



Jen Simon <jen@fora.org>

RE: Agenda item 7c, May 22, 2020 Meeting

1 message

Doug Yount <Doug.Yount@sheahomes.com>

Fri, May 22, 2020 at 11:02 AM

To: "board@fora.org" <board@fora.org>

Cc: "Josh Metz (Josh@fora.org)" <Josh@fora.org>, Harry Tregenza <harry@fora.org>

Dear FOR A Board members:

Attached is suggested revisions to the language in Section 2.2.6 Water/Wastewater for the Transition Plan Agreement. The purpose of these revisions is to clarify and emphasize the water and reclaimed water allocations provided to jurisdictions as granted previously by the FORA Board. It is important these water allocations, and the obligation of MCWD to recognize these allocations after FORA dissolution, be codified in the Transition Plan.

Thanks

Be well. Stay safe.

Doug Yount

Project Director

Shea Homes - Marina Community Partners

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2 attachments

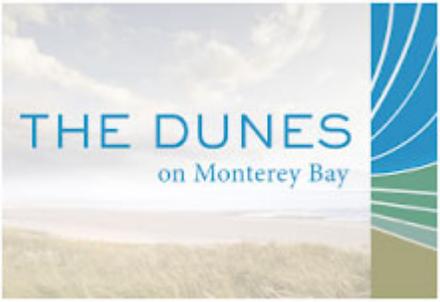


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Proposed Revisions to Section 2(11605342.1).docx
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Proposed Revisions to Section 2.2.6 (Water/Wastewater)

Nothing in this assignment creates any new obligation to utilize groundwater to meet the water service needs of the jurisdictions, but neither does this assignment reduce or eliminate any water service obligation already established by state law or contract, including the allocations. FORA's 2018-19 CIP projects that \$17,098,686 will remain to be funded for base-wide water augmentation improvements after June 30, 2020. In its October 29, 2018 letter MCWD has confirmed its commitment to honoring the base reuse plan's existing potable and recycled water allocations and, if there are cutbacks or increases to sustainable yield under SGMA, to apply those to all land use jurisdictions (proportionally applied) working with the jurisdictions on Water supply needs in a fair and equitable manner. As further set forth in that letter, MCWD shall enter into agreements with each individual land use jurisdiction, which agreements will honor each jurisdiction's existing allocations (subject to sustainable yield determinations under SGMA). In recognition of the foregoing, ~~Except as set forth in the preceding sentence or in a Transition Plan Implementing Agreement,~~ land use jurisdictions may alter their relative water allocations, as identified in the Implementation Agreements, only by written agreement with other land use jurisdictions. ~~To the extent possible,~~ the jurisdictions may also agree among themselves as to what fair and equitable reduction in water allocation, other than proportionally, would be applied in the instance of a mandated water shortage only in a written agreement between them and with concurrence of MCWD. As part of the MCWD ongoing commitment to work with the jurisdictions they are requested to honor any alternate water allocations as agreement between two or more jurisdictions as though the new agreed upon allocation had been set forth in the Implementation Agreements.



Jen Simon <jen@fora.org>

May 22 FORA Board meeting - CNPS letter and map of protected habitat area at Fort Ord

1 message

Molly Erickson <erickson@stamplaw.us>

Fri, May 22, 2020 at 11:29 AM

Reply-To: Molly Erickson <erickson@stamplaw.us>

To: Supervisor Jane Parker <district4@co.monterey.ca.us>, "board@fora.org" <board@fora.org>, Alison Kerr <akerr@delreyoaks.org>

Cc: Harry Tregenza <harry@fora.org>, Josh Metz <josh@fora.org>, Dino Pick <dpick@delreyoaks.org>, Karen Minami <kminami@delreyoaks.org>, Kate X5016 McKenna <mckennak@monterey.lafco.ca.gov>, "debbie@tamcmonterey.org" <debbie@tamcmonterey.org>, Jon Giffen <jgiffen@kaglaw.net>, Crystal Gaudette <cgaudette@kaglaw.net>

Chair Parker and FORA Board members, Mayor Kerr and Council members:

Please see attached letter. Thank you.

Mr. Pick and Ms. Minami: Please forward this letter promptly to Del Rey Oaks council members. Thank you.

Molly Erickson
STAMP | ERICKSON
tel: 831-373-1214

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1951K

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T: (831) 373-1214

May 21, 2020

Via email

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority

Alison Kerr, Mayor
City Council
Del Rey Oaks, CA

Subject: Map of Plant Reserve 1 North accepted by FORA and Del Rey Oaks, FORA-DRO-CNPS contracts, CEQA mitigations, South Boundary Road project, North South Road (General Jim Moore Boulevard)/Highway 218 Improvement Project, General Jim Moore/Eucalyptus Road Improvement Project, ongoing harm, failure to comply with laws

Dear Chair Parker and members of the FORA Board of Directors, Mayor Kerr and members of the Del Rey Oaks city council:

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS) in this matter. CNPS stands by its correspondence with FORA, Del Rey Oaks (DRO) and LAFCO in these matters. In my letter of May 1, 2020, I emphasized that CNPS is and has been steadfastly committed to the habitat protected since 1998 by contract between CNPS, FORA and DRO and the habitat protected by CEQA mitigations. The letter addressed the fact that FORA under its adopted project approvals can proceed with its South Boundary Road project only if FORA first successfully negotiates with CNPS to agree “to relocate a currently identified habitat preserve area further south” and that if FORA cannot renegotiate the location then FORA cannot proceed with the realignment and widening project as approved and must pursue other options. (FORA’s 2010 EA/IS, pp. 3-2, 3-3.) FORA committed to this in FORA’s EA/IS that is the basis for FORA’s approval of the South Boundary Road project. The May 1, 2020 letter reaffirmed that CNPS has not agreed to relocate the habitat preserve 1 North.

FORA has been confrontational, uncooperative, and replete with arguments and incomplete facts twisted to serve FORA’s position, as demonstrated most recently by its letter sent after 4 PM on May 19, 2020. Much of that letter mischaracterizes the facts, the arguments, and the statements of CNPS. This letter addresses some of those.

CNPS writes this letter to demystify the situation and in an effort to defuse the hostile actions by FORA and DRO and to resolve the controversies.

Executive Summary

FORA and Del Rey Oaks have illegally destroyed or hidden the public records that show the true location for the Plant Reserve 1 North. CNPS has the records that show that twenty years ago FORA and Del Rey Oaks agreed that what is now known as parcel E29a.1 is the habitat reserve identified in the CEQA mitigations and the CNPS-FORA-DRO contract. The parcel is approximately 4.6 acres. FORA and Del

Rey Oaks have denied the existence of the records. FORA and Del Rey Oaks failed to produce the records in response to the California Public Records Act requests that CNPS has made. This CNPS letter attaches records that FORA and Del Rey Oaks have destroyed.

CNPS reaffirms its previous concerns and opposition to any "relocation" of the Plant Reserve 1 North and its concerns and opposition regarding FORA's failure to implement adopted CEQA positions and mitigations for past road projects that which FORA has constructed, and FORA's failure to ensure these mitigations will be carried out by a successor. FORA, now that it has built its roads, intends to abandon all remaining legal duties and responsibilities to which FORA committed when it approved the roads. CNPS objects in the strongest terms.

Historic overview: the habitat reserve parcel.

The CNPS letter to FORA dated May 1, 2020, provided a brief historic overview of the habitat reserve parcel. FORA's May 19 letter is wrong on many points. The contract and the other records speak for themselves, and they easily withstand the efforts by FORA to twist the meaning to their own self-serving purposes that are not in the public interest. The FORA letter is based on an artificially limited version of the records that FORA and Del Rey Oaks have selectively considered, and the FORA letter preemptively and prematurely abandons the CEQA commitments of FORA, all in violation of laws.

As background, starting in the 1960s, CNPS secured approximately 14 plant reserves on Fort Ord. CNPS took these actions because of the valuable and unique nature of the habitat and rare plants at Fort Ord. Some reserves were modified over the years as CNPS negotiated with the Army, as the Army approved projects and added reserves as mitigation, and as reserves were merged and renumbered. Plant Reserve #1 was and has always been located at the corner of Highway 218 and North South Road which was later renamed General Jim Moore Boulevard. The northern boundary of Plant Reserve 1 was South Boundary Road.

North-South Road (General Jim Moore)/Highway 218 Improvements Project.

In approximately 1998, FORA prepared a draft Environmental Assessment (EA/IS) for a road project called the "North South Road/Highway 218 Improvements Project." CNPS commented on the draft EA/IS pointing out that the project would harm Plant Reserve 1. In response FORA amended the EA/IS, and FORA later adopted CEQA Mitigation 3 and constructed the project. Mitigation 3 set aside "a minimum of 2.0 acres" in the vicinity of the northeast corner of North-South Road (which later was renamed General Jim Moore Boulevard) and South Boundary Road "plus an adequate buffer" from the proposed development to the north, which was then a golf course. This Mitigation 3 protected the land that CNPS called Reserve 1 North or Preserve 1 North.

On April 22, 1998 a letter contract signed by CNPS, Del Rey Oaks (DRO), and FORA designated a habitat area of minimum of 2 acres of habitat preserve plus an adequate buffer at the NE corner of South Boundary Road and General Jim Moore. This established Preserve 1 North in contract form. Thus, Plant Reserve 1 North was created by FORA's adopted CEQA mitigation 3 and also by contract between CNPS, FORA and the city of Del Rey Oaks.

In 1999 the contract between CNPS, FORA and DRO was modified to strengthen Reserve 1 North and it slightly modified the configuration of the protected land in order to provide consideration for the additional accommodation for proposed improvements at the adjoining road intersection that FORA and DRO sought.

In February and March of 2000, the Army Corps of Engineers was actively mowing and clearcutting many acres of land in the area of the Plant Reserve 1 North. CNPS was very concerned that the protected Reserve 1 North area was in danger. At 2:00 PM on March 2, 2000, FORA's engineer, DRO's city manager, and a CNPS representative met at the intersection of South Boundary and General Jim Moore for an hour and a half. The purpose of the meeting was to resolve the location of the habitat reserve so that it was not harmed by the Army's actions. Immediately after the meeting concluded the FORA engineer prepared a memo that documented the meeting and the "designated habitat area" that was agreed upon pursuant to the contract. The memo and its attached map is attached as Exhibit A to this letter.

The FORA memo states that the purpose of the March 2, 2000 meeting was as follows, at item 1:

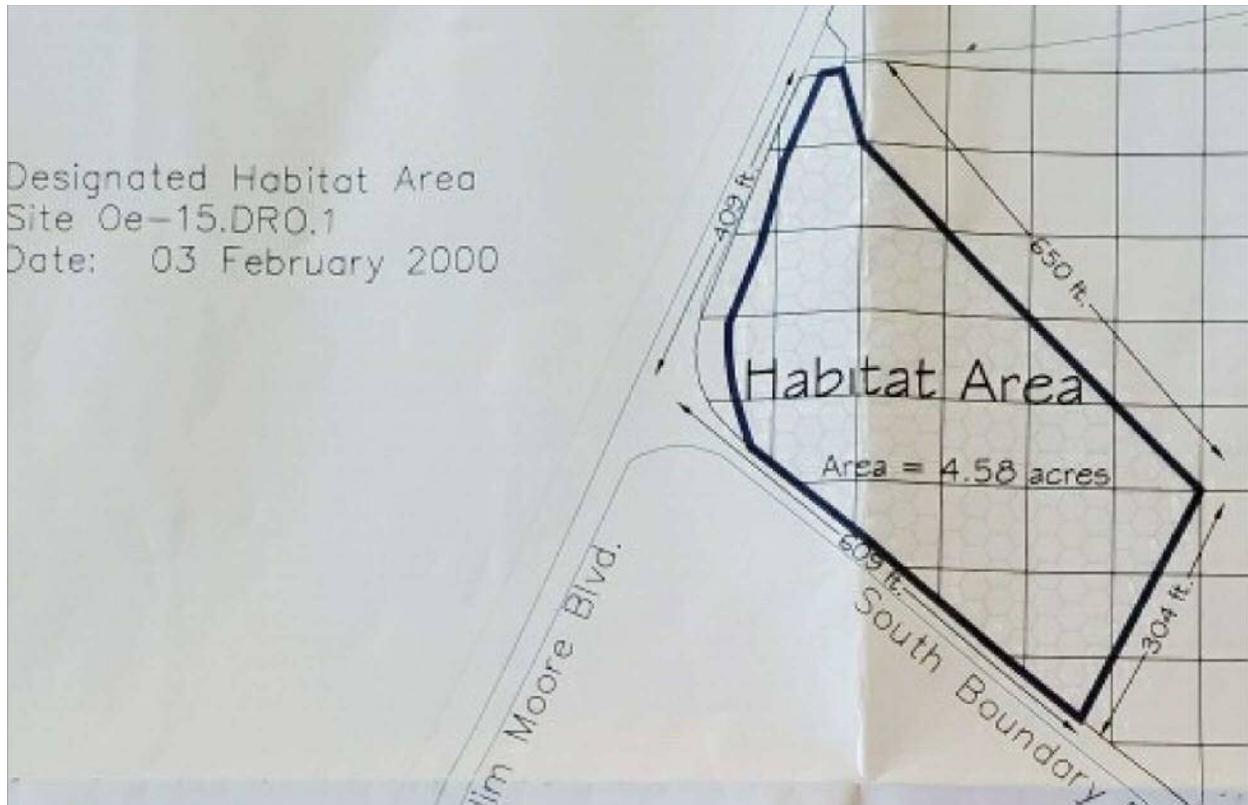
1. Meeting was set up [because] the CNPS habitat area had not been confirmed by the City of Del Rey Oaks. Mass vegetation cutting was ongoing north and south of South Boundary Road. The U.S. Army COE was following a map (attachment 1) showing the habitat area. Confirmation of this area as the preserve was needed from the City Of Del Rey Oaks.

The FORA memo stated at item 4:

4. The actual location of the 2 acre preserve within the 4.58 area was not identified. Per the CNPS agreement dated 22 April 1998 and modified on 1 July 1999 a 2 acre buffer is required thus: the approximately 4 acre habitat area identified on the attached Map.

The FORA engineer's memo shows that Del Rey Oaks agreed that the "4.58-acre parcel" shown as "Designated Habitat Area" on a large map dated "03 February 2000" was to be the protected habitat area. The large map was given by FORA and Del Rey Oaks to CNPS. The memo attached a small version of the map.

This screen shot of the full-size map clearly shows the "designated habitat area":



The FORA memo documented the acceptance by Del Rey Oaks that the "4.58-acre" area shown on the map "shall be the habitat area" pursuant to the FORA-DRO-CNPS contract.

5. [Developer's representative] Dave Miller and [Del Rey Oaks city manager] Ron Langford accepted that the area shown on the attached map shall be the habitat area.

This was an unequivocal concurrence by Del Rey Oaks and FORA as to the approximate size and location of the habitat area pursuant to the contract. CNPS has the large map that Del Rey Oaks gave to CNPS at the meeting in March 2000. Authorized senior officials representing FORA, Del Rey Oaks and CNPS all were

present¹ at the meeting and they all accepted the mapped “4.58-acre”² site as the protected area under the FORA-DRO-CNPS contract as amended. The acceptance was documented. CNPS relied on that and in reliance did not take further action to stop the Army mowing the surrounding area, as the compromise for the definitive established protected area under the contract. (E.g., see CNPS March 2000 newsletter, Exhibit B to this letter.) Public records show that the Army removed much if not all of the vegetation from the surrounding area, and did not remove vegetation from the “4.58-acre” site shown on the accepted map

FORA and Del Rey Oaks should have disclosed the records that show the accepted boundaries of Plant Reserve 1 North. FORA and Del Rey Oaks have denied the existence of the records, have destroyed these records or have hidden them in violation of the California Public Records Act and other laws, all in an effort to violate the DRO-FORA-CNPS contract and to obtain an advantage over CNPS. CNPS has fully performed because, inter alia, CNPS relied on the accepted “Designated Habitat Area” map when CNPS forbore from challenging the actions of the Army, as the then-property owner, to clearcut the surrounding areas, and CNPS forbore from challenging the FORA road projects based on the “Designated Habitat Area” map in exchange for, as compliance with, and consistent with the contract and the actions of the parties. FORA and Del Rey Oaks have received the benefit of their bargain. CNPS has not.

Subsequent to the acceptance by the parties of the “designated habitat area” on March 2, 2000, for the first time official FORA and Army records show the area as a new parcel and refer to it as a “habitat reserve,” for “habitat purposes,” as the “Native Plant Society parcel,” and similar language consistent with the March 2, 2000 accepted map of the “designated habitat area.” Del Rey Oaks and FORA did not object to those official maps and official references to the parcel as the “habitat area.” Here are two examples:

- In 2003 when the Army was transferring land to FORA that was to be within the city limits of Del Rey Oaks in FOSET-003, the Army transferred what had been called parcel E29a, a large parcel which was to be within DRO city limits. The new habitat reserve parcel was a subpart of the

¹ FORA’s engineer managed FORA’s capital projects, project approvals and project mitigations. Del Rey Oaks’ city manager Ron Langford was the longtime right hand of Mayor Jack Barlich and who acted at times concurrently as Del Rey Oaks’ city clerk, police chief, and in other official roles and duties. Mary Ann (Corky) Matthews was a longtime CNPS board member and the knowledgeable longtime conservation chair of the chapter; she is the author of “An Illustrated Field Key to the Flowering Plants of Monterey County and Ferns, Fern Allies, and Conifers,” first published in 1998. She wrote CNPS CEQA comments on various CEQA draft documents prepared by FORA for the road projects that are at issue.

² Some public records describe the parcel as containing 4.63 acres or similar.

larger parcel E29a. For this reason the Army carved out a small parcel from E29a and called the carved-out area a "habitat area" on the FOSET-003 Plate 1 and wrote explanatory text in FOSET-003 that says "Included within Parcel E29a is a 5-acre habitat reserve that is not included in the transfer" in the text. The FOSET-003 Plate 1 shows the same outlined area that had been agreed to on March 2, 2000 by Del Rey Oaks and CNPS as documented in the map given to CNPS in March 2000, a small version of which is attached to the March 2, 2000 FORA memo, as explained above.

- In 2004, a U.S. Army Corps of Engineers report documented a walkabout visit of the "5 acre parcel known as 'DRO Habitat Area'" and attached a map showing the same outlined area that was described in and attached to the March 2, 2000 FORA memo, as described above.
- The Army knew that the area was designated as a habitat area, and the Fort Ord cleanup parcel search tool specifically labels the new parcel E29a.1 as "Habitat Reserve Area", as shown in these screen shots below:

Search Clear your search and show all records Show Map

COE Parcel Number	Parcel Name	HMP Category	Authority	Acreage
E29a	visitor center / business park	Development	EDC	271.00
E29a.1	Habitat Reserve Area	Development	EDC	4.66

Search Clear your search and show all records Show Map

Acreage	BRAC Transfer Status	Transfer Date	Jurisdiction
271.00	Transferred	12/20/2000	Del Rey Oaks
4.66	Transferred	7/10/2009	Del Rey Oaks
22.52	Transferred	12/20/2000	Del Rey Oaks

<https://fortordcleanup.com/parcel-search-tool/>

FORA has made extraordinary efforts to draw attention away from the existing and accepted 2000 map of the "designated habitat area" and the official records. Instead, FORA in its May 19, 2020 letter is oddly focused on a videotape which FORA claims it created, and which was a public record of FORA. Neither FORA nor Del Rey Oaks preserved a copy of a videotape, which is an improper and illegal destruction of records, especially a record that FORA claims was prepared to satisfy a contractual

obligation regarding a real property contract. FORA's actions to destroy the map and the videotape reflect very poorly on FORA's credibility and integrity. FORA's May 19, 2020 letter has an overly narrow focus – while FORA claims it “could not find any record of the precise location of the Habitat Area referenced in the agreements,” FORA does not deny that the precise location for the habitat area was established by a map accepted by the parties in 2000 and memorialized in a contemporaneous memo by FORA. The May 19, 2020 FORA letter also makes inaccurate contentions regarding CNPS's statements during the brief meetings that were held in the past six months, and similar inaccurate contentions regarding FORA's statements and actions, as well as various other misleading comments that are not helpful to achieving a resolution of the controversies.

South Boundary Road Realignment and Widening Project

In 2010, FORA certified an environmental assessment/initial study (EA/IS) for a "South Boundary/Gigling Road Improvement Project" that would realign and widen South Boundary Road. The realigned road would go directly through the protected habitat area known as Preserve 1 North, which is parcel E29a.1.³ The EA/IS failed to include this critical information in the discussion of the project baseline and in the analysis of the project impacts. The impacts are addressed only in chapter 3 of the initial study, the chapter on alternatives. Chapter 3, called "Alternatives Considered," briefly mentions one of the two rare plant reserves. The discussion of “alternatives” describes the reserve as a "habitat preserve area," as follows:

Widening of 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 be [sic] 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

³ Parcel E29a.1 has been identified as APN 031-191-013 following the transfer from Army ownership.

The 2010 EA/IS chapter 3 also says "If negotiations with CNPS are unsuccessful, Alternative #2 provides an alternate" alignment." Thus, the EA/IS stated that FORA must "renegotiate" the location of the habitat reserve area with CNPS before FORA can proceed with the project. The EA/IS states the FORA-CNPS contract requires "permanent protection" of the habitat and that "the boundaries must avoid road widening that would affect the reserve."

FORA did not contact CNPS regarding the 2010 EA/IS or the 2010 South Boundary Road project proposal or the need for "relocation." In August 2010, the FORA Board approved the project without discussion and without questions, in an agenda item that lasted approximately two minutes, according to the transcript. CNPS would have objected and would have attended if CNPS had known about the proposed project and the undisputed impacts it would have on Plant Reserve 1 North. CNPS was not told about it, and CNPS relied on the contract and the map that FORA and Del Rey Oaks had agreed on ten years' previous. FORA's May 19, 2020 letter makes unsupported and meretricious claims about CNPS' "silence" which FORA itself caused when FORA did not notify CNPS and acted secretly about the South Boundary Road project impacts. An agency with nothing to hide, and an agency with a desire to be transparent and responsible, and an agency that honored its CEQA mitigations, would have contacted CNPS under the circumstances and told them about the proposal to construct a road through the habitat area. FORA did not do that. CNPS relied on FORA to do the right thing under the law, consistent with public policy. FORA failed.

In fact, FORA made no attempt to contact CNPS regarding the habitat reserve and impacts for many years. In 2017, CNPS first learned that FORA had approved the South Boundary Road realignment in 2010. FORA did not tell CNPS. CNPS learned through a member of the public who alerted CNPS. CNPS chapter president Nikki Nedeff promptly attended a FORA board meeting and notified FORA in person and in writing of CNPS's concerns about the severe potential impacts of the road realignment on Plant Reserve 1 North. As soon as CNPS was informed of the location of the proposed project, CNPS constantly and consistently objected to the road going through Plant Preserve 1 North. FORA did not respond in any meaningful manner until years later.

In 2018 FORA filed a legal brief filed in the Monterey County superior court by FORA as part of the KFOR v. FORA litigation involving the South Boundary Road realignment project. FORA legal counsel Jon Giffen and Crystal Gaudette stated "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 can be negotiated with CNPS." The FORA brief agreed that "[T]he CNPS preserve must remain untouched unless the agreement regarding that preserve is successfully renegotiated."

In February 2019, FORA counsel Jon Giffen and Crystal Gaudette were present for a court hearing that was part of the same CEQA litigation involving South Boundary Road. FORA counsel Gaudette stated at the hearing in open court as follows: The FORA EA/IS "states 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 under the Initial Study." At the court hearing the judge, after reviewing the South Boundary Road EA/IS, stated "My understanding is that actually the Plant Society is in the driver's seat currently with respect to where the road ultimately is, whether it's in the approved roadway or whether it is alternative 2. Alternative 2 was specifically put in there because of FORA's recognition that the Native Plant Society may say . . . we don't see a way that you can have your new extension and still preserve our area. So, it still seems like the Native Plant Society is in the driver's seat, not FORA." (Transcript.)

FORA did not include the CNPS agreement on the list of FORA contracts to be addressed during and prior to FORA's dissolution. LAFCO asked FORA to "Address the definitive status of FORA agreements and plans after June 30, 2020." In response, on May 14, 2020, FORA through its legal counsel Jon Giffen stated the FORA position as follows: "*Legal counsel has reviewed all agreements and believes that all have been satisfied and/or may no longer be enforceable post FORA sunset.*" (FORA Board packet, May 14, 2020, p. 26 of 133, italics in original.) After CNPS and KFOW raised direct questions and concerns about serious legal violations, on May 14 FORA went into closed session to discuss possible litigation. After the FORA Board emerged from closed session with its counsel Jon Giffen, FORA Director Alan Haffa stated on the record in open session that in closed session FORA legal counsel had advised the Board that the way to avoid litigation was to approve the memoranda of agreement with Del Rey Oaks and other cities – in short, to plow ahead without responding openly and thoroughly to the issues raised by public interest, not-for-profit volunteer organizations.

Mr. Giffen in his May 19, 2020 letter for the first time affirmatively states the FORA position that "FORA will take no further role with regards to the [South Boundary Road] Project" which is a definitive statement that FORA has abandoned its responsibilities with regard to the FORA-DRO-CNPS contract, with regard to the positions adopted by FORA in the South Boundary Road EA/IS, and with regard to the mitigations adopted by FORA for the three road projects described above: South Boundary Road, North-South Road/Highway 218, and General Jim Moore/Eucalyptus Road. This is a serious failure by FORA because the MOAs presented to date do not adequately ensure the implementation of these mitigations and positions on which the FORA approvals of the road projects were based. FORA has repudiated the FORA contracts, the FORA commitments, and the FORA mitigations. FORA has failed to preserve in perpetuity the land in the manner that was agreed upon by contract executed by FORA, CNPS and Del Rey Oaks.

FORA as a public entity is going to sunset in June 30, 2020 and still has not

reached a resolution with CNPS with regard to this controversy. The FORA-CNPS-DRO agreement has not been renegotiated and the habitat area has not been “relocated.” FORA has not assigned successor agencies to carry out past FORA positions and FORA mitigations for the projects that involve Plant Reserve 1 North, including the FORA-DRO-CNPS contract, the South Boundary Road Project, the North-South Road/Highway 218 project, and the General Jim Moore intersection that was part of the General Jim Moore/Eucalyptus Road project. FORA has already constructed the last two listed road projects and FORA has not fulfilled its obligations as lead agency to implement all mitigations and to ensure future implementation of all adopted mitigations, including those that affect the General Jim Moore/South Boundary Road area. The need for these mitigations is continuing and ongoing.

The public interest in public agencies enforcing their adopted environmental mitigations is high. There is strong public policy and public interest in favor of ensuring an agency's commitment to its CEQA mitigations adopted at the time of the agency's project approvals. There is strong public policy and public interest in favor of ensuring the compliance with the FORA's adopted mitigation for the loss of unique habitat at Fort Ord and FORA's adopted mitigations for the impacts to the biological resources at Fort Ord. Once a public agency incorporates the mitigation measures into the project as conditions of approval, as here, the agency is bound to them. Under the law FORA cannot simply ignore the conditions and mitigations it has adopted.

North-South Road (General Jim Moore)/Highway 218 Improvements Project.

As described above, CEQA mitigation 3 of the North-South Road/Highway 218 Improvement Project has not been implemented and carried through in perpetuity as requires. Other mandatory project mitigations and conditions also have not been met by FORA. On May 11, 2000, FORA submitted an application to the California Department of Fish & Game requesting a F&G Code permit for an incidental take of Seaside's Birds Beak arising from the North-South Road/Highway 218 Improvements Project. That permit was not granted. FORA went ahead with the road construction project regardless. The need for a permits remains, along with the ongoing need for implementation of the remaining adopted mitigations that were part of the FORA approvals. The need for the mitigations is ongoing, as shown by recent FORA records, including those that show Seaside Birds Beak at the site over the years. FORA received the benefit of the approvals when FORA constructed the road project. However, FORA has not met its legal obligations in implementing all the necessary mitigations.

North-South Road (General Jim Moore)/Eucalyptus Road Improvements Project.

In approximately 2005, FORA had approved the General Jim Moore/Eucalyptus Road Improvements Project in reliance on an EA/IS for that project. The project description in the EA/IS included a new intersection of General Jim Moore and South

Boundary Road. FORA constructed the General Jim Moore road expansion but not the intersection with South Boundary Road. FORA unsuccessfully has sought approval from the California Department of Fish & Game requesting a F&G Code permit for an incidental take of Seaside's Birds Beak that the project would cause.

Now, in 2020, FORA has stated that it wants to construct a new intersection at the new location of the General Jim Moore intersection with South Boundary Road, and FORA has said may even build a roundabout instead, which requires significantly more land than an intersection. However, FORA has not implemented the adopted Mitigations 5 and 6 in FORA's adopted EA/IS for the General Jim Moore/Eucalyptus Road Improvements Project, as well as other relevant unimplemented mitigations. FORA has not assigned an agency to take over FORA's ongoing and uncompleted obligations for the project, including the mitigations that FORA has not been fully implemented, and an agency has not accepted the duties and obligations. The need for the mitigations is ongoing, as shown by recent FORA records, including those that show Seaside Birds Beak at the site over the years. FORA received the benefit of the approvals when FORA constructed the road project by widening and realigning General Jim Moore Boulevard. However, FORA has not met its legal obligations in implementing all the necessary mitigations.

Offer to meet.

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

Request.

CNPS asks FORA to rescind its approvals of the EA/IS and the South Boundary Road project. CNPS asks Del Rey Oaks to start over with the environmental review if it seeks to realign South Boundary Road. CNPS asks FORA to ensure that all of its environmental obligations are fully implemented and fully assured of implementation, as described above, before FORA sunsets. FORA has had plenty of time to plan for these known obligations. FORA alone is responsible for the delays. There is time to resolve the controversies before FORA sunsets, and CNPS stands ready and able to resolve them.

May 21, 2020

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Sincerely,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson

Attachment: Exhibits A and B, as described above

cc: Kate McKenna, Executive Officer, LAFCO of Monterey County
Debbie Hale, Executive Director, Transportation Agency of Monterey County



Fort Ord Reuse Authority
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FAX COVER SHEET

DATE: 2 Mar 00

TO:

Dave Miller
Mary Mathews
Ron Langford

DBO Dev. Co.
California Native Plants
City of Del Rey Oaks

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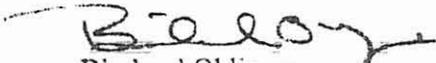
FROM: Birchard Ohlinger, P.E.
FAX: (831) 883-3675
Phone: (831) 883-3672

NUMBER OF PAGES IN THIS FAX: 3

MESSAGE:

Could you please review the attached minutes and let me know if I have forgotten anything.

Sincerely:


Birchard Ohlinger

MINUTES OF MEEETING

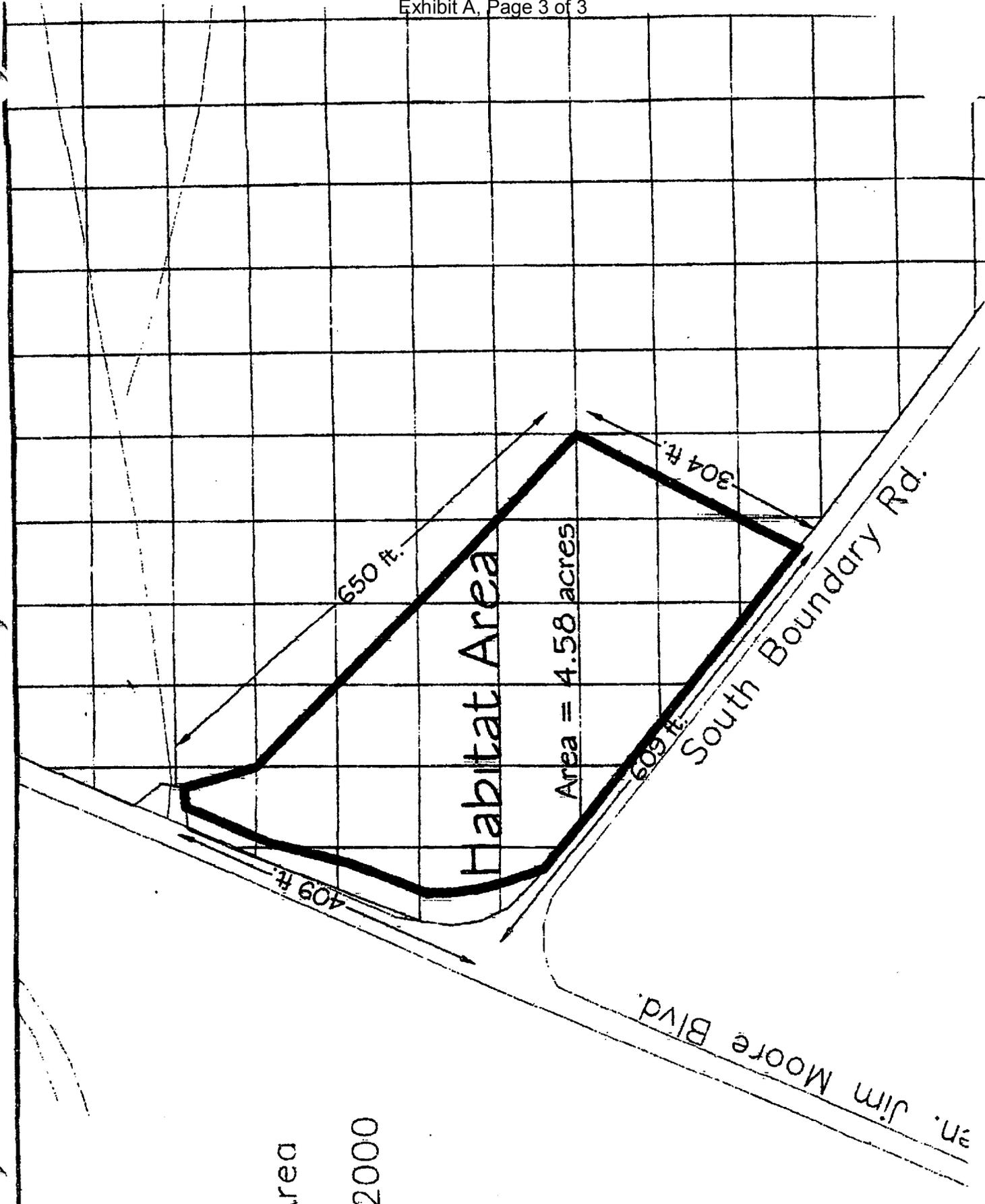
Location: Intersection of South Boundary Rd and Gen. Jim Moore Blvd.
Date/Time: 2 March 2000 at 2:00

People Present:

Birchard Ohlinger	FORA	(831) 883-3672
Ron Langford	Del Rey Oaks	(831) 394-8511
David Miller	DBO Devel.	(831) 649-0394
Mary Mathews	CNPS	(831) 659-2528

1. Meeting was set up as the CNPS habitat area had not been confirmed by the City of Del Rey Oaks. Mass vegetation cutting was ongoing north and south of South Boundary Road. The U.S. Army COE was following a map (attachment 1) showing the habitat area. Confirmation of this area as the preserve was needed from the City Of Del Rey Oaks.
2. Dave Miller indicated that other areas within the golf course areas may be better suited for the preserve as they would not be adjacent to the road way which may be heavily traveled in the future.
3. Mrs. Mathews indicated that CNPS desires their acreage as close a proximity to the existing preserve and that the road north of South boundary Road is similar to what will be taken within the existing preserve by the intersection improvement project slated to start in the next few weeks. They have a strong interest in the vegetation growing in the bank along South Boundary Road.
4. The actual location of the 2 acre preserve within the 4.58 area was not identified. Per the CNPS agreement dated 22 April 1998 and modified on 1 July 1999 a 2 acre buffer is required thus the approximately 4 acre habitat area identified on the attached map.
5. Dave Miller and Ron Langford accepted that the area shown on the attached map shall be the habitat area.
6. One last issue was discussed concerned the South Boundary Road right of way. The Base Reuse Plan indicates a 140 foot right of way and the Record of Survey indicates a 60 foot right of way. It is not known how this will impact the area in the future.

Meeting adjourned at 3:30



Habitat Area
0.1
February 2000

2N. Jim Moore Blvd.

South Boundary Rd.

Habitat Area

Area = 4.58 acres

California Native Plant Society

Monterey Bay Chapter

Newsletter March 2000



GENERAL MEETING, TUESDAY, MARCH 21
PACIFIC GROVE MUSEUM OF NATURAL HISTORY

Flower Power: Natural Recovery After Fires

The crucial role of native "fire follower" plants in the process of recovery after wildland fires will be explored in a slide program by Corky Matthews at the March chapter meeting at the Pacific Grove Museum on Tuesday, March 21. Book sales, browsing, and sociability start at 7:30, with a brief business meeting at 8 preceding the slide show.

The program will feature photos of the unique wildflowers that germinate following fires in shrub and forest communities, help hold the soil in place the first couple of post-fire years, disperse their seeds, and then disappear, often for decades, until the next fire occurs. The program will also stress the importance of preserving biodiversity in wildlands by avoiding practices that inhibit or prevent this natural revegetation after fires.

Spurred by CNPS and other groups that have studied the role of fire in natural ecosystems, the regulatory agencies have gradually been changing their fire suppression policies to allow natural and prescribed fires to burn as long as human life and property are not threatened. However, there is still pressure to plant a temporary crop of grasses to try to reduce erosion on slopes laid bare by fire, a practice that ecological studies have shown to be counterproductive in natural communities. In many cases these grasses do not germinate soon enough to prevent erosion, yet they may out compete the "fire followers," ultimately eliminating the seed bank of the very plants that facilitate natural revegetation. Dozens of these unique plants have been lost over the years because of this practice.

Corky's interest in the subject was stimulated when she was studying botany at Cal Poly, San Luis Obispo. Her course included a fire ecology class in 1986 using the huge Las Pilitas Fire of 1985 as a gigantic outdoor laboratory. The format involved lectures by outside authorities from both agencies and academia, along with field trips to look at recovery in many different sites. Most of the students were master's candidates who did valuable field projects looking at the ways the plants recovered after the fire.

— continued on Page 4

NEW This Month!!! Free with or without a coupon!!

Spring 2000 Flower Report!!

(Submissions for next newsletter welcome; email them to bdelgado@ca.blm.gov or phone 335-5775 by March 28th).

Nature has come into the new millennium with a wildflower spring that has an awesome potential to delight and inspire all flower children, especially in areas not choked with heavy nonnative annual grass growth such as Rocky Ridge (still looking for an April-May trip leader), the beaches, and areas burned in 1998-99. The manzanita blossoms are strong and lovely this year and the wild lilacs (*Ceanothus*) promise to be show stoppers. The early herbaceous wildflowers such as footsteps of spring and shooting stars are coming into full swing and the lilies should be strutting their stuff by the end of March. Watch for a particularly strong spring and summer bloom along the beaches because the perennial wildflowers (such as the beach buckwheats) are looking very healthy with robust new leaf and branch growth. Currently the beautiful coast wallflowers are in riotous yellow bloom at Marina State Beach; especially noticeable near the Lake Court sand ladder (Marina) at 65 mph from Hwy. 1! Also, once the rains have stopped and the Los Padres National Forest is reopened to hikers, the fire-following wildflower explosion in the Ventana Wilderness could be a once-in-a-generation opportunity for the avid posy sniffer. Look for CNPS trips into these Big Sur burned areas around May and June.

— Bruce Delgado

And now for...

March Field Trips 2000

...and Beyond...!!!!!!

The really incredible combination of hard conservation work and fun field trip saunters around Monterey Bay continued last month and goes on into this month's still-early spring. Thanks to all the CNPS and other volunteers for participating, and to Andrew Molera State Park's staff, the Beach Garden Project, Bureau of Land Management at Fort Ord, and Return of the Natives Education Program at CSU Monterey Bay's Watershed Institute, for once again orga-

— continued on Page 3

CONSERVATION UPDATE

As of Mar. 4, 2000

LOS PADRES NATIONAL FOREST: The chapter is sending a letter to Forest Supervisor Jeanine Derby urging review of the agreement signed in July 1991 settling an appeal by CNPS of the Forest Plan. The chapter is very concerned that because the position of botanist on the forest has not been filled since Karen Danielsen left over three years ago, the agreement to prepare management guides for endangered species has apparently not been carried out; and a number of actions regarding grazing impacts, fire recovery, and monitoring have not been completed according to the agreement.

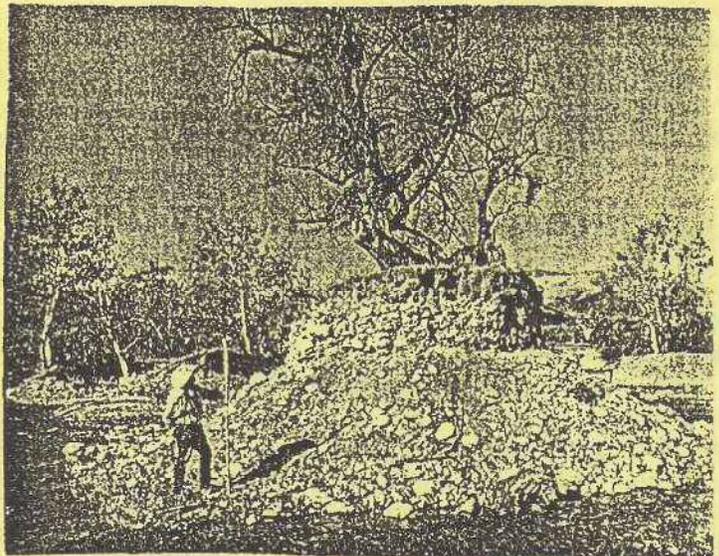
FLANDERS MANSION: CNPS members attended the field trip held last month by the city of Carmel to discuss boundaries for the proposed sale of the Flanders Mansion on Hatton Road. Members as well as the public urged that before any sale is approved, the boundaries should be redrawn to minimize the impact on the Rowntree Native Plant Garden. City officials did agree to narrow the driveway right-of-way from 40 to 20 feet, retain a row of pines, and move the entrance gate 45 feet farther down the driveway. Established in 1980 on city land in Mission Trails Park to honor famed native plant horticulturist Gertrude Lester Rowntree, the garden has been lovingly tended for the past 20 years by a committee currently chaired by landscape architect Gary Girard. The chapter has urged retention or leasing of the mansion, rather than sale, pointing out that divestiture of parkland may provide a short-term financial gain, but it will result in a long-term loss to the quality of life in Carmel.

RANCHO SAN CARLOS: The chapter was deeply disturbed to learn that RSC had drained water from Moore Lake to water the new golf course even though their development permit limits water use to wells in order to reduce the impact on the Carmel River. The chapter wrote the State Water Resources Control Board, which had already denied a temporary permit to remove 250 acre feet from the lake, urging denial of an application for a permanent right to take 250 acre feet of surface water from the winter flows of Garzas Creek, a tributary of the Carmel River that passes through Garland Park. A public hearing is reportedly planned for July. The chapter is also concerned to learn that a number of small drainages that have hitherto run into tributaries of the Carmel River have been diverted to collect water for the RSC golf course, an action which would appear to violate the conditions of its permit. In addition, with the listing of the steelhead as a Threatened Species, and the issuance of the draft 4d rules by the National Marine Fisheries Service, further restrictions on any activity that would impact steelhead habitat should be expected.

FORT ORD-HIGHWAY 218: In response to questions about the major road work at the intersection of Hwy 218 in Del Rey Oaks and Gen. Jim Moore Rd. (formerly North-South Rd.), the chapter has been closely involved for several years in trying to minimize the impact on Plant Reserve #1, which is on the SE corner of Gen. Jim Moore Rd. and South Boundary Road just up the hill from Hwy 218. It is part of a much larger piece that will become part of the Regional Park District. Although the road has been considerably widened to allow for traffic that will be generated by hotel and golf course development in the Del Rey Oaks portion of Fort Ord, it is much narrower than was originally planned. Be-

cause part of Plant Reserve #1 had to be taken by the road, a mitigation site of similar Maritime Chaparral across the road on the north side of South Boundary Rd. has been set aside. In recent months chapter members have met a number of times with representatives of the Army, Fort Ord Reuse Authority (FORA), Del Rey Oaks, and the developer (most recently on Mar. 1) to make sure that the boundaries are understood and protected. Areas surrounding the mitigation site have been mowed as part of the unexploded ordnance removal program, but all the agencies understand that the reserve is not to be mowed. Ultimately, if tests indicate that the area may contain ordnance, CNPS wants it to be burned, an alternative that is more ecologically beneficial for the native plant community than mowing. The new road construction also impacted a wetlands along Hwy 218, which has been mitigated by expanding the wetlands to the northeast. The chapter will continue to monitor both areas closely to make sure that they are maintained as agreed.

ARROYO SECO MINING: On Jan. 27 the County Planning Commission postponed until May 31 a decision on an application by Granite Rock to mine 300,000 tons of sand and gravel from Chalone Creek. Part of the concern was the miners' intention to haul the rock to their asphalt batch plant on the Arroyo Seco, where outraged residents have stopped another mining operation, stating that it is causing irreversible damage to the river, its banks, vegetation, and wildlife habitat. The destruction of Federally Threatened steelhead may be the greatest obstacle to resuming operation, which has been on hold since the county closed it down last fall. Both the county and the state Office of Mining Reclamation have investigated the issue and found that the operation has mined more material than allowed and had spread more than a half mile both upstream and downstream beyond the permit area. The chapter sent a letter early in the controversy citing its long-standing effort to preserve the natural values of the Arroyo Seco, virtually the last free-flowing tributary of the Salinas River, and listing a number of serious hydrological and ecological impacts caused by this type of mining.



One of many trees left on a pedestal by Arroyo Seco mining.

--Photo from S.F. Chronicle

For further information on these or other issues, please call Conservation Chair Corky Matthews, 659-2528.

2020

May 22, 2020

Commissioners

Chair

Matt Gourley
Public Member

Vice Chair

Ian Oglesby
City Member

Luis Alejo
County Member

Joe Gunter
City Member

Mary Ann Leffel
Special District Member

Christopher Lopez
County Member

Warren Poitras
Special District Member

Maria Orozco
City Member, Alternate

Jane Parker
County Member, Alternate

Steve Snodgrass
Public Member, Alternate

Graig R. Stephens
Special District Member, Alternate

Counsel

Kelly L. Donlon
General Counsel

Executive Officer

Kate McKenna, AICP

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P. O. Box 1369
Salinas, CA 93902

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FORA Chair/Supervisor Jane Parker
FORA Board of Directors
Executive Officer Josh Metz
920 2nd Avenue, Suite A
Marina, CA 93933

Subject: 2020 Transition Plan and Draft Multi-Agency Transition Plan Implementing Agreement

Dear FORA Chair/Supervisor Jane Parker, FORA Board, and Executive Officer Metz,

On behalf of the Local Agency Formation Commission (LAFCO), I am writing to respectfully request that FORA:

- 1) Provide clear and definitive statements in the draft 2020 Transition Plan and Transition Plan Implementing Agreement regarding the survival of the Transition Plan, policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, and other FORA agreements, contracts, and plans after June 30;
- 2) Delete inaccurate and unnecessary statements in recitals F, G, and H of the draft Transition Plan Implementing Agreement regarding LAFCO's oversight role;
- 3) Clearly state whether current Fort Ord water allocations are intended to continue post-FORA dissolution or not, and
- 4) Execute an agreement by June 30 with the County of Monterey, a City member of FORA, or a third-party fiduciary to complete FORA's post-dissolution administrative affairs.

We provide these requests through LAFCO's oversight role under Government Code section 67700. LAFCO is dedicated to working with FORA and its member agencies to complete our respective dissolution responsibilities in the time remaining.

1. Provide clear and definitive statements in the draft 2020 Transition Plan and Transition Plan Implementing Agreement regarding the survival of the Transition Plan, policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, and other FORA agreements, contracts, and plans after June 30.

The Draft 2020 Transition Plan includes unclear and provisional statements regarding the potential survival of the policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, and other FORA agreements, contracts, and plans after June 30 (see sections 1.1, 1.3, and 2.2.6 of the 2020 Transition Plan). As expressed in our May 14 letter, LAFCO continues to request that the FORA Board review and provide definitive statements, in the draft 2020 Transition Plan and Transition Plan Implementing Agreements, as to whether or not FORA intends the Transition Plan, policies, programs, and mitigation measures of the Reuse Plan, FORA Master Resolution, 2001 Implementation Agreements, Transition Plan, and other FORA agreements, contracts, and plans to have any force or effect after June 30, 2020. LAFCO staff believes these statements of FORA's intent are important in supporting LAFCO's statutory role to provide for an orderly dissolution.

2. Delete inaccurate and unnecessary statements in recitals F, G, and H of the draft Transition Plan Implementing Agreement regarding LAFCO's oversight role, as shown in the attachment.

The Draft Multi-Agency Transition Plan Implementing Agreement, included in the May 20 FORA Administrative Committee Packet, presented new recitals, which are unnecessary and inaccurate in their depiction of LAFCO's oversight role in FORA dissolution. These recitals incorrectly state that the 2018 Transition Plan depended upon exercise of LAFCO powers to enforce Transition Plan assignments and designations. Furthermore, the discussion of LAFCO's limited role in the dissolution of FORA was identified and addressed before the FORA Board adopted the 2018 Transition Plan. LAFCO's limited role is evident in LAFCO's correspondence to FORA in August and September 2018, which informed FORA that the California Government Code does not invest LAFCO with authority to make assignments, designations or provisions in the event the transition plan approved by the FORA Board failed to do so, nor does it make the provisions of the Cortese-Knox-Hertzberg Act applicable to the FORA transition process.

3. Clearly state whether current Fort Ord water allocations are intended to continue post-FORA dissolution or not.

LAFCO requests that FORA definitively state whether, and how, the Fort Ord water allocations are intended to survive FORA dissolution. The 2020 Transition Plan section 2.2.6 does not provide a clear and definitive statement regarding survival of Fort Ord water allocations after June 30. The draft Multi-Agency Transition Plan Implementing Agreement does not appear to commit to the current allocations. FORA member agencies have raised concerns that the draft TPIA does not require Marina Coast Water District to abide by the water allocations. In addition, it appears to be increasingly unlikely that FORA and its member agencies will finalize the draft TPIA by June 30. In the absence of finalizing the draft Transition Plan Implementing Agreement and individual Water/Wastewater Service Agreements between MCWD and FORA member agencies, the FORA Board should state definitively its intentions as to whether or not Fort Ord water allocations are intended to continue post-dissolution.

4. Execute an agreement by June 30 with the County of Monterey, a City member of FORA, or a third-party fiduciary to complete FORA's post-dissolution administrative affairs.

Following dissolution, the County is anticipated to take responsibility for managing FORA's records. Numerous other tasks for winding up FORA's administrative affairs remain unassigned, including responsibilities for conducting FORA's final fiscal year audit, paying FORA's post-dissolution bills through FORA-provided funds, paying FORA's CalPERS termination liability through FORA's 115 trust account, and completing final payroll documentation. LAFCO requests that the FORA Board move quickly to execute an agreement with the County, a City member of FORA, or a third-party fiduciary to serve as the successor agency for purposes of winding up FORA's administrative affairs. LAFCO's oversight role will be to review and monitor the successful completion of these tasks.

Conclusion

Thank you for your consideration of these requests. We will continue to work closely with your staff, counsel and consultants throughout the process, and appreciate the opportunity to be of service to FORA and the Monterey Bay communities.

Sincerely,



Kate McKenna, AICP
Executive Officer

Attachment: Requested corrections to recitals F, G, and H of the draft Transition Plan Implementing Agreement

TRANSITION PLAN IMPLEMENTING AGREEMENT

Attachment

This Transition Plan Implementing Agreement (this “Agreement”) is dated for reference purposes _____, 2020 and is entered into by and among:

- (a) County of Monterey (“County”),
- (b) City of Marina (“Marina”),
- (c) City of Seaside (“Seaside”),
- (d) City of Del Rey Oaks (“Del Rey Oaks”), and
- (e) City of Monterey (“Monterey”),
- (f) Fort Ord Reuse Authority (“FORA”),
- (g) California Department of Parks and Recreation (“State Parks”),
- (h) Regents of the University of California (“UC”), and
- (i) Board of Trustees of the California State University on behalf of the Monterey Bay campus (“CSUMB” and collectively with County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, and UC, the “Parties”).

RECITALS

A. The Fort Ord Reuse Authority (“FORA”) was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Section 67650 et seq. and referred to herein as the “FORA Act”) as a regional agency to, among other things, plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to various municipalities and other public entities or their designees.

B. FORA acquired portions of the former Fort Ord from the Army under an Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000 (the “EDC Agreement”). FORA has delivered to each of the Parties a complete copy of the EDC Agreement as executed and including all amendments and attachments.

C. In 2001, FORA entered into certain implementation agreements with the County of Monterey and the Cities of Del Rey Oaks, Marina, Monterey, and Seaside, each more particularly identified in Section 1 below (collectively, the “Implementation Agreements”).

D. Section 67700(a) of the FORA Act provides that the FORA Act will become inoperative, at the latest, on June 30, 2020. Concurrently with the FORA Act becoming inoperative, FORA will dissolve.

E. Pursuant to the requirement expressed in Section 67700(b)(2) of the FORA Act, FORA’s Board of Directors approved and on December 27, 2018 submitted to the Local Agency Formation Commission of Monterey County (“LAFCO”) a transition plan (the “2018 Transition Plan”). As required by Section 67700(b)(2) of the FORA Act, the 2018 Transition Plan assigned assets and liabilities, designated responsible successor agencies, and provided a schedule of remaining obligations.

F. Pursuant to the requirement expressed in Section 67700(b)(1) of the FORA Act, LAFCO is required to provide for the orderly dissolution of FORA (the “Dissolution”), including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by FORA are honored and properly administered, and that all assets of FORA are appropriately transferred. ~~LAFCO has not taken any action to approve or accept the 2018 Transition Plan, but rather has acknowledged receiving it.~~

~~**G.** Many of the assignments and designations of successors set forth in the 2018 Transition Plan were predicated and dependent upon the exercise by LAFCO of powers to impose and enforce such assignments and designations in the event that contracts relating to such assignments and designations were not arranged between FORA and the assignees and designees. LAFCO has taken the position that (i) the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the “Reorganization Act”) does not apply to the Dissolution and (ii) that LAFCO lacks any power under the Reorganization Act, the FORA Act, or any other applicable law to impose or enforce such assignments and designations in the absence of contracts voluntarily entered into with the assignees and designees. This Agreement is being entered into in connection with an effort to update the 2018 Transition Plan to more closely align with the limited role being taken by LAFCO in the Dissolution.~~

H. Although FORA has successfully negotiated the assignment of certain other contracts, FORA has not found any assignee willing and able to accept assignment of FORA’s rights and responsibilities under the Implementation Agreements. ~~Because LAFCO will not impose any assignment of the Implementation Agreements, after the Dissolution there may be no party still in existence with the power to enforce the Implementation Agreements against the county and respective cities.~~

I. By its entry into this Agreement, FORA neither intends to (i) terminate the Implementation Agreements nor (ii) contend that the Implementation Agreements remain enforceable. Further, FORA does not by its entry into this Agreement intend to alter the meaning or effect of any of the Implementation Agreements to the extent, if any, that they may remain enforceable after the Dissolution.