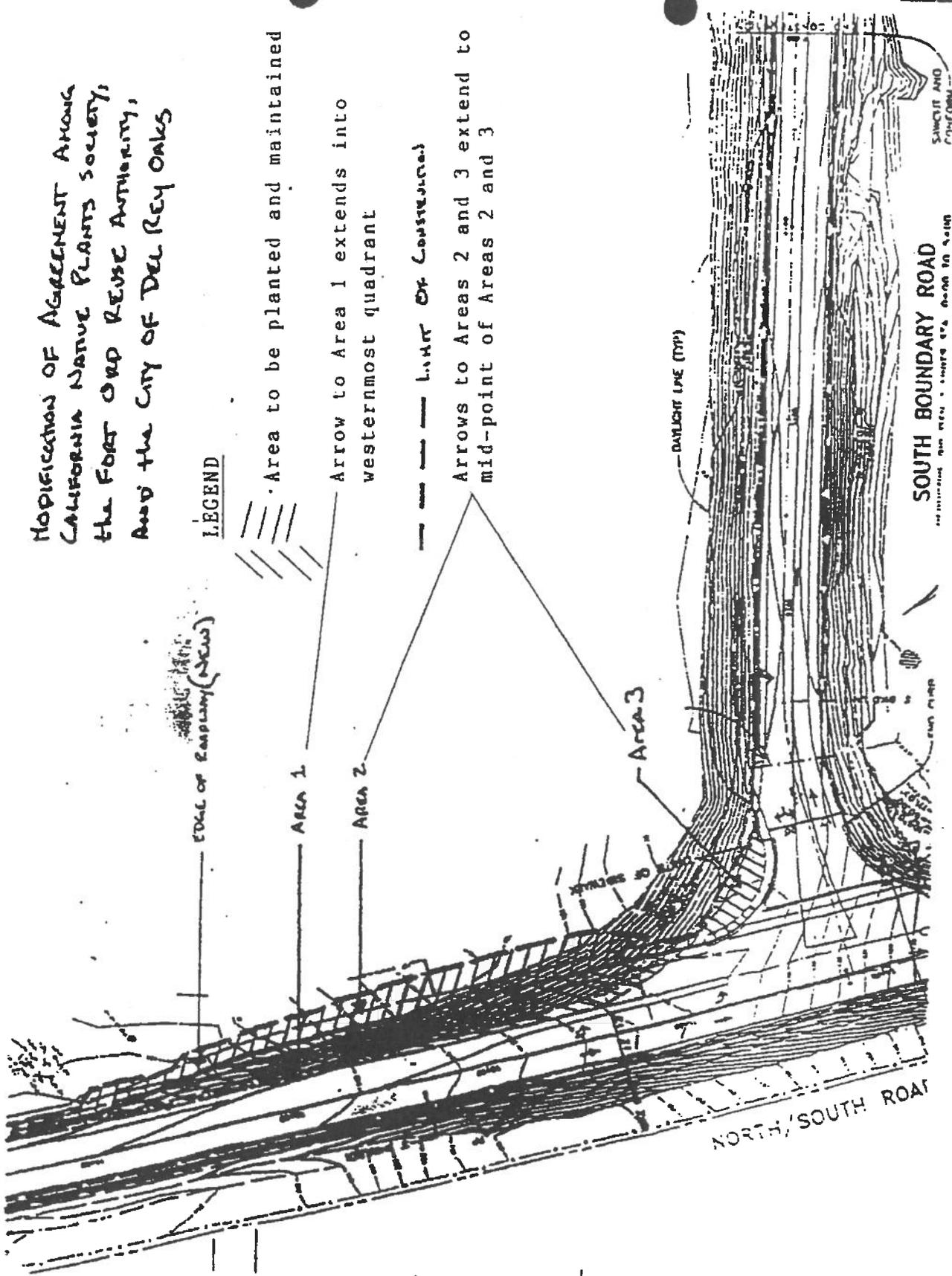
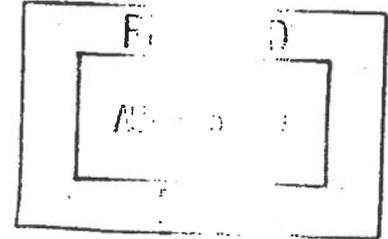


Exhibit "A"

**FORT ORD REUSE AUTHORITY**

100 12TH STREET, BUILDING 2880, MARINA, CALIFORNIA 93933  
PHONE: (831) 883-3672 - FAX: (831) 883-3675  
WEBSITE: [www.fora.org](http://www.fora.org)

August 5, 1999



Jane Haines  
LAW OFFICES OF JANE HAINES  
614 Lighthouse Avenue, Suite G  
Pacific Grove CA 93950

RE: CNPS-FORA-DRO Modification of Agreement

Dear Jane:

I apologize for the delay in getting these documents back to you, there has been a whirlwind of activity in the FORA offices. It is my understanding that construction-disruption of the vegetation area in question has not commenced.

I am enclosing two duly executed agreements signed by James Feeney, Assistant Executive Officer of the Fort Ord Reuse Authority, who is temporarily acting for Michael Houlemard during his absence. I am also enclosing the videotape of the South Boundary Road area. Please let me know at your earliest convenience, if the videotape is an accurate depiction of the area in question. I will be out of the office August 9-25, so if the tape is unacceptable, please contact Birch Ollinger at FORA (883-3672).

I am carbon copying this letter and a copy of the signed agreement to Ken Buchert with the request that after Mayor Barlich has signed this amendment that he provide a copy of the document to me so I will have a complete copy for my files. Thank you both for your assistance in resolving this matter.

Very truly yours,  
DOUGLAS C. HOLLAND,  
Authority Counsel

Sheri L. Damon  
Assistant Authority Counsel

Enc.(s)

Cc: Kenneth Buchert  
James Feeney, FORA

Deed No. **DACA05-9-06-552**

**FORT ORD REUSE AUTHORITY  
OFFICIAL BUSINESS  
REQUEST DOCUMENT TO BE RECORDED  
AND EXEMPT FROM RECORDING FEES  
PER GOVERNMENT CODE 6103**

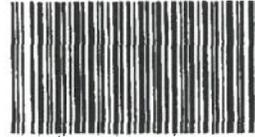
Stephen L. Vagnini  
Monterey County Recorder  
Recorded at the request of  
**Chicago Title**

CRLESLIE  
7/10/2009  
8:00:00

Recording requested by and  
when recorded mail to:

George R. Schlossberg, Esq.  
Kutak Rock LLP  
1101 Connecticut Avenue, NW  
Suite 1000  
Washington, DC 20036

DOCUMENT: **2009043259**



Titles: 1/ Pages: 21

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

Space Above This Line Reserved for Recorder's Use

Documentary Transfer Tax \$0-government agency, exempt from DTI

\_\_\_\_ Computed on full value of property conveyed  
\_\_\_\_ Computed on full value less liens and encumbrances  
remaining at time of sale

Signature of Declarant or agent - Firm name

This instrument filed for record by  
CHICAGO TITLE, as an accommodation  
only. It has not been examined as to its  
execution or its effect upon the title.

**QUITCLAIM DEED FOR  
FORT ORD REUSE AUTHORITY (FORA)  
CITY OF DEL REY OAKS  
MONTEREY COUNTY, CALIFORNIA  
(Parcel E29a.1)**

This QUITCLAIM DEED, between the UNITED STATES OF AMERICA (hereinafter the "Grantor"), acting by and through the Deputy Assistant Secretary of the Army (Installations & Housing), pursuant to a delegation of authority from the SECRETARY OF THE ARMY (hereinafter the "ARMY"), under the authority of the provisions of the Federal Property and Administrative Services Act of 1949, approved June 30, 1949 (Ch. 288, 63 Stat. 377), 40 U.S.C. §101, et seq., as amended, and the Defense Base Closure and Realignment Act of 1990, Public Law No. 101-510, ("DBCRA"), as amended, and the FORT ORD REUSE AUTHORITY ("FORA") (the "Grantee"), created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, et seq., and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, et seq., and Article 4, commencing with Section 33492.70, et seq., and recognized as the Local Redevelopment Authority for the former Fort Ord Army Base, California, by the Office of Economic Adjustment on behalf of the Secretary of Defense.

#8

5

**WITNESSETH THAT:**

**WHEREAS**, the Secretary of the Army may convey surplus property to a local redevelopment authority at a closing military installation for economic development purposes pursuant to the power and authority provided by DBCRA and the implementing regulations of the Department of Defense (32 C.F.R. 174 and 32 C.F.R. 176);

**WHEREAS**, Grantee, by application, requested an economic development conveyance of portions of the former Fort Ord, California, consistent with the redevelopment plan prepared by the Grantee;

**WHEREAS**, Grantor issued the Finding of Suitability to Transfer, Former Fort Ord, California, Track 0 Plug-in Group D, Track I Plug-in East Garrison Areas 2 and 4 NE, and Track 1 Plug-in Groups 1-5 Parcels (FOST 10) (August 2007), ("FOST") and an environmental baseline survey (EBS) known as the Community Environmental Response Facilitation Act report, which is referenced in the FOST, sets forth the environmental condition of the Property. The FOST sets forth the basis for the Grantor's determination that the Property is suitable for transfer.

**NOW THEREFORE**, the Grantor, for good and valuable consideration, the receipt of all of which is hereby acknowledged, does hereby **REMISE, RELEASE, AND FOREVER QUITCLAIM** unto the Grantee, its successors and assigns, all its right, title, and interest in the property situated, lying and being in the County of Monterey, in the State of California, Parcel E29a.1 containing approximately 4.628 acres as shown on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Property").

**AND IT IS FURTHER AGREED AND UNDERSTOOD** by and between the parties hereto that the Grantee, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the following covenants, which covenants shall be binding upon and enforceable against the Grantee, its successors and assigns, in perpetuity by the United States and other interested parties as allowed by Federal, State or local law; that the **NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS** set forth herein are a binding servitude on the Property herein conveyed and shall be deemed to run with the land in perpetuity; and that the failure to include the **NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS** in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns:

**I. PROPERTY DESCRIPTION:**

The Property includes:

A. All buildings, facilities, roadways, and other improvements, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon;

B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, and privileges not otherwise excluded herein; and

C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto.

## II. EXCLUSIONS AND RESERVATIONS

This conveyance is made subject to the following **EXCLUSIONS** and **RESERVATIONS**:

A. The Property is taken by the Grantee subject to any and all valid and existing recorded outstanding liens, leases, easements, and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record; and any unrecorded easements and any other encumbrances made for the limited purpose of roads, streets, utility systems, and pipelines set forth in Exhibit "E".

B. The Grantor reserves a right of access to any and all portions of the Property for environmental investigation and remediation or other corrective action. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of conveyance of the Property, or such access is necessary to carry out a remedial action, response action or corrective action on adjoining property. Pursuant to this reservation, the United States and its officers, agents, employees, contractors, and subcontractors shall have the right (upon reasonable notice to the Grantee, or the then owner and any authorized occupant of the Property) to enter upon the Property and conduct investigations and surveys, to include drillings, test-pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment. The Grantee agrees that notwithstanding any other provisions of this Deed, the Grantor assumes no liability to the Grantee, the then owner, or any other person, should the Grantor's exercise of its rights hereunder interfere with the Grantee's use of the Property, such interference to be avoided by Grantor to the extent reasonably practicable.

C. The reserved rights and easements set forth in this section are subject to the following terms and conditions:

1. Grantee is to comply with all applicable Federal law and lawful existing regulations;

2. The Grantor is to allow the occupancy and use by the Grantee, its successors, assigns, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the Grantor, so long as such occupancy

and use does not compromise the ability of the Grantor to use the easements for their intended purposes, as set forth herein;

3. The easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;

4. Any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant;

5. Unless otherwise provided, no interest reserved shall give the Grantor any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and

6. The Grantor is to restore any easement or right of access area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the then owner of the Property.

D. The Grantor reserves mineral rights that Grantor owns with the right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the Property.

**TO HAVE AND TO HOLD** the Property granted herein to the Grantee and its successors and assigns, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever of the Grantor, either in law or in equity and subject to the terms, reservations, restrictions, covenants, and conditions set forth in this Deed.

### **III. CERCLA NOTICE, ASSURANCES, WARRANTY, AND ACCESS PROVISIONS**

#### **A. CERCLA COVENANT**

For the Property, the Grantor provides the following covenants and retains the following access rights:

1. Pursuant to section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(4)(D)(i)), the United States warrants that any response action or corrective action found to be necessary after the date of this deed for contamination existing on the Property prior to the date of this deed shall be conducted by the United States.

2. This warranty shall not apply in any case in which the person or entity to whom the Property or any portion thereof is transferred is a potentially responsible party with respect to the Property or any such portion thereof. For purposes of this warranty, Grantee shall

not be considered a potentially responsible party solely due to a hazardous substance remaining on the Property on the date of this instrument. Further, the Grantor shall not be relieved of any obligation under CERCLA to perform any remedial action found to be necessary after the date of this Deed with regard to any hazardous substances remaining on the Property as of the date of this Deed if the Grantee is subsequently determined to be a potentially responsible party with respect to hazardous substances placed on the Property after the date of this Deed.

## B. RIGHT OF ACCESS

1. Pursuant to section 120(h)(4)(D)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(4)(D)(ii)), the United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property after the date of transfer of the Property in any case in which an environmental response action or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws, related to the Fort Ord Installation Restoration Program (IRP), Military Munitions Response Program (MMRP), or Federal Facility Agreement (FFA), as amended, and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

2. In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this covenant, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means, but without significant additional costs to the United States, to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

3. In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this covenant. In addition, the Grantee, its successors and assigns, shall not interfere with any response action or corrective action conducted by the Grantor on the Property.

**IV. "AS IS"**

The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. Except as otherwise provided herein, the Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered. Nothing in this "As Is" provision will be construed to modify or negate the Grantor's obligation under the CERCLA Covenant or any other statutory obligations.

**V. POST-TRANSFER DISCOVERY OF CONTAMINATION**

Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed and not attributable to the activities of Grantor, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor's indemnification obligations under applicable laws.

**VI. ENVIRONMENTAL PROTECTION PROVISIONS**

The Environmental Protection Provisions are at Exhibit B, which is attached hereto and made a part hereof. These provisions are intended to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at the former Fort Ord. The Grantee shall not transfer or lease the Property or any portion thereof, or grant any interest, privilege, or license whatsoever in connection with the Property, or any portion thereof, without the inclusion of the Environmental Protection Provisions contained herein to the extent applicable to the Property or a portion thereof, and shall require the inclusion of the applicable Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license concerning the Property or the applicable portion thereof.

**VII. AIR NAVIGATION RESERVATION AND RESTRICTIONS**

The Monterey Peninsula Airport and the former Fritzsche Army Airfield, now known as the Marina Municipal Airport, are in close proximity to the Property. Accordingly, in coordination with the Federal Aviation Administration, the Grantee covenants and agrees, on behalf of itself, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, that there will be no construction or alteration unless a

determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

### **VIII. ENFORCEMENT AND NOTICE REQUIREMENT**

The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, the local governments, and the lands retained by the Grantor and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of California, the local governments, and by the Grantee, and its successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. The enforcement rights set forth in this Deed against the Grantee, or its successors and assigns, shall only apply with respect to the Property conveyed herein and held by such Grantee, its successors or assigns, and only with respect to matters occurring during the period of time such Grantee, its successors or assigns, owned or occupied such Property or any portion thereof.

### **IX. NOTICE OF NON-DISCRIMINATION**

With respect to activities related to the Property, the Grantee covenants for itself, its successors and assigns, that the Grantee, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); and the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794). This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The Grantor shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

### **X. ANTI-DEFICIENCY ACT STATEMENT**

The Grantor's obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the Grantor in violation of the Anti-Deficiency Act (Public Law 97-258, 31 U.S.C. § 1341).

**XI. GENERAL PROVISIONS**

A. SEVERABILITY. If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

B. CAPTIONS. The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

C. RIGHT TO PERFORM. Any right which is exercisable by the Grantee, and its successors and assigns, to perform under this Deed may also be performed, in the event of default by the Grantee, or its successors and assigns, by a lender of the Grantee and its successors and assigns.

**XII. OTHER CONDITIONS**

Should the Property be considered for the proposed acquisition and construction of school properties utilizing State funding, at any time in the future, a separate environmental review process in compliance with the California Education Code Section 17210 *et seq.*, will need to be conducted and approved by DTSC.

**XIII. THE CONDITIONS, RESTRICTIONS, AND COVENANTS**

The conditions, restrictions, and covenants set forth in this deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions, stipulations and covenants contained herein will be inserted by the Grantee verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof. All rights and powers reserved to the Grantor, and all references in this deed to Grantor shall include its successor in interest. The Grantor may agree to waive, eliminate, or reduce the obligations contained in the covenants, **PROVIDED, HOWEVER,** that the failure of the Grantor or its successor to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee, its successors and assigns, with respect to such future performance shall be continued in full force and effect.

**XIV. LIST OF EXHIBITS**

The following listed Exhibits are made a part of this Deed:

- Exhibit A: Legal Description of the Property
- Exhibit B: Environmental Protection Provisions
- Exhibit C: Notification of Munitions and Explosives of Concern (MEC)

Exhibit D: Site maps depicting the locations of Munitions Response Sites  
Exhibit E: Unrecorded Easements and Encumbrances

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the Grantor, the UNITED STATES OF AMERICA, has caused this Deed to be executed in its name by the Director of Real Estate, this the 8th day of June 2009.

UNITED STATES OF AMERICA

By: Scott L. Whiteford

SCOTT L. WHITEFORD  
Director of Real Estate

NOTARIAL CERTIFICATE

DISTRICT OF COLUMBIA : SS

I, Barbara J. Davis a Notary Public in and for the District of Columbia, do hereby certify that this 8th day of June, 2009 Scott L. Whiteford, Director of Real Estate, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document, appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by him for the purposes therein stated and that he had due authority to sign the document in the capacity therein stated.

Barbara J. Davis  
Notary Public

Notary Registration No. N.A.

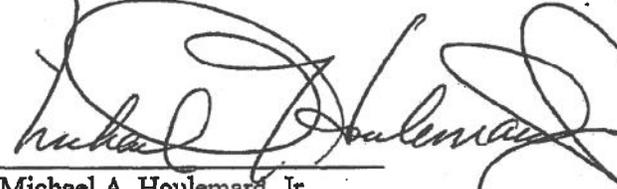
My commission expires the 30th day of June, 2011.



ACCEPTANCE:

In Testimony Whereof, witness the signature of the Fort Ord Reuse Authority ("Authority"), an organization organized and existing under the laws of the State of California under the Fort Ord Reuse Authority Act created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, et seq., and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, et seq., and Article May, commencing with Section 33492.70, et seq., this 26<sup>th</sup> day of May 2009 hereby accepts and approves this Quitclaim Deed for itself, its successors and assigns, and agrees to all the conditions, reservations, restrictions, and terms contained therein.

FORT ORD REUSE AUTHORITY  
LOCAL REDEVELOPMENT AUTHORITY

By:   
Michael A. Houlemard, Jr.  
Executive Officer

STATE OF CALIFORNIA

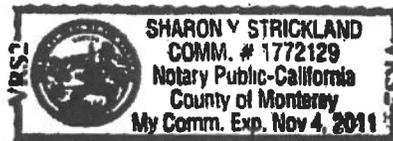
COUNTY OF Monterey

On 5-26-09 before me, Sharon Y. Strickland (name of notary public) personally appeared Michael A. Houlemard Jr. who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged to me that he/she/they executed the same in their authorized capacity(ies), and by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sharon Y. Strickland  
(Signature of Notary)



EDC Parcel E29a.1  
FOST 10  
Fort Ord Military Reservation  
City of Del Rey Oaks  
Monterey County, California

Legal Description

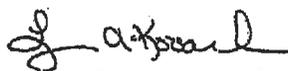
SITUATE in a portion of the former Fort Ord Military Reservation as it is shown on that certain map recorded in Volume 19 of Surveys at Page 1, and being a portion of Parcel 1 as it is shown on that certain map recorded in Volume 23 of Surveys at Page 103, Official Records of Monterey County, being within Monterey City Lands Tract No. 1, County of Monterey, State of California; being more particularly described as follows:

BEGINNING at a point on the northerly boundary of South Boundary Road shown as Parcel 18 on that certain map recorded in Volume 20 of Surveys at Page 110, being also "Point B" in the legal description of EDC parcel E29a, said parcel being shown as Parcel A on that certain map recorded in Volume 28 of Surveys at Page 40; thence from said Point of Beginning along said northerly boundary

1. North 50° 41' 04" West for a distance of 511.18 feet to the beginning of a tangent curve; thence
2. Along a curve to the right, through a central angle of 73° 55' 59", having a radius of 150.00 feet, for an arc length of 193.56 feet, and whose long chord bears North 13° 43' 04" West for a distance of 180.40 feet to a point of intersection with a tangent line being also a point on the easterly boundary of General Jim Moore Boulevard as shown on said map; thence along said easterly boundary
3. North 23° 14' 55" East for a distance of 271.56 feet to an angle point in the boundary of said Parcel A; thence leaving said easterly boundary and following the boundary of said Parcel A
4. North 84° 50' 03" East for a distance of 36.80 feet; thence
5. South 14° 52' 39" East for a distance of 90.78 feet; thence
6. South 45° 00' 00" East for a distance of 565.69 feet; thence
7. South 26° 00' 01" West for a distance of 293.98 feet to the POINT OF BEGINNING.

Containing an area of 4.628 acres, more or less.

This legal description was prepared by



Lynn A. Kovach L.S. 5321  
My license expires December 31, 2009



EXHIBIT  
of  
EDC Parcel E29a.1  
City of Del Rey Oaks  
Fort Ord FOST 10  
Being a Portion of  
Parcel 1 as shown on Vol. 23 of Surveys at Page 103  
Lying within the Fort Ord Military Reservation  
as shown on Vol. 19 of Surveys at Page 1  
Being also within Monterey City Lands Tract No. 1  
Monterey County, California

Note: Course Numbers Refer to the  
Legal Description.



Not to Scale

"ORDINANCE REMOVAL  
LIMITS"  
27 SURVEYS 14

EDC PARCEL E29a

PARCEL 1  
23 SURVEYS 103

PARCEL A  
28 SURVEYS 40

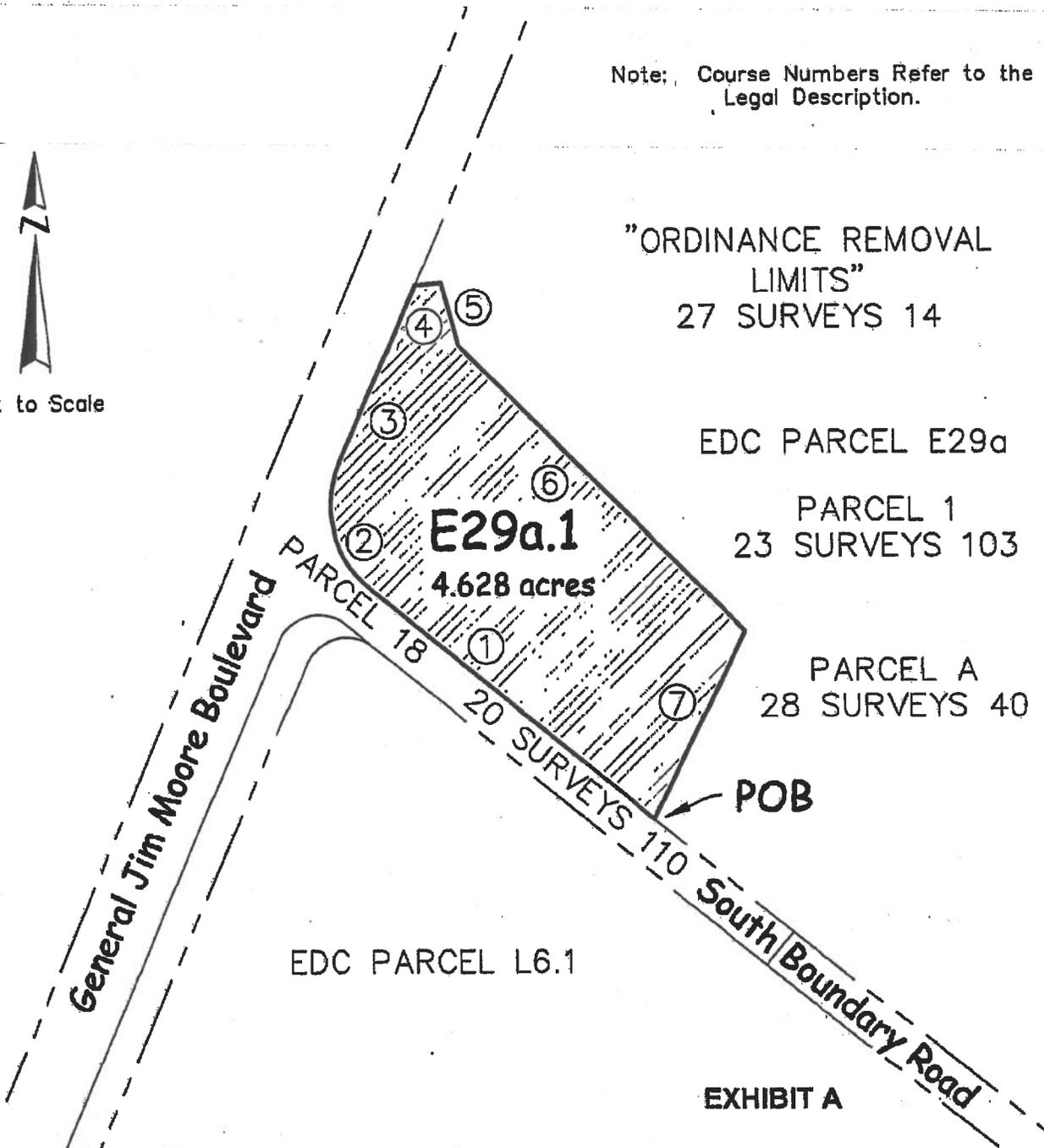


EXHIBIT A

**EXHIBIT "B"**

**ENVIRONMENTAL PROTECTION PROVISIONS**

**1. FEDERAL FACILITY AGREEMENT**

The Grantor acknowledges that the former Fort Ord has been identified as a National Priorities List (NPL) site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the Grantor has provided it with a copy of the Fort Ord Federal Facility Agreement, and any additional amendments thereto (FFA), entered into by the United States Environmental Protection Agency Region IX (USEPA), the State of California, and the Department of the Army, effective on November 19, 1990, and will provide the Grantee with a copy of any future amendments thereto. For so long as the Property remains subject to the FFA, the Grantee, its successors and assigns, agree that they will not interfere with United States Department of the Army activities required by the FFA. Grantor shall give Grantee reasonable notice of its action required by the FFA and use all reasonable means to the extent practicable to avoid and/or minimize interference with Grantee's, its successors' or assigns' use of the Property. In addition, should any conflict arise between the FFA and any amendment thereto and the deed provisions, the FFA provisions will take precedence. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with their use of the Property. Grantor agrees to use its best efforts to the extent practicable to avoid and/or minimize interference with Grantee's, its successors' or assigns' use of the Property, and to provide Grantee with a copy of any amendments to the FFA.

**2. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)**

- A. The Grantee is hereby notified that, due to the former use of the Property as a military installation, all of the parcels may contain munitions and explosives of concern (MEC). The term MEC means specific categories of military munitions that may pose unique explosives safety risks and includes: (1) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (2) Discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (3) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard. For the purposes of the basewide Military Munitions Response Program (MMRP) being conducted for the former Fort Ord and these Environmental Protection Provisions (EPPs), MEC does not include small arms ammunition (i.e. ammunition .50 caliber or smaller, or for shotguns, with projectiles not containing explosives, other than tracers).
- B. The Property was previously used for a variety of purposes, including operational ranges for live-fire training (small arms ammunition); leadership reaction course; combat leader course; field battalion training; mechanic training; engineering training; field expedient training; and tactical training. Munitions responses were conducted on the Property. Any

MEC discovered were disposed of by a variety of methods, including open detonation, either in place or as a consolidated shot, or destroyed using contained detonation. A summary of MEC discovered on the Property is provided in Exhibit "C." Site maps depicting the locations of Munitions Response Sites are provided at Exhibit "D."

C. The Grantor represents that, to the best of its knowledge, no MEC are currently present on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. Per this acknowledgment, and to promote safety, the Grantor provides munitions recognition and safety training to anyone who requests it. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the local law enforcement agency having jurisdiction on the Property so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations and at no expense to the Grantee. The Grantee hereby acknowledges receipt of the "Ordnance and Explosives Safety Alert" pamphlet.

D. Easement and Access Rights.

1) The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property as a result of the ongoing Munitions Response Remedial Investigation/Feasibility Study. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

2) In exercising this easement and right of access, the Grantor shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property; however, the use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (a) to provide the required minimum separation distance employed during intrusive munitions response actions that may occur on or adjacent to the Property; and (b) if Army implemented prescribed burns are necessary for the purpose of a munitions response action (removal) in adjacent areas. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the

exercise of the easement and right of access hereby retained and reserved by the United States.

3) In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Grantor on the Property.

E. The Grantee acknowledges receipt of the Track 0 Record of Decision (June 2002), the Track 1 Record of Decision (March 2005), the Track 0 Plug-In Approval Memorandum, Group D Parcels (May 2006), the Track 0 Approval Memorandum, East Garrison Area 1 (December 2003); the Track 1 Plug-In Approval Memorandum, East Garrison Areas 2 and 4 NE (March 2006); and the Track 1 Plug-In Approval Memorandum, Multiple Sites, Groups 1-5 (July 2006).

### **3. NOTICE OF RARE, THREATENED AND ENDANGERED SPECIES MANAGEMENT**

The Grantee acknowledges and agrees to implement the following provisions, as applicable, relative to listed species:

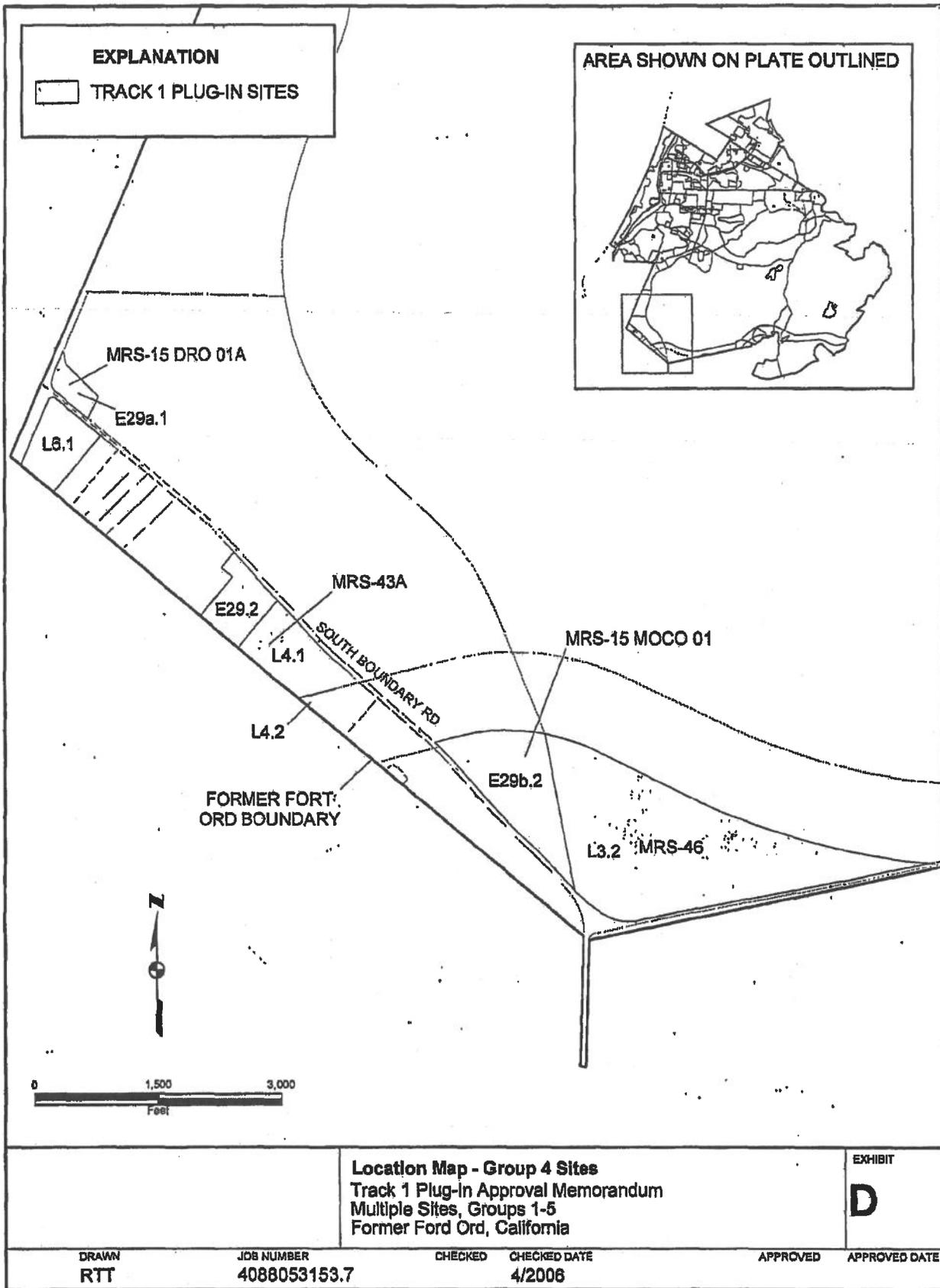
- A. The Property is within a Habitat Management Plan (HMP) Development Area. No resource conservation requirements are associated with the HMP for these parcels. However, small pockets of habitat may be preserved within and around the Property.
- B. The March 30, 1999, Biological and Conference Opinion on the Closure and Reuse of Fort Ord, Monterey County, California (1-8-99-F/C-39R); the October 22, 2002, Biological Opinion on the Closure and Reuse of Fort Ord, Monterey County, California, as it affects Monterey Spineflower Critical Habitat, (1-8-01-F-70R); and the March 14, 2005, Biological Opinion for the Cleanup and Reuse of Former Fort Ord, Monterey County, California, as it affects California Tiger Salamander and Critical Habitat for Contra Costa Goldfields Critical Habitat (1-8-04-F-25R) identify sensitive biological resources that may be salvaged for use in restoration activities within reserve areas, and allows for development of the Property.
- C. The HMP does not exempt the Grantee from complying with environmental regulations enforced by Federal, State, or local agencies. These regulations could include obtaining the Endangered Species Act (ESA) (16 U.S.C. §§ 1531-1544 et seq.) Section 7 or Section 10(a) permits from the U.S. Fish and Wildlife Service (USFWS); complying with prohibitions against take of listed animals under ESA Section 9; complying with prohibitions against the removal of listed plants occurring on Federal land or the destruction of listed plants in violation of any State laws; complying with measures for

conservation of State-listed threatened and endangered species and other special-status species recognized by California ESA, or California Environmental Quality Act (CEQA); and complying with local land use regulations and restrictions.

- D. The HMP serves as a management plan for both listed and candidate species, and is a prelisting agreement between the USFWS and the local jurisdiction for candidate species that may need to be listed because of circumstances occurring outside the area covered by the HMP.
- E. Implementation of the HMP would be considered suitable mitigation for impacts to HMP species within HMP prevalent areas and would facilitate the USFWS procedures to authorize incidental take of these species by participating entities as required under ESA Section 10. No further mitigation will be required to allow development on the Property unless species other than HMP target species are proposed for listing or are listed.
- F. The HMP does not authorize incidental take of any species listed as threatened or endangered under the ESA by entities acquiring land at the former Fort Ord. The USFWS has recommended that all non-Federal entities acquiring land at former Fort Ord apply for ESA Section 10(a)(1)(B) incidental take permits for the species covered in the HMP. The definition of "take" under the ESA includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Although the USFWS will not require further mitigation from these entities that are in conformation with the HMP, those entities without incidental take authorization would be in violation of the ESA if any of their actions resulted in the take of a listed animal species. To apply for a Section 10 (a)(1)(B) incidental take permit, an entity must submit an application form (Form 3-200), a complete description of the activity sought to be covered by the permit, and a conservation plan (50 CFR 17.22[b]).

**Table 6 - Notification of Munitions and Explosives of Concern (MEC)\***

Munitions Response Site	Type of Military Munitions	Date of Military Munitions Use	Munitions Response Actions
MRS-15DRO.1A (Parcel E29a.1)	None	Unknown	MRS-15DRO.1A lies within the former Fort Ord Impact Area. The boundary of MRS-15DRO.1A was developed to support the transfer of Parcel E29a.1 and not on evidence of munitions use. MRS-15DRO.1A was evaluated in the MR RI/FS a Track 1 Plug-In site. Historical research and field investigation (site walks and sampling) conducted at this site found no evidence to indicate military munitions were used at this site. The Track 1 PAM, Groups 1-5 determined no further military munitions investigations at MRS-15DRO.1A is required ( <i>Army, 2006c</i> ) and the USEPA and the DTSC concurred in letters dated July 21, 2006 and July 26, 2006, respectively.
<p>*<b>Munitions and Explosives of Concern (MEC).</b> This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks, means: (A) Unexploded Ordnance (UXO), as defined in 10 §101(e)(5); (B) Discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.</p>			



**EXPLANATION**  
 [Symbol] TRACK 1 PLUG-IN SITES

**AREA SHOWN ON PLATE OUTLINED**

				<b>Location Map - Group 4 Sites</b> Track 1 Plug-In Approval Memorandum Multiple Sites, Groups 1-5 Former Ford Ord, California		EXHIBIT <b>D</b>	
DRAWN <b>RTT</b>	JOB NUMBER <b>4088053153.7</b>	CHECKED	CHECKED DATE <b>4/2006</b>	APPROVED	APPROVED DATE		

group4-plate1.mxd - 6/1/2006

**EXHIBIT E**

**UNRECORDED EASEMENTS AND ENCUMBRANCES**

Existing utilities, if any, along General Jim Moore Boulevard and South Boundary Road.

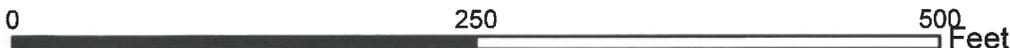
**END OF DOCUMENT**



TITLE: Parcel: L35.4  
DEED: DACA05-9-06-552  
RECIPIENT: FORA

Author: B.Kowalski  
Date: 4/11/2012  
Coordinate System:  
NAD83 Stateplane California Zone IV (feet)  
Lambert Conformal Conic Projection

Data: reuse\_parcel database  
Name: DACA05-9-06-552  
Aerial: 2007

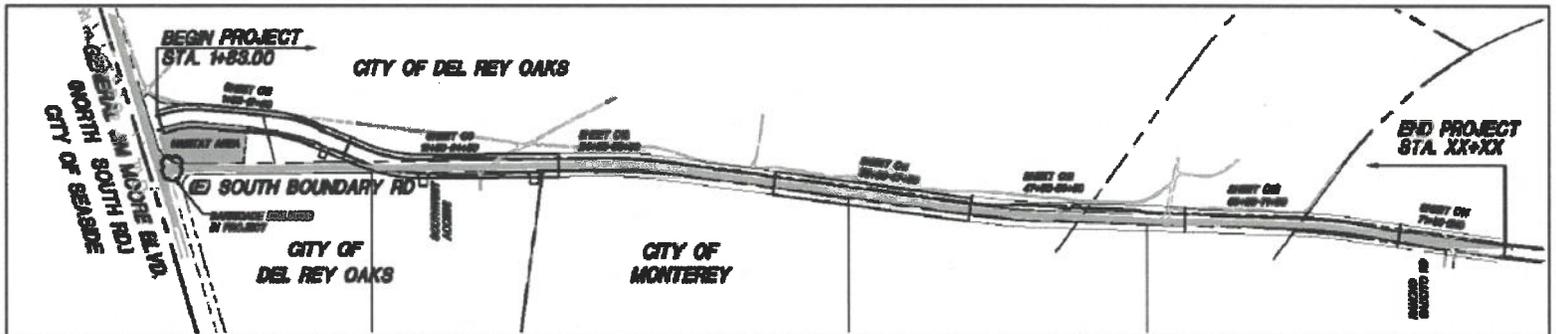


# South Boundary Road:

# Easements and Rights of Way

Peter Said  
FORA Senior Project Manager  
December 13, 2019

# SBR Planning

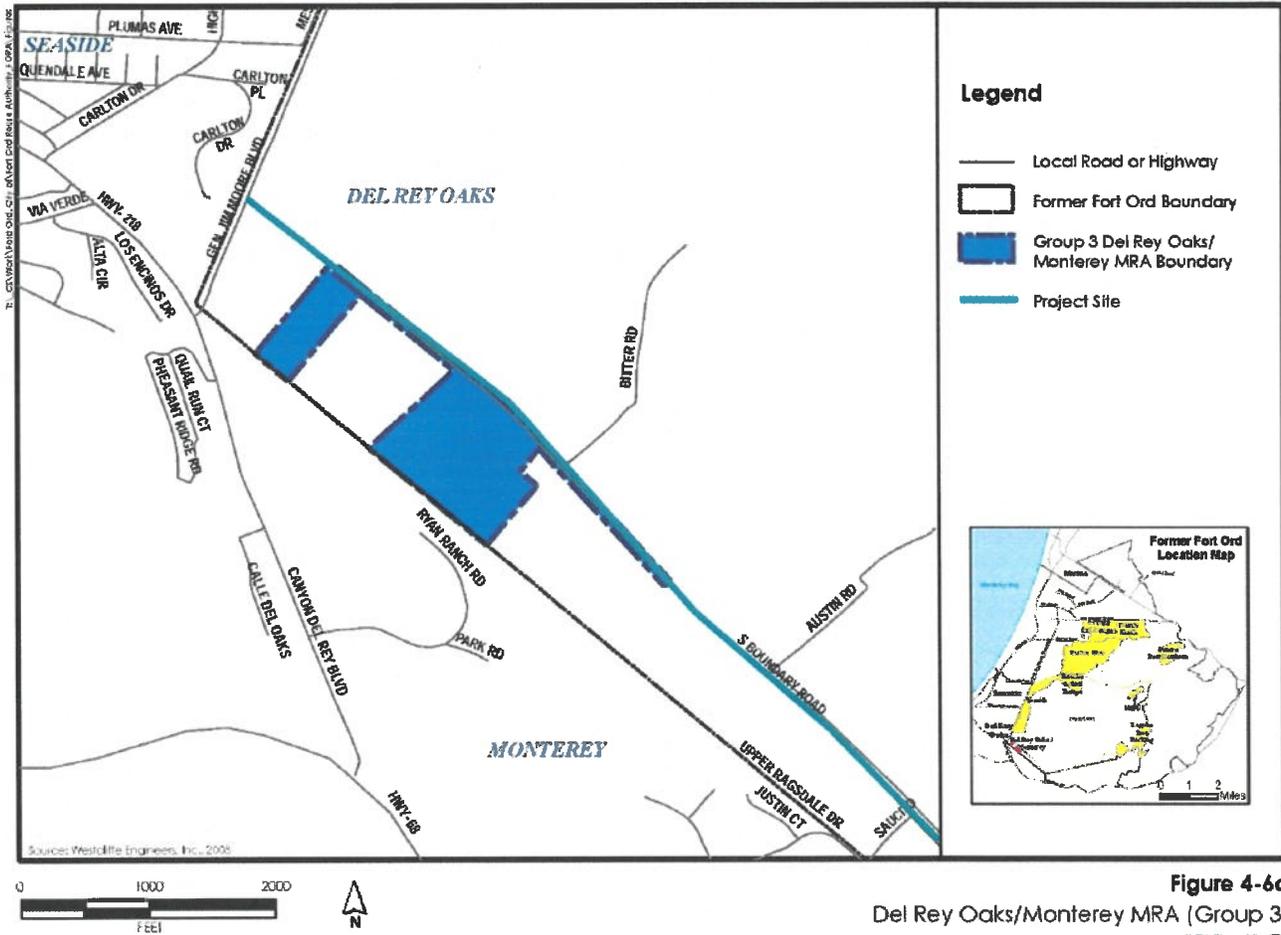


**KEY MAP**  
SCALE: 1" = 400'

# SBR Planning



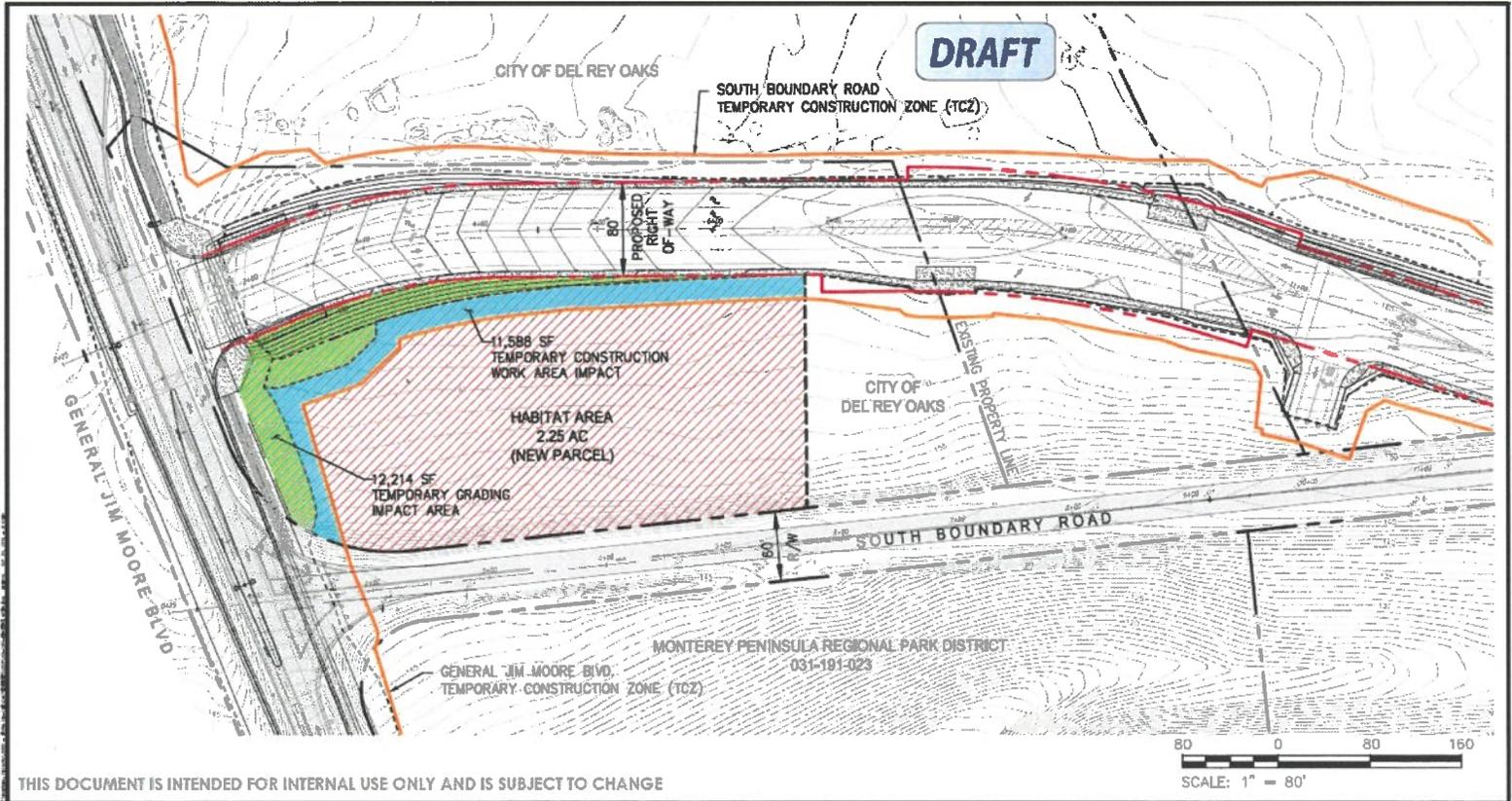
# ESCA Parcels



**Figure 4-6c**  
Del Rey Oaks/Monterey MRA (Group 3)



# Construction Easements

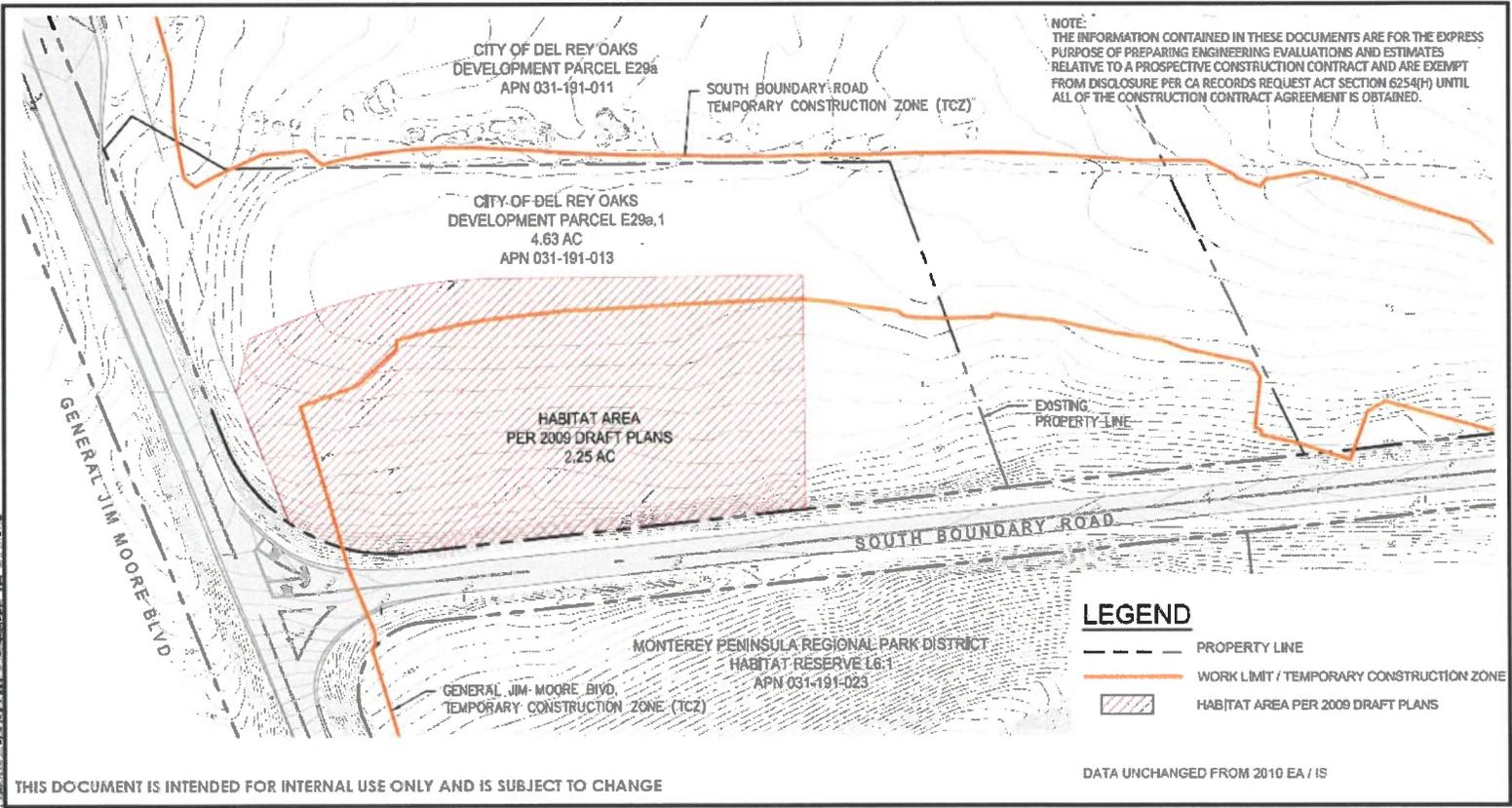


HABITAT AREA (2009 DESIGN)  
**FORD ORD REUSE AUTHORITY**  
DEL REY OAKS / MONTEREY, CALIFORNIA

OCT 28, 2019  
Project No.: 3485.02



# Construction Easements



2009 HABITAT AREA WITH 2009 TEMPORARY CONSTRUCTION ZONES  
**FORD ORD REUSE AUTHORITY**  
 DEL REY OAKS / MONTEREY, CALIFORNIA



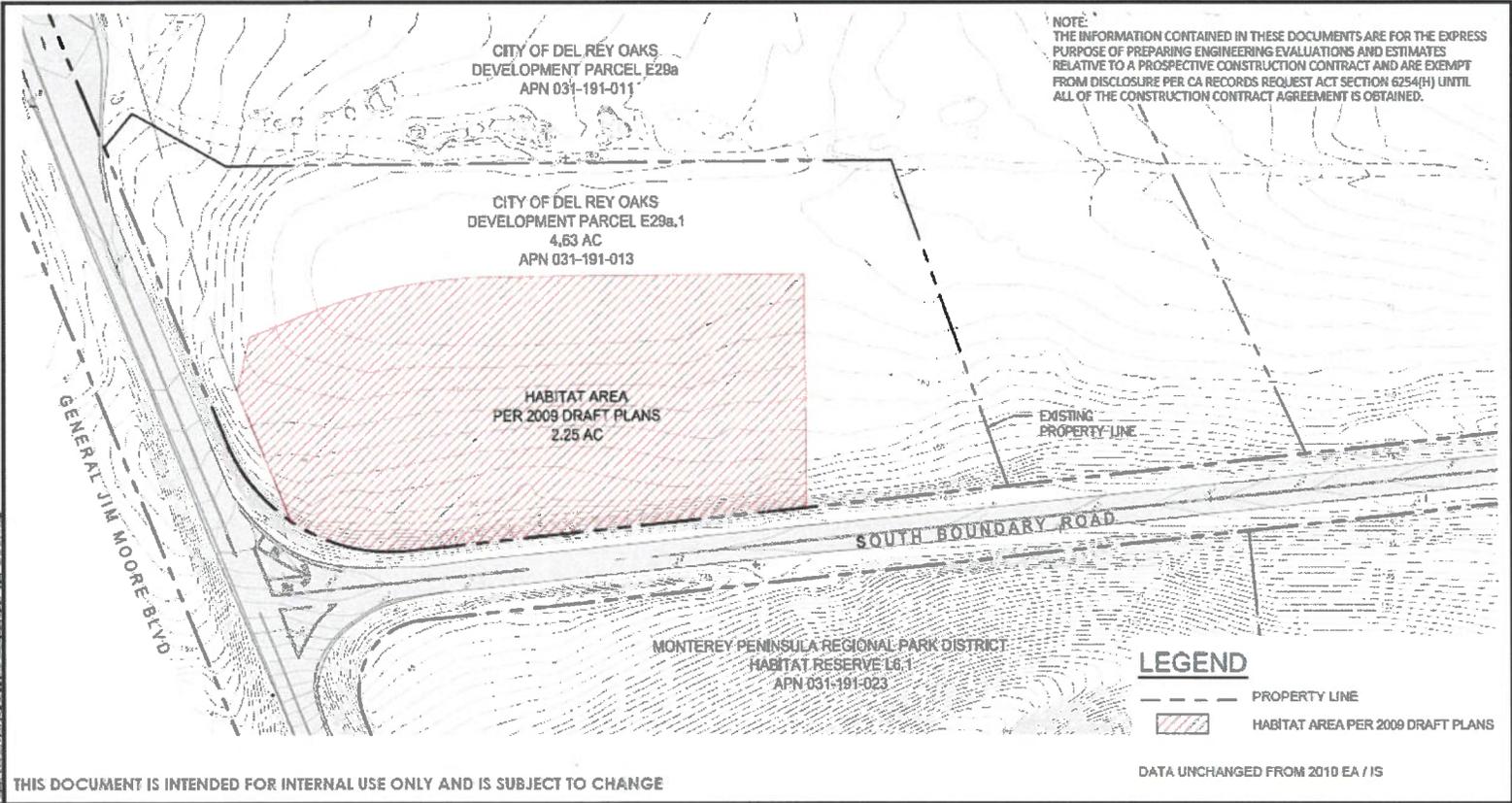
NOV 15, 2019  
 Project No. 13485.02



# Construction Easements



NOTE:  
THE INFORMATION CONTAINED IN THESE DOCUMENTS ARE FOR THE EXPRESS PURPOSE OF PREPARING ENGINEERING EVALUATIONS AND ESTIMATES RELATIVE TO A PROSPECTIVE CONSTRUCTION CONTRACT AND ARE EXEMPT FROM DISCLOSURE PER CA RECORDS REQUEST ACT SECTION 6254(H) UNTIL ALL OF THE CONSTRUCTION CONTRACT AGREEMENT IS OBTAINED.



THIS DOCUMENT IS INTENDED FOR INTERNAL USE ONLY AND IS SUBJECT TO CHANGE

DATA UNCHANGED FROM 2010 EA / IS

2009 HABITAT AREA  
**FORD ORD REUSE AUTHORITY**  
DEL REY OAKS / MONTEREY, CALIFORNIA



NOV 15, 2019  
Project No.: 3485-02



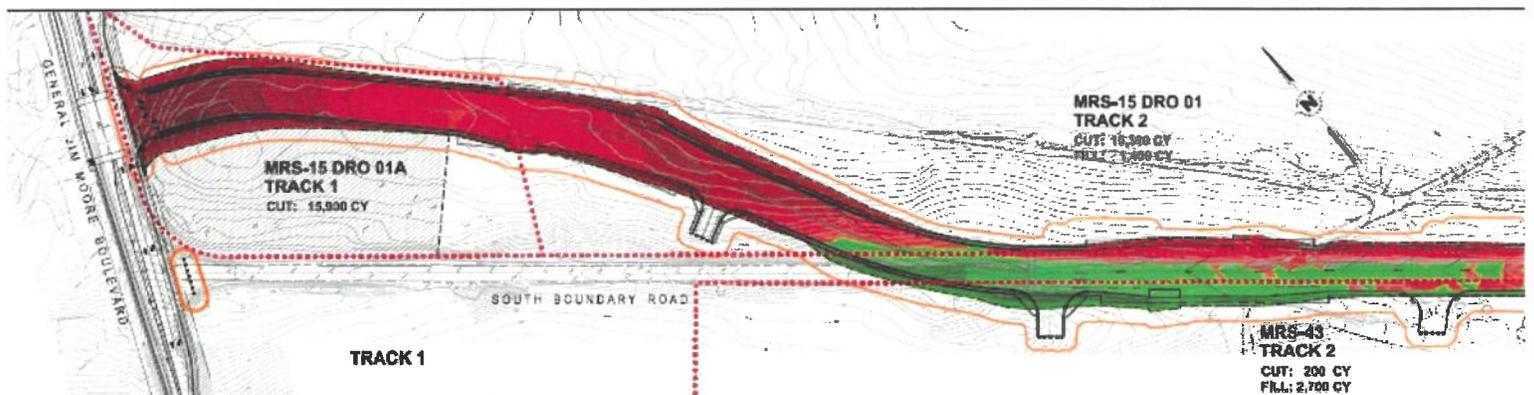
## Roadway Implementation

### 2019 Soil & Munitions

- Department of Toxic Substance Control (DTSC) Federal EPA, and the US ARMY
  - Confirmed the Regulatory approach
  - Must Keep Track 2 Soil within Track 2
  - Must Limit soil transfer between tracks
  - Signed off on Seaside MRA 1-4 programmatic CSP
  - Will use Seaside as template for SBR

### 2019 Biological Take Permits

- FORA Habitat Conservation Plan (HCP)



## Muniton Response Site (MRS)

TRACK Designation (Soil/Cleanup Quality Level) *Type 0,1,2*

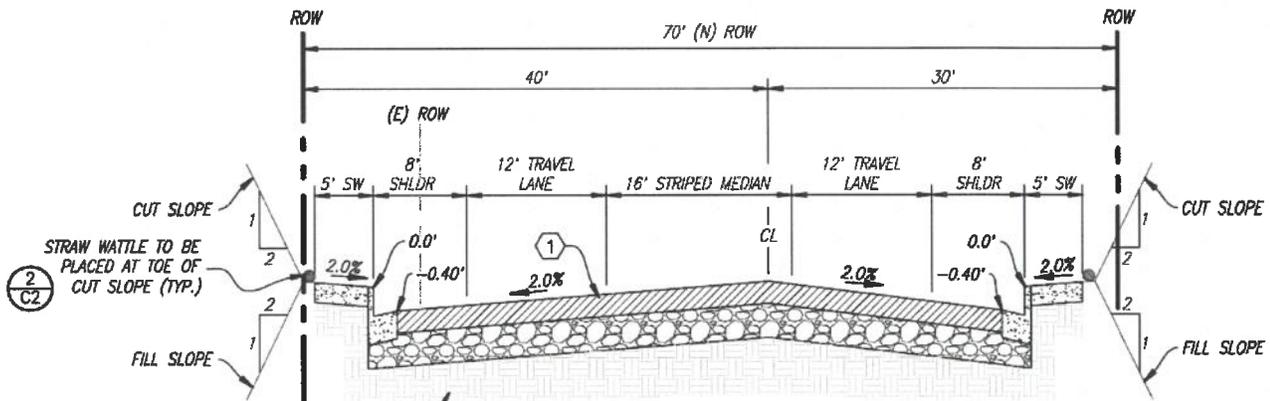
Do Not Move Soil between track types

Cannot Dispose of excess soil off the project site

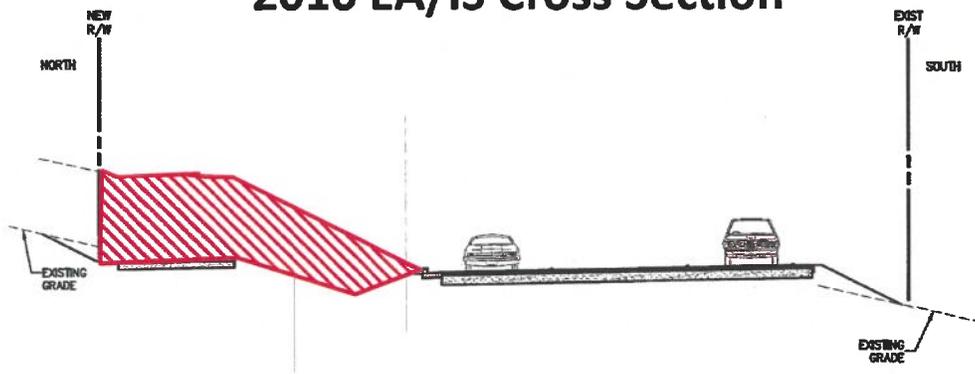
2010 Project has 14,600 CY of excess soil (Cut)

**To meet DTSC, EPA, Army agreed upon requirements there must be plan modifications**

# Conceptual Plan Modifications



## 2010 EA/IS Cross Section



## 2019 Proposed Plan Modification

# SBR Planning

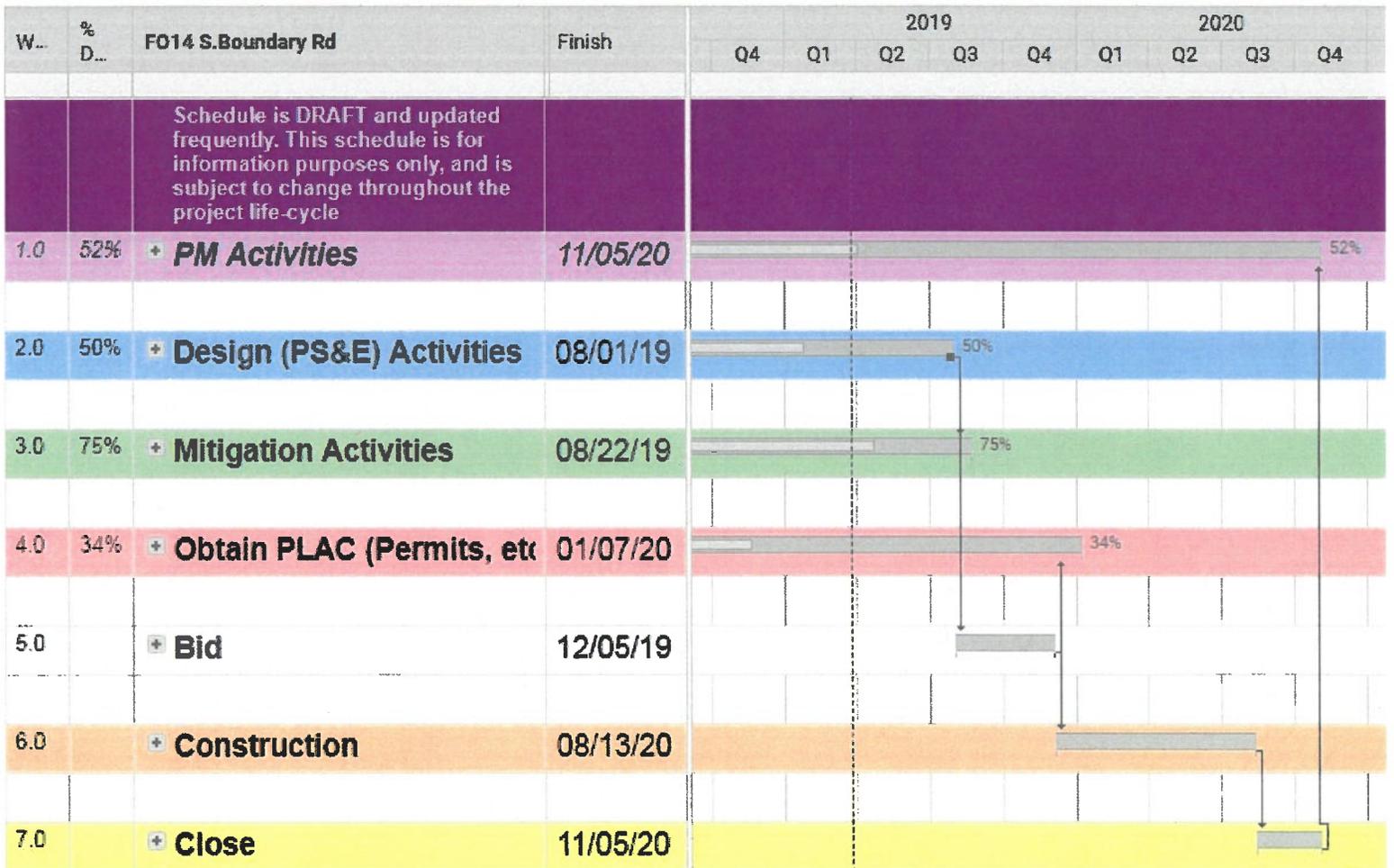


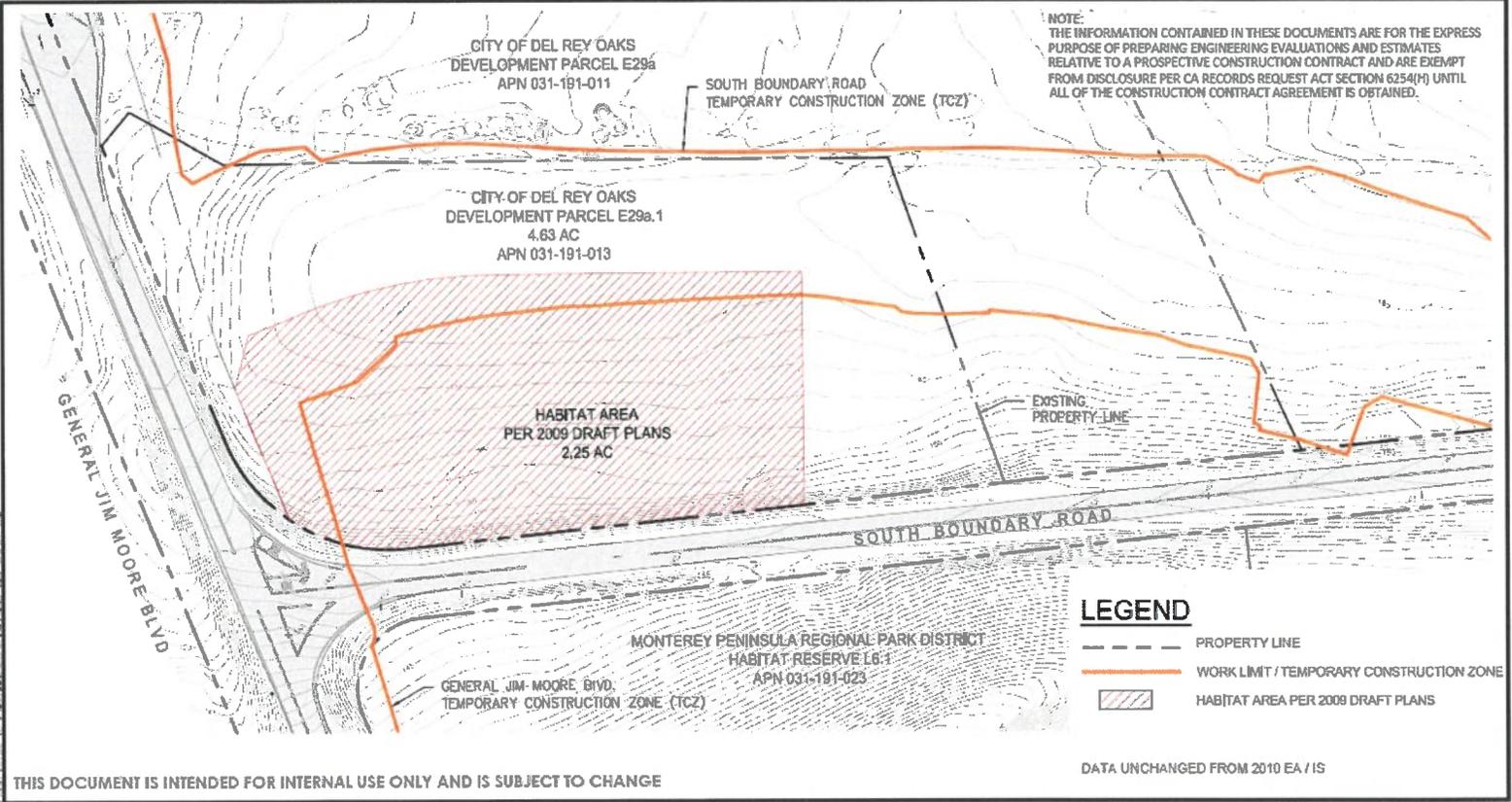
# SBR Planning



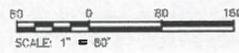
1. Establish Construction Easements for future work
  - DRO & CNPS to set boundary of agreed upon area
  - DRO & FORA to establish temporary construction easements
2. Determine Utility Placement & Trench Locations (Soils Plan)
3. Finalize DRO / MRY Maintenance Agreements
4. Finalize required Plan Modifications
5. Complete Engineer's Construction Estimates from Plans and Specifications

# Current Status





2009 HABITAT AREA WITH 2009 TEMPORARY CONSTRUCTION ZONES  
**FORD ORD REUSE AUTHORITY**  
 DEL REY OAKS / MONTEREY, CALIFORNIA



NOV 15, 2019  
 Project No. 2485.02





# FORT ORD REUSE AUTHORITY

## REGULAR MEETING FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS Thursday, May 14, 2020 at 2:00 p.m.

### AGENDA

**ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON MAY 13, 2020.**

THIS MEETING MAY BE ACCESSED REMOTELY USING THE FOLLOWING ZOOM LINK:

[HTTPS://ZOOM.US/J/956115894](https://zoom.us/j/956115894)

PLEASE REVIEW FORA'S UPDATED REMOTE MEETINGS PROTOCOL AND BEST PRACTICES HERE:

[HTTPS://FORA.ORG/REMOTE MEETINGS PROTOCOLS](https://fora.org/remote-meetings-protocols)

1. CALL TO ORDER
2. CLOSED SESSION
  - a. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, three potential cases.
3. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION
4. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE
5. ROLL CALL

*FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.*

- |  |                           |
|--|---------------------------|
| <ol style="list-style-type: none"> <li>6. CONSENT</li> </ol> | <b>INFORMATION/ACTION</b> |
|--|---------------------------|
- a. March 27, 2020 Special Board Meeting Minutes **(p. 3)**  
**Recommendation:** Approve March 27, 2020 Special Meeting Minutes.
  - b. Administrative Committee **(p. 7)**  
**Recommendation:** Receive Administrative Committee report.
  - c. Veterans Issues Advisory Committee **(p. 17)**  
**Recommendation:** Receive a report from the Veterans Issues Advisory Committee.
  - d. Transition Status Report **(p. 21)**  
**Recommendation:** Review staff and consultant progress on actions leading to sunset of the Fort Ord Reuse Authority.
  - e. Bank Accounts Closure and Consolidation **(p. 81)**  
**Recommendation:** Authorize staff to close and consolidate FORA bank accounts.
  - f. Vacation Cash-out Policy Amendment **(p. 82)**  
**Recommendation:** Approve amended vacation cash-out policy.

## 7. BUSINESS ITEMS

## ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. Memoranda of Agreements ("MOA") for Capital Improvement Program ("CIP") and General Fund Project Transfers (p. 83)

**Recommendation:** Approve Resolution 20-xx: Authorizing Executive Officer to execute MOAs to support the transfer of three CIP and one General Fund Projects, in the forms attached hereto as exhibits or in substantially similar forms containing such modifications as the Executive Officer may deem necessary or appropriate to carry out the purposes of the MOAs.

1. Memorandum of Agreement Regarding Funding to be Provided for Removal of the City of Marina Stockade and Ancillary Buildings
2. Memorandum of Agreement Regarding Funding to be Provided for the Repair of Stormwater Infiltration Units - Eucalyptus Road
3. Memorandum of Agreement Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements
4. Memorandum of Agreement Regarding Funding to be Provided to County of Monterey County for Oak Woodlands Project

- b. Joint Community Facilities Agreements (p. 125)

**Recommendation:** Adopt Resolution 20-xx: Approving and Authorizing the Execution and Delivery of Joint Community Facilities Agreements with the County of Monterey and the Cities of Del Rey Oaks, Marina, Monterey, and Seaside and Approving Related Actions.

## 7. PUBLIC COMMENT PERIOD

## INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes and will not receive Board action. Due to the [Governors Stay at Home Order](#) and recent [Executive Order related to Public Meetings Protocols](#), all FORA Meetings will now be conducted via Zoom. Public comments should be emailed to [board@fora.org](mailto:board@fora.org). Thank for your patience and understanding during these unprecedented times.*

## 8. ITEMS FROM MEMBERS

## INFORMATION

*Receive communication from Board members as it pertains to future agenda items.*

## 9. ADJOURNMENT

**NEXT MEETING: Friday, May 22, 2020 AT 1:00 P.M.**

<b>FORT ORD REUSE AUTHORITY BOARD REPORT</b>	
<b>BUSINESS ITEM</b>	
<b>Subject:</b>	Memoranda of Agreements (“MOA”) for Capital Improvement Program (“CIP”) and General Fund Project Transfers
<b>Meeting Date:</b>	May 14, 2020
<b>Agenda Number:</b>	7a
<b>ACTION</b>	

**RECOMMENDATION:**

Approve Resolution 20-xx: Authorizing Executive Officer to execute MOAs to support the transfer of three CIP and one General Fund Projects, in the forms attached hereto as exhibits or in substantially similar forms containing such modifications as the Executive Officer may deem necessary or appropriate to carry out the purposes of the MOAs.

1. Memorandum of Agreement Regarding Funding to be Provided for Removal of the City of Marina Stockade and Ancillary Buildings
2. Memorandum of Agreement Regarding Funding to be Provided for the Repair of Stormwater Infiltration Units - Eucalyptus Road
3. Memorandum of Agreement Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements
4. Memorandum of Agreement Regarding Funding to be Provided to County of Monterey County for Oak Woodlands Project

**BACKGROUND/DISCUSSION:**

Due to FORA’s pending sunset on June 30, 2020, coupled with FORA Staff reductions, several projects were unable to be completed. Meetings were held between FORA and the jurisdictions to discuss transfer of project responsibility and remaining funds in February and March 2020. FORA has worked with consultants to identify project close out requirements.

At the April 30, 2020 FORA Board Meeting, the Board received a report on the status of FORA’s efforts to transition three on-going CIP projects and one General Fund project to the underlying jurisdictions of the Cities of Del Rey Oaks, Marina and Seaside and Monterey County. During that meeting the funds approved in the 2019/2020 Mid-Year General and CIP Budget update were authorized for transfer. The approval and establishment of the 2019/2020 Mid-Year Budget was a critical step to facilitate the transfer of funds to support these projects.

As identified in the April 30, 2020 Board Report, a MOA between FORA and each recipient of funds is required to be executed prior to fund transfer. FORA has been working with each of the jurisdictions to identify the appropriate terms and conditions to be captured in each MOA. These MOAs will enable the transition of projects from FORA by: defining each party’s responsibilities; outlining the requirements for transfer of authorized funds; acknowledging the transition of lead agency status to the jurisdictions where applicable;

coordinating the transfer of project related data, information and reporting; and closing out and/or reassigning contracts as appropriate. The MOAs for approval between FORA and the underlying jurisdictions have been provided as attachments to this Board Report; and a summary of the terms and status of each MOA is provided below.

**A. Memorandum of Agreement Regarding Funding to be Provided for Removal of the City of Marina Stockade and Ancillary Buildings**

- FORA has requested, and the City of Marina agrees, to undertake the Project to complete the removal of hazardous materials and deconstruction and removal of the Stockade Complex as established in the terms and conditions set forth in the MOA.
- Within seven (7) calendar days after signing the MOA, FORA will transfer and pay to the order of the City, the amount of Two Million Fifty Thousand Dollars (\$2,050,000).
- FORA will close out contracts associated with the Project; and will make good faith and commercially reasonable efforts to arrange for the timely completion of services, delivery of work products, and transfer of information which FORA has authorized.
- Upon execution of the MOA, the City will become the lead agency for the Project and the waste generator with respect to any hazardous materials associated with the Project.
- *MOA Status: reviewed and approved by City of Marina Attorney and FORA Legal Counsel; approved on April 28, 2020 by the City of Marina City Council; execution pending FORA Board approval.*

**B. Memorandum of Agreement Regarding Funding to be Provided for the Repair of Stormwater Infiltration Units - Eucalyptus Road**

- FORA has requested, and the City of Seaside agrees, to undertake repair of the storm water infiltration units installed within Eucalyptus Road as established in the terms and conditions set forth in the MOA.
- Within seven (7) calendar days after signing the MOA, FORA will transfer and pay to the order of the City, the amount of One Million One Hundred Twenty Thousand Dollars (\$1,120,000) to cover the currently estimated cost of the Repairs and Ten Thousand Five Hundred Thirty Dollars (\$10,530) of the funds originally budgeted in connection with design services during the construction stage of the Repairs.
- FORA will close out contracts associated with the Repairs; and will make good faith and commercially reasonable efforts to arrange for the timely completion of services, delivery of work products, and transfer of information which FORA has authorized.
- Upon the full signing of the MOA, the City will carry out the Repairs in compliance with applicable law, including by acting as lead agency if and to the extent that a lead agency may be required under the California Environmental Quality Act.

- *MOA Status: reviewed and approved by City of Seaside Attorney and FORA Legal Counsel; pending approval by City of Seaside City Council; execution pending FORA Board approval.*

**C. Memorandum of Agreement Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements**

- FORA will not undertake the construction of Improvements to South Boundary Roadway and the Intersection at General Jim Moore Boulevard. Rather, the City of Del Rey Oaks wishes to undertake these Improvements and FORA is willing to provide funding in support of the Improvements as established in the terms and conditions set forth in the MOA.
- Within seven (7) calendar days after signing the MOA, FORA will: 1) fund two escrow holding accounts - one for the estimated construction costs of South Boundary Roadway Improvements for Seven Million Two Hundred Thousand Eight Hundred Thirteen Dollars (\$7,269,813), and one for the estimated construction costs of the Intersection at General Jim Moore Boulevard for One Million Fifty Six Thousand One Hundred Sixty Eight Dollars (\$1,056,168); and 2) transfer and pay to the order of the City of Del Rey Oaks the combined design services estimate for the Improvements of Five Hundred Eighteen Thousand Five Hundred Sixty Four Dollars (\$518,564).
- FORA intends to assign (with the consent of Whitson Engineers Inc.) the existing and open contract work orders with Whitson Engineers associated with the design of the Improvements; and will make good faith and commercially reasonable efforts to arrange for the timely completion of services, delivery of work products, and transfer of information which FORA has authorized.
- Inasmuch as FORA will not be carrying out the Improvements, but rather will only make funding available to the City as provided in the MOA, responsibility for any further necessary environmental analysis, review, or approvals, implementation and supervision of any mitigation measures or monitoring program adopted in connection with any environmental approvals for the Improvements, coordination with the City of Monterey or any other governmental entities, will be that of the City and not of FORA.
- *MOA Status: a draft MOA has been submitted to counsel for the City of Del Rey Oaks for review and approval; pending approval by City of Del Rey Oaks City Council; execution pending FORA Board approval.*

**D. Memorandum of Agreement Regarding Funding to be Provided to County of Monterey for Oak Woodlands Project**

- a) Monterey County has requested, and FORA agrees to assign, the existing contract and transfer remaining contract dollars associated with the Oak Woodlands Project as established in the terms and conditions set forth in the MOA.
- b) Within seven (7) calendar days after signing the MOA, FORA will transfer and pay to the order of Monterey County, the amount of Eighteen Thousand Seven Hundred

Thirteen Dollars (\$18,713) to complete the tasks and reporting outlined in the contract.

- FORA intends to assign the existing and open contract work orders with Denise Duffy & Associates, Inc. associated with the Oak Woodland Project; and will make good faith and commercially reasonable efforts to arrange for the timely completion of services, delivery of work products, and transfer of information which FORA has authorized.
- *MOA Status: a draft MOA has been submitted to County Counsel's office for review and approval; pending approval by Monterey County Board of Supervisors; execution pending FORA Board approval.*

**FISCAL IMPACT:**

Staff time and expenditures are included in the approved FY 19-20 Mid-Year Budget.

Reviewed by FORA Controller  \_\_\_\_\_

**COORDINATION:**

Authority Counsel, Administrative Committee, land use jurisdictions, Consultants.

Prepared by  \_\_\_\_\_  
Kristie Reimer, RAC

Approved by  \_\_\_\_\_  
Joshua Metz

**ATTACHMENTS:**

- A. Resolution 20-xx: Authorizing Executive Officer to execute MOA to support the transfer of three CIP and one General Fund Projects, in the forms attached hereto as exhibits or in substantially similar forms containing such modifications as the Executive Officer may deem necessary or appropriate to carry out the purposes of the MOAs.
- B. Memorandum of Agreement Regarding Funding to be Provided for Removal of the City of Marina Stockade and Ancillary Buildings
- C. Memorandum of Agreement Regarding Funding to be Provided for the Repair of Stormwater Infiltration Units - Eucalyptus Road
- D. Memorandum of Agreement Regarding Funding to be Provided for the South Boundary Roadway and the Intersection at General Jim Moore Boulevard Improvements
- E. Memorandum of Agreement Regarding Funding to be Provided to County of Monterey County for Oak Woodlands Project

**MEMORANDUM OF AGREEMENT  
REGARDING FUNDING TO BE PROVIDED FOR  
THE SOUTH BOUNDARY ROADWAY AND THE INTERSECTION AT GENERAL  
JIM MOORE BOULEVARD IMPROVEMENTS**

This Memorandum of Agreement (“MOA”) is made and entered into effective as of \_\_\_\_\_, 2020, (the “Effective Date”) by and between the Fort Ord Reuse Authority (“FORA”), a California public agency, and the City of Del Rey Oaks (the “City”), a California general law city. FORA and the City are sometimes referred to herein in the singular as a “Party” and collectively as the “Parties.”

**Recitals**

A. The “Improvements” consist of (i) relocation and/or reconfiguration of the existing intersection of General Jim Moore Boulevard with South Boundary Road and (ii) an upgrade of that portion of South Boundary Road located between its intersection with General Jim Moore Boulevard to 200 feet east of its intersection with Rancho Saucito Road.

B. FORA entered into a professional services contract dated November 17, 2017 with Whitson Engineers, Inc. (“Whitson”) for engineering services in connection with the contemplated Improvements, which contract was subsequently amended four (4) times (and as so amended may be referred to herein as the “Contract”). Whitson’s work under the Contract has not yet been completed.

C. FORA is scheduled to terminate in accordance with state law on June 30, 2020 (“FORA’s Termination Date”). It is not possible to complete the Improvements before FORA’s Termination Date and accordingly FORA will not undertake the Improvements. However, the City wishes to undertake the Improvements following FORA’s sunset and FORA is willing to make the below-described funding available to the City, each on all of the terms and conditions set forth in this MOA.

D. FORA’s Capital Improvement Program for fiscal years 2018/2019 and 2019/2020 includes the Improvements. FORA’s Board of Directors (the “Board”) has recently approved and committed to reserving the amount of Seven Million Two Hundred Sixty-Nine Thousand Eight Hundred Thirteen Dollars (\$7,269,813) to be available to cover the currently estimated construction and related costs of the South Boundary Roadway elements of the Improvements (to be deposited into an escrow account established with Fidelity National Title, Inc. as escrow holder); One Million Fifty-Six Thousand One Hundred Sixty-Eight Dollars (\$1,056,168) to be available to cover the currently estimated construction and related costs of the Intersection at General Jim Moore Boulevard elements of the Improvements (to be deposited into a separate escrow account established with Fidelity National Title, Inc. as escrow holder); and Five Hundred Eighteen Thousand Five Hundred Sixty-Four Dollars (\$518,564) to be available to cover the combined design services estimate for the Improvements (to be transferred to the City). Accordingly, the Parties now wish to enter into this MOA to provide for the aggregate amount of Eight Million Eight Hundred Forty-Four Thousand Five Hundred Forty-Five Dollars

(\$8,844,545) to be deposited into escrow accounts and transferred to the City as outlined above (which funds may collectively be referred to as the “Improvement Funds”).

E. Inasmuch as FORA will not be carrying out the Improvements, but rather will only make the Improvement Funds available to the City as provided in this MOA, responsibility for any further necessary environmental analysis, review, or approvals, implementation and supervision of any mitigation measures or monitoring program adopted in connection with any environmental approvals for the Improvements, coordination with the City of Monterey or any other governmental entities, and defense of any action brought to challenge completion of the Improvements, environmental approvals relating thereto, or any failure of the City to timely and fully carry out all responsibilities as lead agency for the Improvements in compliance with all applicable laws shall be that of the City and not of FORA.

### Agreement

In consideration of the mutual terms, covenants and conditions contained herein the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated into this MOA by this reference.
  
2. **FORA’s Obligations.** Within seven (7) calendar days of the full signing of this MOA, FORA will deposit Seven Million Two Hundred Sixty-Nine Thousand Eight Hundred Thirteen Dollars (\$7,269,813) and One Million Fifty-Six Thousand One Hundred Sixty-Eight Dollars (\$1,056,168) into the escrow accounts described above and transfer and pay to the order of the City Five Hundred Eighteen Thousand Five Hundred Sixty-Four Dollars (\$518,564). The City agrees to accept from FORA, the aggregate amount of Eight Million Eight Hundred Forty-Four Thousand Five Hundred Forty-Five Dollars (\$8,844,545), as so deposited into escrow accounts and paid to the City in full satisfaction of any obligation of FORA to provide funding for the Improvements. With the consent of Whitson, FORA will assign the Contract to the City.
  
3. **City’s Obligations.** With the consent of Whitson, the City will accept assignment of the Contract from FORA. The City may in its discretion use the Improvement Funds to complete the Improvements or any portion thereof; provided, however, that the City may not use the Improvement Funds for any other purpose. If the City enters into any agreements for the completion of the Improvements or any portion thereof and uses any of the Improvement Funds to pay for such work, those agreements shall include requirements to pay prevailing wages in accordance with state law and the FORA Master Resolution. To the extent that the Improvement Funds are insufficient to fully cover completion of the Improvements, the City will be responsible for paying or arranging for the payment of any excess costs. From and after the full signing of this MOA, the City shall timely and fully carry out all responsibilities as lead agency for the Improvements in compliance with all applicable laws.

4. **Notification to State Clearinghouse.** Promptly following the full signing of this MOA, the Parties shall cooperate in providing appropriate notification to the California Office of Planning and Research's State Clearinghouse that FORA is not carrying out the Improvements and that the City has assumed the role of lead agency for the Improvements.

5. **Term.** The term of this MOA shall begin on the Effective Date and continue until FORA's Termination Date, unless terminated earlier as provided herein; provided, however, that the City's obligations to (a) use the Improvement Funds solely for completion of the Improvements or a portion thereof, as set forth in Section 3 above and (b) distribute unexpended funds in accordance with the terms of this MOA if the Improvements are not timely completed, as set forth in Section 10 below shall remain in full force and effect until final completion of the Improvements as evidenced by the recording of Notices of Completion in the Official Records of Monterey County.

6. **Accounting and Records.** FORA (until FORA's Termination Date) and the City shall each maintain and account for the funds related to the Improvements. Promptly following the full signing of this MOA, FORA will coordinate with the City to identify goals and needs with respect to information transfer and to develop a program to implement the same before FORA's Termination Date. FORA will exercise good faith and commercially reasonable efforts to provide the City with copies of available and appropriate documents and records pertaining to the Improvements which have reasonably been requested by the City in writing.

7. **Parties' Representatives.** This MOA shall be coordinated between the Parties through the City's Manager and FORA's Executive Officer.

8. **Reserved.**

9. **Indemnification.** Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees.

10. **Termination.** If through any cause either Party fails to fulfill in a timely and proper manner its obligations under this MOA, or violates any of the terms or conditions of this MOA or applicable Federal or State laws and regulations, the non-breaching Party may terminate this MOA upon seven (7) calendar days written notice to the breaching Party. In the event that the Improvements have not been completed within ten (10) years after the Effective Date of this MOA, then any funds remaining unexpended as of that date shall be distributed as follows: Twenty percent (20%) may be retained by the City and twenty percent (20%) shall be distributed to each of the County of Monterey and the Cities of Marina, Monterey, and Seaside.

11. **Applicable Law.** This MOA shall be construed and interpreted under the laws of the State of California.

12. **Severability.** In the event any part of this MOA is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such part shall be deemed severed from the remainder of the MOA and the remaining provisions shall continue in full force without being impaired or invalidated in any way.

13. **Assignment.** Neither Party may assign this MOA or any part hereof, without written consent and prior approval of the other Party and any assignment without said consent shall be void and unenforceable.

14. **Amendment.** No amendment, modification, alteration, or variation of the terms of this MOA shall be valid unless made in writing and signed by authorized representatives for the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties thereto.

15. **Time of the Essence.** Time is of the essence for each and every provision of this MOA.

16. **Notices.** Any notice required or permitted under this MOA, shall be in writing and shall be deemed served on the date personally delivered or three (3) business days after being sent by certified mail, return receipt requested, addressed as follows, unless otherwise notified in writing of a change of address:

To the City: City Manager  
City of Del Rey Oaks  
650 Canyon Del Rey Boulevard  
Del Rey Oaks, CA 93940

To FORA: Executive Officer  
Fort Ord Reuse Authority  
920 2nd Avenue, Suite A  
Marina, CA 93933

17. **Authority.** Each Party represents and warrants to the other Party that it is authorized to execute, deliver and perform this MOA, and the terms and conditions hereof are valid and binding obligations of the Party making this representation.

18. **Compliance with Laws.** The Parties agree to comply with all applicable local, state and federal laws and regulations. The City further agrees to comply with all applicable public works contracting requirements.

19. **Venue.** Both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Monterey County, California.

20. **Survival.** All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this MOA shall survive any such expiration or termination.

21. **Relationship of the Parties.** It is understood that this MOA is entered into by and between two public entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association.

22. **Third-Party Beneficiaries.** In order to provide a mechanism for enforcement of the City's obligations set forth in clauses (a) and (b) of Section 5 above after FORA's Termination Date, the County of Monterey and the Cities of Marina, Monterey and Seaside are each hereby made an intended third-party beneficiary of this MOA.

23. **Reserved.**

24. **Interpretation.** This MOA, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

25. **Counterparts.** This MOA may be signed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The signature page of this MOA or any Amendment may be executed by way of a manual or authorized signature. Delivery of an executed counterpart of a signature page to this MOA or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOA or any Amendment.

26. **Reserved.**

27. **Entire Agreement.** This MOA contains the entire understanding between the Parties and supersedes any prior written or oral understandings and agreements regarding the subject matter of this MOA. There are no representations, agreements, arrangements or understandings, or written, between the Parties relating to the subject matter of this MOA which are not fully expressed herein.

*[signatures appear on following page(s)]*

The Parties have executed this MOA on the date(s) written below:

FORT ORD REUSE AUTHORITY

CITY OF DEL REY OAKS

\_\_\_\_\_  
Joshua Metz  
Executive Officer

\_\_\_\_\_  
Dino Pick  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Authority Counsel

\_\_\_\_\_  
City Attorney

## Karen Minami

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**From:** Dennis Allion <dennisallion@sbcglobal.net>  
**Sent:** Monday, May 18, 2020 9:54 AM  
**To:** Karen Minami  
**Cc:** Dino Pick; Alison Kerr  
**Subject:** Re: highlights

Kare, here you go:

The MRWMD Board meeting focused on actions being taken to address the reduction in income resulting from the economic shutdown. Tipping fee income is down 20 percent. Staff presented preliminary budget estimates for the upcoming fiscal year and alternatives for reducing the cost of operations to achieve a balanced budget. The board discussed the potential impacts, directed staff to proceed with an early retirement program as one possible cost saving measure and provided guidance to staff to come back to the Board at the May meeting with further refinement and a draft budget. It appears likely that the board will approve a tipping fee increase for the first time in three years as one means of dealing with the reduced revenues.

Dennis

On Monday, May 18, 2020, 09:17:56 AM PDT, Karen Minami <kminami@delreyoaks.org> wrote:

Hi Dennis,

Do you have any highlights from the garbage meeting for the agenda packet this month? Karen

Karen Minami

Deputy City Clerk

City of Del Rey Oaks

(831) 394-8511 Ext. 11

## TRANSPORTATION AGENCY FOR MONTEREY COUNTY

[www.tamcmonterey.org](http://www.tamcmonterey.org)

### **HIGHLIGHTS**

**April 22, 2020**



### **Measure X Citizens Oversight Committee Presents Independent Audit Results**

Kevin Dayton, Former Chair of the Measure X Citizens Oversight Committee, and member of the Measure X audit sub-committee presented the Measure X Second Year Audit results and the Measure X Annual Report to the TAMC Board of Directors. In keeping with their responsibilities, the committee conducted audits of the revenues and expenditure of Measure X funds earlier this year and prepared an annual report regarding the administration of the program.

The audit results revealed that most jurisdictions were in compliance. The three exceptions were the Cities of Greenfield, Pacific Grove and Salinas. The City of Greenfield was late in submitting all of the required documents. The City of Pacific Grove had unanticipated project delays, which resulted in the city not making enough project expenditures to count towards their Maintenance of Effort requirement. The City of Salinas spent Measure X funds on a project that was determined to be ineligible. The Cities of Pacific Grove and Salinas have repaid the funds to their Measure X accounts from non-Measure X sources as remediation and are currently in compliance.

Mr. Dayton stressed that the Oversight Committee's goal is to have full compliance from the jurisdictions. He reminded the Board that it took five attempts to pass the sales tax measure. He also stated that the Oversight Committee was committed to making sure that residents would never have cause to say Measure X funds were used inappropriately.

The results of the Measure X Second Year Audit and the Measure X Annual Report are included in the Transportation Agency's 2019 Annual Report. The TAMC Annual Report will be mailed to Monterey County residents and posted on the TAMC website.

Measure X is estimated to generate \$600 million over 30 years. 60% of that amount (\$360 million) will be distributed to the cities and the County for local projects, while the remaining 40% (\$240 million) is programmed for regional safety and mobility projects.

### **Shelter-in-Place Impacts TAMC Activities and Measure X Revenues**

The TAMC Board of Directors received a presentation from Todd Muck, TAMC's Deputy Director on the Agency's activities related to the shelter-in-place orders to contain the transmission of COVID-19 and the Transportation estimated impacts on Measure X revenue.

Mr. Muck reported that Agency staff has been largely working remotely on Agency projects and programs since March 16, 2020; with a focus on coordinating with local and state partners to limit delays to regional infrastructure projects.

Agency's activities during this time include:

- one of the first government agencies to hold a video public meeting and has provided advice and assistance to others, including Monterey-Salinas Transit and the Fort Ord Reuse Authority.
- providing Go831 program clients sample telecommuting policies to support local businesses whose employees are now working at home; publishing tips and techniques supporting employers and employees in implementing home-based work; developing a Telework webinar series with members of the Central Coast for employers and employees
- working on creative ways to continue to deliver its Safe Routes to School program.
- working closely with project sponsors and state regulatory agencies to address potential project delays due to the COVID-19 crisis.

The impacts of the shelter-in-place are:

- While Measure X monies are forecast to be significantly less over the next three years, the program's existing fund balance along with new revenues will allow the Measure X program of projects to stay on track to meet programmed local match requirements for the next four years. That said, the anticipated loss of gas tax revenues will have a definite impact on the ability to deliver Measure X projects, unless the State Transportation Improvement Program (STIP) and the various SB 1 programs are back-filled with a state or federal stimulus package.
- The Salinas Rail Station project will halt after Stage 1, when the work on public streets will be completed. The remaining work within the rail station project area (Stage 2) will be delayed until the construction restrictions are lifted.
- The Salinas Safe Routes to School project and Every Child safety education projects are impacted by County of Monterey Health Department staff being transferred to address the County's COVID-19 response. Staff is working out which components of these programs can proceed within the shelter-in-place guidelines.
- External risks to project schedules, such as the possibility that the shortened state legislative session could delay consideration of SB 1231 (Monning). This TAMC-sponsored legislation will allow the mitigation of potential impacts to the Santa Cruz Long-Toed Salamander habitat resulting from the State Route 156-Castroville Boulevard Interchange project.
- The US 101 - South of Salinas project study was in the middle of a broad public outreach effort, which is now being reframed. Traffic counts for the study's technical analysis are postponed until traffic returns to normal conditions, hopefully in the fall.
- The California Transportation Commission has relaxed some of its timely use of funds requirements to take into account any project delays caused by the shelter-in-place order. They are also considering delaying the due dates for applications to SB1 competitive grant programs and the Active Transportation Program grant program.