

LAFCO *of Monterey County*

LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

2020

June 3, 2020

Commissioners

Chair

Ian Oglesby
City Member

Vice Chair

Christopher Lopez
County Member

Luis Alejo
County Member

Joe Gunter
City Member

Mary Ann Leffel
Special District Member

Matt Gourley
Public 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

132 W. Gabilan Street, #102
Salinas, CA 93901

P. O. Box 1369
Salinas, CA 93902

Voice: 831-754-5838

www.monterey.lafco.ca.gov

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

Subject: Transmittal of California Native Plant Society's Notice of Intent to Initiate Litigation, Notice of Filing of Litigation, and LAFCO's Demand for Urgent Action

Dear FORA Chair/Supervisor Jane Parker and FORA Board of Directors,

On behalf of the Local Agency Formation Commission (LAFCO) of Monterey County, and pursuant to the terms of the FORA-LAFCO indemnification agreement, I hereby tender the defense of California Native Plant Society's (CNPS) lawsuit filed in Monterey Superior Court on June 2, 2020 (**Attachment 1**). CNPS' lawsuit names FORA and the City of Del Rey Oaks as defendants, and LAFCO as a real party in interest. LAFCO was served on June 3, 2020. CNPS also sent a letter dated May 31, 2020 providing notice of intent to initiate legal action (**Attachment 2**).

We reference the FORA-LAFCO indemnification agreement dated December 18, 2019 in which FORA agrees to defend and indemnify LAFCO in the event of litigation concerning dissolution-related matters. We have previously requested that FORA address its various issues with CNPS, to no avail, leading CNPS to file the current litigation. LAFCO is an unnecessary party to this lawsuit, as it has nothing to do with the underlying project and is not a party to the contractual, CEQA, and Public Records Act disputes that are subject to the lawsuit. Furthermore, LAFCO has a limited role in the dissolution process with no authority or enforcement powers to compel FORA or FORA members to resolve the identified issues.

LAFCO requests your urgent attention to resolve the subject litigation prior to June 30, or to name a successor to indemnify LAFCO for this specific purpose. Toward this purpose, LAFCO staff met with City of Del Rey Oaks representatives to discuss our request that the City also indemnify LAFCO in the CNPS litigation.

To summarize, it is incumbent upon FORA to make every effort to immediately defend and indemnify LAFCO in the legal proceedings brought forth by CNPS, and to name a successor for this purpose. Also, LAFCO reiterates its request for FORA to direct \$1.5 million to LAFCO for a litigation defense fund for any necessary legal actions relating to post-dissolution defense, in our dissolution oversight capacity, as it is now extremely unlikely that FORA will address its unresolved legal issues prior to June 30, 2020.

Thank you for your prompt attention to items outlined in this letter.

Sincerely,



Kate McKenna, AICP
Executive Officer

Attachments: (1) CNPS's Petition for Writ of Mandate and Complaint for Declaratory Relief filed June 2, 2020; and (2) Letter from Law Offices of Stamp | Erickson on behalf of CNPS, dated May 31, 2020 to FORA, City of Del Rey Oaks and LAFCO

1 Molly Erickson, State Bar No. 253198
2 STAMP | ERICKSON
3 Box 2448
4 Monterey, CA 93942-2448
5 Telephone: (831) 373-1214
6 erickson@stamlaw.us

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 6/3/2020 11:00 AM
By: Sonia Gama, Deputy

7 William P. Parkin, State Bar No. 139718
8 Pearl Kan, State Bar No. 294563
9 WITTWER PARKIN LLP
10 335 Spreckels Dr., Ste. H
11 Aptos, CA 95003-3952
12 Telephone: (831) 429-4055
13 wparkin@wittwerparkin.com
14 pkan@wittwerparkin.com

15 Attorneys for Petitioner and Plaintiff
16 California Native Plant Society

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF MONTEREY**

19 CALIFORNIA NATIVE PLANT SOCIETY,
20
21 Petitioner and Plaintiff,

Case No. 20CV001529
Filed June 2, 2020

22 v.

23 FORT ORD REUSE AUTHORITY,
24 CITY OF DEL REY OAKS, DOES 1 to
25 100,
26 Respondents and Defendants.

**NOTICE OF ELECTION TO PREPARE
RECORD OF PROCEEDINGS**

27 CITY OF DEL REY OAKS, LOCAL
28 AGENCY FORMATION COMMISSION
OF MONTEREY COUNTY, and DOES
101 to 200,

Real Parties, Potential Parties,
and/or Recipients of Approvals
(Pub. Resources Code,
§ 21167.6.5).

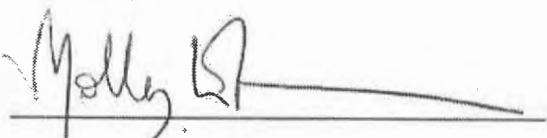
Pursuant to Public Resources Code section 21167.6, Petitioner California Native
Plant Society elects to prepare the record of Respondents' proceedings relating to the
claims under the California Environmental Quality Act. Petitioner invites suggestions

1 and input as to the process and execution of the preparation of the record from
2 Respondents and Real Parties. Petitioner has not consented to and does not agree to
3 any actions by Respondents or Real Parties to take over the preparation of the record
4 unless there is a prior written agreement with Petitioner.

5 Respectfully submitted,

6 Dated: June 2, 2020

STAMP | ERICKSON

7 
8

9 by: Molly Erickson

10
11 WITTWER PARKIN
12 William P. Parkin
13 Pearl Kan

14 Attorneys for Petitioner and Plaintiff
15 CALIFORNIA NATIVE PLANT SOCIETY
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**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 6/2/2020 1:51 PM
By: Kristen Simonsen, Deputy

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

FORT ORD REUSE AUTHORITY, CITY OF DEL REY OAKS, DOES 1 to 100, LOCAL AGENCY
FORMATION COMMISSION OF MONTEREY COUNTY, DOES 101 to 200

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CALIFORNIA NATIVE PLANT SOCIETY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
1200 Aguajito Road
Monterey, CA 93940

CASE NUMBER: (Número del Caso):
20CV001529

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Molly Erickson, STAMP / ERICKSON, Box 2448, Monterey CA 93942 tel: 831-373-1214

DATE: (Fecha) 6/2/2020 Clerk, by (Secretario) /s/ Kristen Simonsen Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify): *Local Agency Formation Commission of Monterey County*
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): *CCP 416.50 public agency*
- 4. by personal delivery on (date) *June 3, 2020*

SUPERIOR COURT OF MONTEREY COUNTY
Monterey Branch, 1200 Aguajito Road, Monterey, CA 93940

California Native Plant Society
vs.
Fort Ord Reuse Authority, et al.

CASE NUMBER
20CV001529

Case Management Conference

NOTICE OF ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

Your case number ending **EVEN** is assigned for all purposes to the Hon. Marla O. Anderson- Dept. 14

Your case number ending **ODD** is assigned for all purposes to the Hon. Thomas W. Wills- Dept. 15

This notice and Alternative Dispute Resolution (ADR) information packet (CI-127)* must be served together with the Summons and Complaint pursuant to California Rule of Court 3.221. *Parties are required to follow the case management rules as outlined in California Rule of Court 3.722 and Chapter 6 of the Local Rules of Court found on the court website at www.montereycourt.ca.gov* . A case management statement from each party or joint statement shall be filed prior to the conference as outlined in California Rule of Court 3.725.

Date: October 06, 2020 Time: 9:00 AM

Location: Monterey Courthouse, 1200 AGUAJITO ROAD, MONTEREY, CA 93940

*The ADR information packet (CI-127) can be found at FORMS on the court's website at www.monterey.courts.ca.gov.

Pursuant to statutes of the State of California, it is the responsibility of the court to establish procedures for the timely and effective disposition of civil cases.

The court is charged with the responsibility of ensuring all parties a fair and timely resolution of their disputes, and the court is in the best position to establish neutral rules and policies without adversely affecting all parties' right to a fair trial. Effective management of the judicial system will build continuing respect by the community of government, minimize the costs to the parties and the public, and maximize the probability that cases will be timely resolved.

The goals of the Monterey County civil case and trial management system are:

1. To provide an effective and fair procedure for the timely disposition of civil cases;
2. To provide a mechanism to gather needed case information in order to make appropriate judicial management decisions; and
3. To establish reasonable rules and policies to require that cases reporting "ready" for trial may be tried without unnecessary delays or interruptions.

*Court proceedings are in English. If you or a witness in your case needs an interpreter, please complete Judicial Council form INT-300. **You must file INT-300 at the first floor clerks counter (or by e-file) 15* business days prior to your hearing.***

*Los procedimientos judiciales son en inglés. Si usted o un testigo en su caso necesita un intérprete, complete el formulario INT-300 del Consejo Judicial. **Debe presentar el INT-300 con los empleados legales de la oficina del primer piso (o mediante archivo electrónico) 15* días hábiles antes de su audiencia.***

1 Molly Erickson, State Bar No. 253198
2 STAMP | ERICKSON
3 Box 2448
4 Monterey, CA 93942-2448
5 Telephone: (831) 373-1214
6 erickson@stamlaw.us

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 6/3/2020 11:00 AM
By: Sonia Gama, Deputy

7 William P. Parkin, State Bar No. 139718
8 Pearl Kan, State Bar No. 294563
9 WITTWER PARKIN LLP
10 335 Spreckels Dr., Ste. H
11 Aptos, CA 95003-3952
12 Telephone: (831) 429-4055
13 wparkin@wittwerparkin.com
14 pkan@wittwerparkin.com

15 Attorneys for Petitioner and Plaintiff
16 California Native Plant Society

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF MONTEREY**

19 CALIFORNIA NATIVE PLANT SOCIETY, Case No.
20
21 Petitioner and Plaintiff,

22 v.

NOTICE OF ELECTION TO PREPARE
RECORD OF PROCEEDINGS

23 FORT ORD REUSE AUTHORITY,
24 CITY OF DEL REY OAKS, DOES 1 to
25 100,

26 Respondents and Defendants.
27 /

28 CITY OF DEL REY OAKS, LOCAL
AGENCY FORMATION COMMISSION
OF MONTEREY COUNTY, and DOES
101 to 200,

Real Parties, Potential Parties,
and/or Recipients of Approvals
(Pub. Resources Code,
§ 21167.6.5).
/

Pursuant to Public Resources Code section 21167.6, Petitioner California Native
Plant Society elects to prepare the record of Respondents' proceedings relating to the
claims under the California Environmental Quality Act. Petitioner invites suggestions

1 and input as to the process and execution of the preparation of the record from
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3 any actions by Respondents or Real Parties to take over the preparation of the record
4 unless there is a prior written agreement with Petitioner.

5 Respectfully submitted,

6 Dated: June 2, 2020

STAMP | ERICKSON

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9 by: Molly Erickson

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11 WITTWER PARKIN
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16 California Native Plant Society

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF MONTEREY**

19 CALIFORNIA NATIVE PLANT SOCIETY,
20
21 Petitioner and Plaintiff,

Case No. 20CV001529
Filed June 2, 2020

22 v.

NOTICE TO ATTORNEY GENERAL

23 FORT ORD REUSE AUTHORITY,
24 CITY OF DEL REY OAKS, DOES 1 to
25 100,

26 Respondents and Defendants.

27
28 CITY OF DEL REY OAKS, LOCAL
AGENCY FORMATION COMMISSION
OF MONTEREY COUNTY, and DOES
101 to 200,

Real Parties, Potential Parties,
and/or Recipients of Approvals
(Pub. Resources Code,
§ 21167.6.5).

To the Attorney General of the State of California:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and
Code of Civil Procedure section 388, that on June 2, 2020, , Petitioner California Native

1 Plant Society filed a petition for writ of mandate against the Fort Ord Reuse Authority
2 and the City of Del Rey Oaks in the Superior Court of California, County of Monterey.
3 The petition names as a real party in interest the Local Agency Formation Commission
4 of Monterey County.

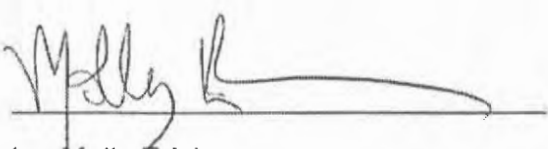
5 The petition challenges the actions by the Fort Ord Reuse Authority and/or the
6 City of Del Rey Oaks to fail to honor CEQA commitments and to not implement adopted
7 mandatory CEQA mitigations for road projects on the former Fort Ord, all under the
8 California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.). The
9 CEQA commitments and CEQA mitigations were adopted to address significant
10 impacts to protected biological resources including maritime chaparral and endangered
11 plants. The accompanying complaint alleges breaches of contract by Fort Ord Reuse
12 Authority and the City of Del Rey Oaks with regard to a contract between Fort Ord
13 Reuse Authority, the City of Del Rey Oaks and the California Native Plant Society with
14 regard to a protected plant habitat area on the former Fort Ord.

15 A copy of the filed petition and complaint is attached to this notice.

16 Respectfully submitted,

17 Dated: June 3, 2020

STAMP | ERICKSON

18 

19 by: Molly Erickson

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21
22 WITTWER PARKIN
William P. Parkin
23 Pearl Kan

24 Attorneys for Petitioner and Plaintiff
25 CALIFORNIA NATIVE PLANT SOCIETY
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MONTEREY

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action. My business address is Box 2448, Monterey, California 93942-2448.

On June 3, 2020, I served the foregoing document(s) described as follows:

NOTICE TO ATTORNEY GENERAL

on the Attorney General in this action as follows:

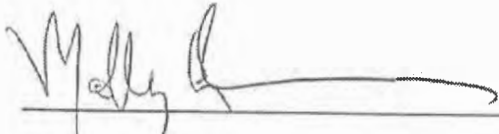
(X) by attaching to the notice a complete copy of the filed petition and placing a true copy thereof enclosed in a sealed envelope with first class postage fully prepaid and addressed as shown below, and depositing it with the United States Postal Service.

Addressed as follows:

Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Mailed and executed on June 3, 2020 at Monterey, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Molly Erickson

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Molly Erickson, SBN 253198 William P. Parkin, SBN 139718
 STAMP / ERICKSON WITTMER PARKIN LLP
 Box 2448, Monterey CA 93942 335 Spreckels Dr., Ste. H, Aptos, CA 95003-3952

TELEPHONE NO.: 831-373-1214 FAX NO. (Optional):
 ATTORNEY FOR (Name): California Native Plant Society

FOR COURT USE ONLY

ELECTRONICALLY FILED BY
 Superior Court of California,
 County of Monterey
 On 6/2/2020 1:51 PM
 By: Kristen Simonsen, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Monterey
 STREET ADDRESS: 1200 Aguajito Road
 MAILING ADDRESS: 1200 Aguajito Road
 CITY AND ZIP CODE: Monterey CA 93940
 BRANCH NAME:

CASE NAME:
 California Native Plant Society v. Fort Ord Reuse Authority, et al.

CIVIL CASE COVER SHEET		Complex Case Designation	
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000)	<input type="checkbox"/> Counter	<input type="checkbox"/> Joinder
		Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

CASE NUMBER:
20CV001529

JUDGE:
 DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Three: (1) Calif. Environmental Quality Act (2) Calif. Public Records Act (3) declaratory relief

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 1, 2020

Molly Erickson
 (TYPE OR PRINT NAME)

Molly Erickson
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

Alternative Dispute Resolution
 (INFORMATION PACKET)
 OPTIONS FOR RESOLVING YOUR DISPUTE

There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach an agreement.

Advantages of ADR

Here are some potential advantages of using ADR:

- **Save Time:** A dispute often can be settled or decided much sooner with ADR, often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
 - **Save Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and expert's fees.
 - **Increase Control over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
 - **Preserve Relationships:** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
 - **Increase Satisfaction:** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
 - **Improve Attorney-Client Relationships:** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.
- Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

What Are the ADR Options?

The most commonly used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

Mediation

In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. The Monterey County Superior Court offers a Court-Directed Mediation Program.

Cases for Which Mediation May Be Appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use.

Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate: Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration

In arbitration, a neutral person called an “arbitrator” hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may be either “binding” or “nonbinding.” Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator’s decision as final. Generally, there is no right to appeal an arbitrator’s decision in binding arbitration. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator’s decision. The Monterey County Superior Court offers a nonbinding judicial arbitration program.

Cases for Which Arbitration May Be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate: If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator’s award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation

In neutral evaluation, each party gets a chance to present the case to a neutral person called an “evaluator.” The evaluator then gives an opinion on the strengths and weaknesses of each party’s evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator’s opinion is nonbinding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate: Neutral evaluation may be most appropriate in cases in which there are technical issues that require expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate: Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conference

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or neutral person called a “settlement officer” to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF MONTEREY**

19 CALIFORNIA NATIVE PLANT SOCIETY, Case No. 20CV001529

20 Petitioner and Plaintiff,

21 v. **PETITION FOR WRIT OF MANDATE;**

22 **COMPLAINT FOR**

23 **FORT ORD REUSE AUTHORITY,**
24 **CITY OF DEL REY OAKS, DOES 1 to**
25 **100,**

26 **DECLARATORY RELIEF**

27 Respondents and Defendants.

28 (California Environmental Quality Act

1 CITY OF DEL REY OAKS, LOCAL
2 AGENCY FORMATION COMMISSION
3 OF MONTEREY COUNTY, and DOES
4 101 to 200,

5 [CEQA; Pub. Resources Code, § 21000 et
6 seq.], California Public Records Act [Gov.
7 Code, § 6250 et seq.]; breach of contract)

8 Real Parties, Potential Parties,
9 and/or Recipients of Approvals
10 (Pub. Resources Code,
11 § 21167.6.5).

12 Petitioner and Plaintiff CALIFORNIA NATIVE PLANT SOCIETY alleges as

13 follows:

1 **PETITION FOR WRIT OF MANDATE**

2 **(First claim – California Environmental Quality Act [CEQA]) –**
3 **against Respondent Fort Ord Reuse Authority)**

4 1. California Native Plant Society (CNPS) brings this lawsuit because the
5 Fort Ord Reuse Authority (FORA) as the project proponent of three road projects has
6 abandoned its CEQA commitment as to the road realignment project and as lead
7 agency under the California Environmental Quality Act (CEQA, Pub. Resources Code, §
8 21000 et seq.) has failed to implement mandatory CEQA mitigations that were intended
9 to protect rare plants and habitat.

10 2. FORA adopted these commitments and mitigations for at least three
11 FORA road projects: the 1999 General Jim Moore Boulevard/Highway 218 project, the
12 2005 General Jim Moore Boulevard/Eucalyptus Road project, and the 2010 South
13 Boundary Road realignment and widening. In 1999 and 2005, respectively, FORA
14 constructed the two General Jim Moore Boulevard projects in large part; however,
15 material parts remain unimplemented. FORA adopted specific mitigations for the 1999
16 and 2005 road projects but has not fully implemented all of the legally mandated CEQA
17 mitigations intended to mitigate harm to protected species and habitats and FORA has
18 not obtained all the required permits from the resource agencies. In 2010, FORA as
19 project proponent committed to “successful negotiations with CNPS” prior to
20 implementing the South Boundary Road realignment project, and the alignment was
21 “dependent upon the outcome of negotiations” with CNPS, as stated in the CEQA
22 document approved by FORA. FORA has ignored its CEQA project commitments.
23 FORA has not obtained success in the negotiations with CNPS, and FORA is still
24 actively pursuing and enabling the South Boundary Road realignment project.

25 3. To make matters worse, FORA and Del Rey Oaks have destroyed or lost
26 public records that are pertinent to the CEQA mitigation that protected a habitat area
27 near the road projects, including a February 2000 map and the March 2000 minutes
28 showing that the specific 4.6-acre habitat area on the map was accepted by Del Rey

1 Oaks and CNPS. The minutes and map defined the boundary and acreage of the
2 habitat area that fulfilled the required CEQA Mitigation 3 for the General Jim
3 Moore/Highway 218 project. The acceptance of the 4.6-acre habitat area was
4 consistent with the 1998 contract between FORA, CNPS and Del Rey Oaks, as
5 amended in 1999, that established the protected habitat area through contract. Thus,
6 the protected habitat area was created in two different ways: by adopted CEQA
7 mitigation and by FORA-CNPS-Del Rey Oaks contract.

8 4. In 2010, FORA, as project proponent, proposed the South Boundary Road
9 realignment project. FORA as lead agency approved an environmental
10 assessment/initial study (EA/IS) that specifically stated that the South Boundary Road
11 realignment would go through the CNPS habitat preserve area. The EA/IS stated that
12 the "alignment as proposed by the project would be largely dependent upon the
13 outcome of negotiations with the California Native Plant Society (CNPS) to relocate a
14 currently identified habitat preserve area" because CNPS has a designated "habitat
15 preserve area . . . approximately where the proposed project would realign South
16 Boundary Road and relocate the South Boundary Road/General Jim Moore Boulevard
17 intersection. Therefore, implementation of the proposed project would require
18 successful negotiations with CNPS to relocate their habitat preserve area to an area
19 south of the currently identified location." (FORA EA/IS for South Boundary Road.) The
20 EA/IS provided that "If negotiations with CNPS are unsuccessful, Alternative #2
21 provides an alternate" alignment." Alternative #2 was the existing alignment of South
22 Boundary Road. FORA as lead agency approved the realignment through the habitat
23 preserve, based on the commitment of FORA as project proponent that the alignment
24 would require successful negotiations with CNPS to move a habitat preserve from what
25 FORA called "the currently identified location" to a location "south of the currently
26 identified location." FORA did not approve Alternative #2. FORA did not discuss the
27 realignment project with CNPS before FORA acted to approve the project and the
28 EA/IS.

1 5. In 2018, FORA stated to the Monterey County Superior Court in briefing
2 on a CEQA challenge to the 2010 EA/IS that the EA/IS “addresses and provides for
3 Project impacts” upon the CNPS habitat area, “recognizing that the proposed [South
4 Boundary Road] project alignment can only proceed if a modification to the reserve can
5 be negotiated with CNPS.” (Nov. 2018 brief of FORA, Case no. 17CV004540, *Keep
6 Fort Ord Wild v. FORA.*) In 2019, after reviewing the briefing and the record in that
7 case, the Superior Court, the Hon. Marla O. Anderson presiding, stated that, “My
8 understanding is that actually the Plant Society is in the driver's seat currently with
9 respect to where the road ultimately is” because “of FORA's recognition that the Native
10 Plant Society may say ... we don't see a way that you can have your new [road
11 alignment] and still preserve our area.” (Feb. 11, 2019, Case no. 17CV004540,
12 transcript, p. 190, lines 5-12.) In late 2019, FORA started negotiating with CNPS. The
13 negotiations have not been successful. CNPS has not agreed to any reduction in size
14 or "relocation" of the protected 4.6-acre habitat area. The realignment cannot proceed
15 according to FORA's commitment.

16 6. On May 22, 2020, FORA approved the transfer of more than \$8.8 million
17 to the City of Del Rey Oaks to construct the South Boundary Road project and a new
18 intersection/roundabout with General Jim Moore Boulevard. FORA refused to assign
19 FORA's commitment that the South Boundary Road realignment project requires
20 CNPS's express consent. FORA also refused to assign all the unimplemented CEQA
21 road project mitigations to Del Rey Oaks or any other public agency. FORA as an entity
22 will sunset on June 30, 2020 by operation of law.

23 7. In addition to FORA's failure to fulfill its commitment that the South
24 Boundary Road realignment project would require CNPS's express consent, FORA also
25 has ignored its contractual obligations to CNPS that required “permanent protection” of
26 additional habitat area as compensation for the harm caused to the existing CNPS plant
27 reserve #1 by the 1999 FORA General Jim Moore Boulevard road project. The contract
28 executed by FORA, CNPS, and Del Rey Oaks stated that newly conserved habitat

1 "area will be protected from fragmentation and degradation in perpetuity. The
2 boundaries must avoid road widening that would affect the reserve." The contract was
3 entered into in 1998 and amended in 1999 to add a buffer zone in exchange for further
4 harms. In 2000, CNPS and Del Rey Oaks accepted a specific 4.6 acre parcel as the
5 habitat area protected through the contract, as documented and mapped by FORA.
6 FORA and Del Rey Oaks have destroyed or lost their records and the February 2000
7 map that documented the 4.6-acre CNPS protected habitat area. FORA has not
8 ensured a successor in interest to FORA's contractual responsibilities to CNPS. FORA
9 did not include the FORA-CNPS-Del Rey Oaks contract on FORA's list of "FORA's
10 outstanding obligations" in the transition plan adopted by FORA in December 2018.
11 (FORA Reso. 18-11; see Gov. Code, § 67700(b)(2)). FORA has stated its position that
12 FORA's "Legal counsel has reviewed all agreements and believes that all have been
13 satisfied and/or may no longer be enforceable post FORA sunset." (May 14, 2020
14 FORA Board packet, p. 25 of 133, p. 26 [same].) Thus, FORA having taken the benefits
15 of the contract, now is acting contrary to its responsibilities under the contract at a time
16 when the rights of CNPS and the protection of the habitat area under the contract are at
17 issue. The protected habitat reserve is in danger of significant harm because FORA
18 has approved the realignment of South Boundary Road directly through the habitat
19 area. CNPS has consistently objected to the realignment of the road, which would
20 cause irreparable loss and harm to rare plants and habitats and would fragment the
21 reserve.

22 8. Now, in 2020, FORA has reneged or intends to renege on its commitment
23 as project proponent that it would negotiate successfully with CNPS before
24 implementing the South Boundary Road realignment project. That FORA commitment
25 put CNPS in the driver's seat, as documented in FORA's adopted CEQA document.
26 FORA has thwarted or intends to thwart Mitigation 3 of FORA's General Jim Moore
27 project requires protection of the habitat reserve in perpetuity, and which prohibits
28 fragmentation of the reserve. FORA also has violated or intends to violate the terms of

1 the contract between FORA, CNPS and Del Rey Oaks, which also requires protection of
2 reserve in perpetuity and prohibits fragmentation. FORA will dissolve on June 30, 2020.

3 9. In short, FORA has failed to honor its CEQA commitments and contractual
4 obligations to preserve in perpetuity the land in the manner that was agreed upon by
5 CEQA mitigation and by contract executed by FORA, CNPS and Del Rey Oaks. CNPS
6 has relied on the mitigations and the contract when CNPS forbore from challenging the
7 FORA CEQA project approvals and other development. CNPS has fully performed
8 under the contract. FORA has repudiated and violated, or intends to repudiate and
9 violate, the FORA contract and not hold up its end of the bargain with CNPS. This
10 litigation follows.

11 Parties

12 10. Petitioner and Plaintiff CALIFORNIA NATIVE PLANT SOCIETY (at times
13 Petitioner, Plaintiff, and/or CNPS) is a non-profit public benefit corporation under the
14 laws of the State of California. CNPS through its local Monterey Bay Chapter has been
15 actively involved for decades in working to protect the biological resources at Fort Ord,
16 starting in the 1960s.

17 11. CNPS was responsible for FORA's adoption of biological Mitigation 3 for
18 the General Jim Moore/Highway 218 road project, because CNPS submitted comments
19 on the draft initial study pointing out inadequacies in the document, to which FORA
20 responded by strengthening the language and adopting Mitigation 3. Mitigation 3 is at
21 issue in this action. CNPS was specifically named in the FORA initial study for the
22 South Boundary Road project, CNPS made CEQA comments on one or more road
23 project at issue herein, and the CNPS comments were instrumental in one or more of
24 the CEQA mitigations adopted by FORA as a result. CNPS also has raised the issues
25 of the unimplemented mitigations for the General Jim Moore/Eucalyptus Road project.
26 CNPS also is a party to the contract between FORA, CNPS, and the City of Del Rey
27 Oaks executed in 1998 and amended in 1999 intended to help mitigate the significant
28

1 and unavoidable adverse impacts of the large road projects and other actions by FORA
2 and the Army to harm protected biological resources.

3 12. CALIFORNIA NATIVE PLANT SOCIETY is, and at all times herein
4 mentioned has been, a section 501(c)(3) non-profit organization created with the
5 mission “To conserve California native plants and their natural habitats, and increase
6 understanding, appreciation, and horticultural use of native plants.” Since its beginnings
7 in 1965, the California Native Plant Society has been a leading voice in plant science
8 and native plant appreciation, making it one of the foremost native plant organizations in
9 the world. CNPS is dedicated to conserving California native plants and their natural
10 habitats. CNPS is actively involved in advocacy to further its mission including filing
11 litigation when appropriate. E.g., *Save Agoura Cornell Knoll, California Native Plant*
12 *Society v. City of Agoura Hills* (2020) 46 Cal.App.5th 665; *California Native Plant*
13 *Society v. County of El Dorado* (2009) 170 Cal. App.4th1026. CNPS has longstanding
14 interests in rare plants and habitat at Fort Ord, CNPS wrote the CEQA comments that
15 gave rise to the Mitigation 3 at issue in this action, and CNPS has a contractual interest
16 in the habitat preserve – which CNPS refers to as Plant Reserve 1 North – at issue in
17 this action, and CNPS has acted in reliance on the mitigations and contract at issue in
18 this action. CNPS has a material beneficial interest in these matters in the public
19 interest and is beneficially interested in the outcome of the actions described below.
20 CNPS participated in the proceedings giving rise to this action by commenting on CEQA
21 documents, presenting written and oral comments to FORA and Del Rey Oaks, making
22 California Public Records Act requests to FORA and Del Rey Oaks, meeting with FORA
23 and Del Rey Oaks, and more. CNPS files this action in the public interest and on behalf
24 of the public. CNPS has standing to pursue this action.

25 13. Petitioner is informed and believes and on that basis alleges that
26 Respondent and defendant FORT ORD REUSE AUTHORITY (FORA) is a public
27 agency and a governmental entity under the laws of the State of California. (Gov.
28 Code, §§ 67650-67700.) FORA is governed by a board of directors including a

1 representative of Del Rey Oaks. FORA is subject to the California Environmental
2 Quality Act (CEQA), the California Public Records Act (CPRA), and other laws. FORA
3 is scheduled to sunset on June 30, 2020 by operation of law. (Gov. Code, § 67700(a).)
4 FORA as lead agency adopted the CEQA mitigations and approved the three road
5 projects at issue in this action. FORA also was the proponent of each of the three
6 projects. FORA is a party to the 1998 contract between FORA, CNPS and Del Rey
7 Oaks, as amended in 1999. The FORA engineer was present at and documented a
8 March 2, 2000 meeting at which Del Rey Oaks accepted a 4.6 acre parcel on a
9 February 2000 map as the habitat area to be protected by the FORA-CNPS-Del Rey
10 Oaks contract. FORA did not produce either the meeting minutes or the map to CNPS
11 in response to a request dated December 6, 2019 from CNPS to FORA for the records
12 under the California Public Records Act. FORA should have produced the minutes and
13 the map because they were responsive to more than one category of records requested
14 by CNPS.

15 14. Petitioner is ignorant of the true names and capacities of Respondents
16 and Defendants DOES 1 to 100 and therefore sues those respondents and defendants
17 by these fictitious names. Petitioner will amend this complaint to allege their true names
18 and capacities when ascertained.

19 15. Petitioner is informed and believes and on that basis alleges that
20 Respondent and defendant and real party in interest CITY OF DEL REY OAKS (“City“
21 or “Del Rey Oaks”) is a public agency in Monterey County, California. The three FORA-
22 approved road projects at issue in this action are located within the city limits of Del Rey
23 Oaks. In late May 2020, FORA approved a memorandum of agreement to give Del Rey
24 Oaks \$8.8 million that FORA has directed to be used to construct the South Boundary
25 Road realignment project and a South Boundary Road/General Jim Moore intersection
26 project that FORA approved in approximately 2005. Del Rey Oaks is a party to the
27 1998 FORA-CNPS-Del Rey Oaks contract as amended in 1999. On March 2, 2000, Del
28 Rey Oaks accepted the outlined 4.6 acre parcel as the habitat area to be protected by

1 the FORA-CNPS-Del Rey Oaks contract, as documented in the meeting minutes dated
2 March 2, 2000 and the February 2000 map attached to the minutes prepared by FORA.
3 Del Rey Oaks did not produce either the minutes or the map to CNPS in response to
4 the December 6, 2019 CNPS request for the records under the California Public
5 Records Act. The minutes and the map were responsive to more than one category of
6 records requested by CNPS.

7 16. Petitioner is informed and believes and on that basis alleges that real
8 party in interest LOCAL AGENCY FORMATION COMMISSION OF MONTEREY
9 COUNTY ("LAFCO") is a public agency in Monterey County, California. LAFCO is
10 required under the Fort Ord Reuse Authority Act as follows:

11 "The Monterey County Local Agency Formation Commission
12 shall provide for the orderly dissolution of the authority
13 including ensuring that all contracts, agreements, and
14 pledges to pay or repay money entered into by the authority
15 are honored and properly administered, and that all assets of
16 the authority are appropriately transferred."

17 (Gov. Code, § 67700(b)(1).) LAFCO has asked FORA to address one or more of the
18 issues identified in this petition, including specifically the status of the CNPS-FORA-Del
19 Rey Oaks contract and other "urgent matters" that are "unresolved issues." (LAFCO
20 letter to FORA, May 6, 2020, p. 2.)

21 17. Petitioner is ignorant of the true names and capacities of Real Parties,
22 Potential Parties, and/or Recipients of Approvals DOES 101 to 200 and therefore sues
23 those parties by these fictitious names. Petitioner will amend this complaint to allege
24 their true names and capacities when ascertained.

25 18. Petitioner is informed and believes and thereon alleges that at all times
26 material to the complaint, each of the respondents and defendants and each of the
27 respondents and defendants fictitiously named in this petition and complaint, in addition
28 to acting for himself/herself/itself, and on his/her/its behalf individually, is and was acting

1 as the agent, servant, employee, and representative of, and with the knowledge,
2 consent, and permission of, and in concert with, each and all of the respondents and
3 defendants and within the course, scope, and authority of that agency, service,
4 employment, representation, and conspiracy. Petitioner further alleges on information
5 and belief that the acts of each of the respondents and defendants were fully ratified by
6 each and all of the respondents and defendants. Specifically, and without limitation,
7 Petitioner alleges on information and belief that the actions, failures to act, breaches,
8 and misrepresentations alleged herein and attributed to one or more of the specific
9 respondents and defendants were approved, ratified and done with the cooperation and
10 knowledge of each and all of the respondents and defendants.

11 Overview of the facts giving rise to this action.

12 19. The facts in this case are complicated. The facts involve at least three
13 separate FORA road projects that FORA approved in the years 1999, 2005 and 2010,
14 respectively, and a FORA contract entered into in 1998, as amended in 1999, and
15 further implemented in March 2000 through mutual assent by the parties. FORA has
16 not admitted its failure to honor its commitment to obtain the required consent from
17 CNPS as a prerequisite to proceeding with the realignment of South Boundary Road.
18 FORA has not disclosed its failures to implement material CEQA mitigations for the two
19 General Jim Moore road projects. FORA has never clearly presented the
20 interrelationship of the three road projects or the significance of the contract in light of
21 the three projects.

22 Starting in the 1960s, CNPS secured 13 plant reserves at Fort Ord
23 through negotiations with the United States Army.

24 20. Fort Ord is known for its assemblage of rare maritime chaparral habitat
25 and the numerous special status plants this habitat supports. (U.S. Army, February
26 1976, Fort Ord Natural Resources Program - 1975 Report, pp.56-59; J.R. Griffin, July
27 1976, Native Plant Reserves at Fort Ord, Fremontia, pp. 25-28.) Historically, CNPS
28 sought to protect the habitat and plants from development impacts. By December 1989,

1 CNPS had secured 13 plant reserves on Fort Ord through negotiation with the Army,
2 agreements with the Army, and CEQA mitigation adopted by the Army as conditions of
3 approval of Army development projects. The preserves were specifically in exchange
4 for harm to the native plant habitats caused by Army construction. In exchange for the
5 agreements, CNPS did not challenge the Army construction actions. (E.g., Dec. 20,
6 1989 agreement between CNPS and Army.) The 13 original CNPS reserves were
7 identified by number 1 through 13.

8 21. Plant reserve 1 is located at the northeast corner of General Jim Moore
9 Boulevard (formerly North-South Road) and Highway 218 (also known as Canyon Del
10 Rey Boulevard) in Del Rey Oaks. Plant Reserve 1 is bounded to the north by South
11 Boundary Road, which is located generally parallel to and near the southern boundary
12 of Fort Ord.

13 22. In enacting the Fort Ord Reuse Authority Act, the Legislature declared four
14 goals to be the policy of the State of California, including to "maintain and protect the
15 unique environmental resources of the area." (Gov. Code, § 67651.)

16 1997-1999 – FORA's "North South Road [General Jim Moore]/
17 Highway 218 Improvements Project."

18 23. In approximately 1997, FORA proposed a road project called the "North
19 South Road/Highway 218 Improvements Project." Shortly thereafter, North South Road
20 was renamed "General Jim Moore Boulevard" and from this point on this pleading at
21 times uses the current name for clarity. The project description included the
22 reconstruction of approximately 1,500 linear feet of General Jim Moore Boulevard from
23 State Highway 218 extending north past South Boundary Road, and included widening
24 the existing roadway, grading, drainage, and installation of a signal at Highway 218/
25 General Jim Moore Boulevard and associated modifications and turn lanes. (Final
26 EA/IS, fig. 2 [Vicinity/Location], figs 3A and 3B project plans.)

27 24. CNPS objected that the project would have harmful impacts on CNPS
28 Plant Reserve #1 habitat and on rare plants. In February 1998, Del Rey Oaks mayor

1 Jack Barich sent a letter to CNPS, with copies to FORA, stating that Del Rey Oaks
2 wanted to “mitigate any disturbance of habitat that may be caused as a result” of the
3 road project, and that Del Rey Oaks endorsed utilizing land “of the City’s parcel 29A” to
4 provide the mitigation area being endorsed by the CNPS. FORA, Del Rey Oaks and
5 CNPS negotiated an agreement signed in April 1998 that preserved land north of South
6 Boundary Road and Plant Reserve #1 in exchange for the harmful impacts on the
7 protected Reserve #1 habitat and plants. The contract stated that “The plant preserve
8 [#1] is protected by the December 1989 agreement between the Army and CNPS as
9 mitigation for loss of habitat caused by construction.” The parties agreed that “The area
10 affected [by the project] contains the best example of maritime chaparral in the
11 preserve.” (April 1998 contract.) The contract protected the area that CNPS then
12 referred to as Reserve 1 North. In 1999, the contract between FORA, CNPS, and Del
13 Rey Oaks was modified to strengthen Reserve 1 North and to modify one corner of the
14 protected land to accommodate additional road improvements.

15 25. In autumn 1998, FORA released a draft Environmental Assessment
16 (EA/IS) for its North South Road (General Jim Moore) / Highway 218 Improvements
17 Project. In December 1998, CNPS commented on the draft EA/IS. In response FORA
18 amended the EA/IS, and in 1999 FORA approved the EA/IS, adopted CEQA Mitigation
19 3 as one of the mitigations, and approved the project. The EA/IS discussion of impacts
20 for biological impacts included this paragraph:

21 Through a previous arrangement between the Army and the
22 California Native Plant Society, a maritime chaparral plant
23 reserve was established south of South Boundary Road
24 along the east side of North-South Road. According to the
25 project plans, the proposed [North-South Road/General Jim
26 Moore] roadway improvements would affect approximately
27 0.33 acre within or directly adjacent to the CNPS reserve
28 area. As a result of negotiations with the CNPS, FORA and

1 the City of Del Rey Oaks agreed to preserve additional
2 maritime chaparral habitat adjacent to the project site to
3 compensate for potential conflicts with the existing CNPS
4 reserve. Pursuant to this agreement, the mitigation measure
5 set forth below would reduce this impact to a
6 less-than-significant level.”

7 26. Mitigation 3 echoed the EA/IS text noted above. Mitigation 3 included the
8 following requirements:

- 9 • FORA shall “preserve in perpetuity” maritime chaparral habitat “as a
10 CNPS native plant area” at least “a minimum of 2.0 acres” located in the
11 vicinity of “the northeast corner of North-South Road (which later was
12 renamed General Jim Moore Boulevard) and South Boundary Road plus
13 more land to serve as an “adequate buffer” from the proposed
14 development to the north.
- 15 • “Markers shall be established by the City of Del Rey Oaks to assure that
16 there is no misunderstanding about the location or condition of the
17 preserved area.”
- 18 • “Before any grading is done in carrying out this [General Jim
19 Moore/Highway 218] project, the surveyor from Del Rey Oaks will meet
20 with CNPS representatives in order to pinpoint and mark these locations.”
- 21 • “Requirements for this mitigation area are specified as follows.”
- 22 • “The habitat area shall be protected from fragmentation and degradation
23 in perpetuity.”
- 24 • “No spraying or irrigation drainage shall be directed toward the habitat
25 area.”
- 26 • “No development shall be permitted in the plant reserve.”

27 (Final Environmental Assessment/Initial Study for the North-South Road/Highway 218
28 Improvements Project, April 1999.) Appendix D-1 to the Final EA/IS was the 1998

1 contract agreement between FORA, CNPS and Del Rey Oaks. The contract, as
2 amended, is attached to this petition as Exhibit A.

3 27. In 1999, FORA approved the General Jim Moore/Highway 218 project
4 based on a mitigated negative declaration and the revised initial study. In addition to
5 Mitigation 3 described above to mitigate for impacts to maritime chaparral, the EA/IS
6 required Mitigation 6 because the "project-related impacts to . . . seaside bird's beak
7 (state endangered) require special consideration" and "state lead agencies are directed
8 under Section 2090 of the CESA to consult with CDFG [California Department of Fish &
9 Game] for actions that could affect state-listed species." CESA is the California
10 Endangered Species Act. The California Department of Fish and Game, now called
11 California Department of Fish and Wildlife, is a trustee agency under CEQA. (CEQA
12 Guidelines, §15386(a).) Mitigation 6 required FORA to "initiate consultation with CDFG
13 to establish a project-specific basis for incidental take of seaside bird's beak in
14 compliance with CESA, prior to project construction." (Final EA/IS, p. 29.)

15 28. FORA did not comply with Mitigation 6. In May 2000, FORA submitted to
16 the California Department of Fish & Game "a completed application, including a
17 mitigation plan for a permit for the incidental take of seaside bird's beak (*Cordylanthus*
18 *rigidus* ssp. *littoralis*)" (Fish and Game Code, § 2081) that could result from the North-
19 South Road/Highway 218 project at three different locations with the project site
20 including at the northeast corner of General Jim Moore and South Boundary Road.
21 (2000 FORA application, fig. 4.) FORA's application materials stated that "Biologists
22 estimate that Fort Ord supports between 30 and 50 percent of the distribution of
23 Seaside bird's beak (CDFG 1996)." FORA proposed to restore a degraded range area
24 to establish new Seaside bird's beak colonies, and monitoring and reporting on the
25 efficacy of the restoration as additional measures intended to mitigate the road project's
26 impacts to Seaside bird's-beak. FORA's biological consultant had told FORA that
27 "There are some unresolved issues with this application package" including "The
28 mitigation program is not as thorough and habitat-oriented as [CDFG] will want. We can

1 either spend more time developing it or send it in as is and take our chances.” He also
2 warned that the proposed mitigation site was still in Army hands and FORA would “need
3 to involve the Army and formalize an arrangement with them to pull this off. . . . The
4 costs for the mitigation program are based on some guestimates and may not be
5 enough to satisfy DFG, especially considering the habitat orientation [that CDFG senior
6 staff] will want.” (April 20, 2000 memo from Zander Associates to FORA project
7 manager Jim Feeney, FORA engineer Birch Ohlinger, and director of planning Steve
8 Endsley [former Del Rey Oaks city manager who was on FORA staff from 1999-2019].)
9 Public records indicate that the California Department of Fish & Game did not issue the
10 permit and FORA did not implement Mitigation 6. Thus, all mandatory mitigations for
11 the 1999 General Jim Moore Boulevard/Highway 218 project’s impacts to Seaside bird’s
12 beak have not been implemented. FORA constructed the project regardless.

13 29. In February 2000, the U.S. Army Corps of Engineers (COE) was actively
14 removing large amounts of vegetation from many acres of land north of South Boundary
15 Road. CNPS representatives were alarmed about potential harm to the newly protected
16 Plant Reserve 1 North. FORA set up a meeting of the parties to try to resolve the
17 concerns.

18 30. On March 2, 2000, at 2:00 PM, FORA engineer Birchard Ohlinger, Del
19 Rey Oaks city manager Ron Langford, CNPS conservation chair Mary Ann Matthews,
20 and the developer of a proposed project located to the north of the Reserve 1 North met
21 for an hour and a half at the intersection of General Jim Moore and South Boundary
22 Road. FORA’s engineer managed FORA’s capital projects, project approvals and
23 project mitigations. Del Rey Oaks city manager Ron Langford was the longtime right
24 hand of Mayor Jack Barlich and who acted at times concurrently as Del Rey Oaks’ city
25 clerk, police chief, and in other official roles and duties. Mary Ann (Corky) Matthews
26 was a longtime Monterey Bay CNPS board member and the knowledgeable
27 conservation chair of the chapter. Ms. Matthews is the author of “An Illustrated Field
28 Key to the Flowering Plants of Monterey County and Ferns, Fern Allies, and Conifers,”

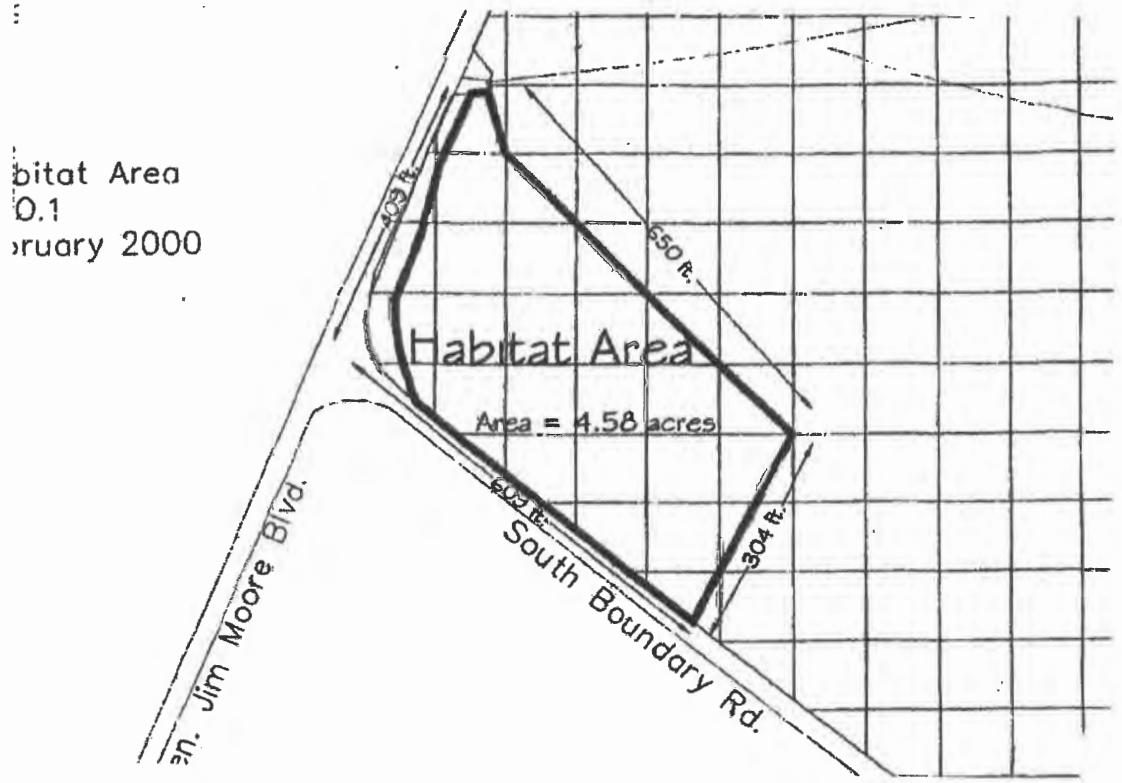
1 first published in 1998. Ms. Matthews submitted CNPS's CEQA comments on various
2 CEQA draft documents prepared by FORA for the road projects at issue in this action.

3 31. That same day, March 2, 2000, FORA engineer Ohlinger prepared
4 minutes. The minutes state in pertinent part as follows:

- 5 • "Meeting was set up as the CNPS habitat area had not been confirmed by
6 the City of Del Rey Oaks. Mass vegetation cutting was ongoing north and
7 south of South Boundary Road. The U.S. Army COE was following a map
8 (attachment 1) showing the habitat area. Confirmation of this area as the
9 preserve was needed from the City Of Del Rey Oaks."
- 10 • At the meeting, Del Rey Oaks and CNPS reviewed the referenced
11 February 2000 map, and Del Rey Oaks and CNPS accepted that the
12 "4.58-acre" parcel labeled "Habitat Area" was to be the protected habitat
13 area in accordance with the terms of the FORA-CNPS-Del Rey Oaks
14 contract. A small version of the map was referenced in and attached to
15 the March 2, 2000 minutes. A large map given to CNPS.
- 16 • The minutes and map are attached to this pleading as Exhibit B.
- 17 • The map is shown here:

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1 32. Here is a screen shot of the map attached to March 2, 2000 minutes of
2 meeting of FORA, CNPS and Del Rey Oaks, that shows the "Habitat Area" accepted by
3 CNPS and Del Rey Oaks:



Habitat Area
0.1
January 2000

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1 33. In reliance on the assurance from Del Rey Oaks of the habitat area
2 outlined on the map, CNPS then forbore from challenging the Army's actions to remove
3 vegetation from the surrounding area, and the Army then continued to removed
4 vegetation from the surrounding area, while keeping the "Habitat Area" parcel
5 untouched, as shown by public records including aerial photographs. The March 2,
6 2000 actions of FORA, Del Rey Oaks and CNPS show that the parties meant what they
7 said in the contract: the habitat area accepted by the parties is a minimum of two acres
8 plus adequate buffer. The accepted habitat area parcel is consistent with the terms on
9 the face of the contract.

10 34. FORA engineer Ohlinger sent his memorandum and minutes dated March
11 2, 2000 to Del Rey Oaks, CNPS and the developer of the proposed project to the north.
12 FORA and Del Rey Oaks later destroyed their copies of the minutes and the attached
13 map, or they lost or withheld them, because neither the minutes nor the map were
14 included in the responsive productions by FORA and Del Rey Oaks when in 2019
15 CNPS made requests to the agencies under the California Public Records Act.

16 35. Subsequent to the parties' acceptance of the "Habitat Area" in March
17 2000, official records and maps start referring to the parcel as the "habitat area," "CNPS
18 parcel," and similar terms.

19 36. In June 2003, the U.S. Army issued a draft Finding of Suitability for Early
20 Transfer (FOSET). The draft was substantially similar to the final FOSET that was
21 issued in 2004, as described immediately below, particularly with regard to the labeled
22 "habitat area" of five acres.

23 37. In approximately July 2004, the U.S. Army issued a Finding of Suitability
24 for Early Transfer (FOSET) that transferred to FORA more than 340 acres of land north
25 of South Boundary Road; that land was intended to be transferred eventually to Del Rey
26 Oaks. The Army transfer included most of the 268-acre parcel E29a, which is what Del
27 Rey Oaks Mayor Barlich had referred to as "the City's parcel 29A" in his February 1998
28 letter to CNPS conservation chair Mary Ann Matthews. The Army FOSET text stated

1 that "Included within Parcel E29a is an approximately 5-acre habitat reserve area that is
2 not included in this transfer." The FOSET Table 1 also referred parcel E29a as follows:
3 "The parcel includes a 5-acre habitat reserve that is not included in the transfer." The
4 FOSET Plate 1 shows that the Army had carved out a small parcel from the 345-acre
5 parcel E29a. The Army called the small parcel "E29a.1" and labeled it as a "HABITAT
6 AREA" on FOSET Plate 1. The 2003 FOSET Plate 1 is attached to this petition as
7 Exhibit C. The outline of parcel E29a.1 on Plate 1 is the same outline as of the labeled
8 "Habitat Area" shown on the map provided to CNPS on March 2, 2000.

9 38. In 2004, the U.S. Army Corps of Engineers documented a walkabout of
10 the "5 acre parcel known as 'DRO Habitat Area.'" The Army report attached a map
11 showing the same outlined area that was identified in the March 2000 FORA minutes
12 and attached map, and also the same as the Army's 2003 map. The 2004 Army report
13 is attached to this petition as Exhibit D.

14 39. In 2005, the Army deeded to FORA hundreds of acres of undeveloped
15 land, including parcel E29a, that was intended to go to the City of Del Rey Oaks. The
16 habitat area parcel is identified in the Army deed as "Exception Parcel B" that was not
17 included in the transfer. The description of the property to be transferred included the
18 specific references that "Excepting also therefrom the following described parcel of land
19 for habitat preserve purposes." Exception Parcel "B" is described as contains "4.63
20 acres more or less." The Army "Covenant to Restrict Use of Property: separately
21 recorded on the land (Dec. 28, 2005 [doc. #2005135588]) attaches as Exhibit A and as
22 Exhibit B the legal description of the property being transferred as excluding "Exception
23 Parcel B" and described by the surveyor as "Excepting also therefrom the following
24 described parcel of land for habitat preserve purposes" and stating that "Exception
25 Parcel "B" contains 4.63 acres more or less."

26 40. In or around March 2006, FORA deeded the Parcel E29a land to Del Rey
27 Oaks. The 4.63-acre CNPS habitat reserve was "excepted" from the deed and
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1 described in the same way as the language in the 2005 deeds from the Army to FORA
2 described in the preceding paragraph.

3 2005 – FORA’s “General Jim Moore Boulevard/Eucalyptus Road Project”

4 41. In or around March 2005, FORA released an EA/IS for the General Jim
5 Moore Boulevard/Eucalyptus Road project. The project involved some 12,800 linear
6 feet of General Jim Moore Boulevard roadway and related work, including realigning
7 and widening General Jim Moore to 4 lanes to approximately 700 feet north of Highway
8 218, plus an 18-foot wide center median, sidewalks, curbs and gutters. The project
9 included an intersection at General Jim Moore and South Boundary Road “although
10 these improvements may be constructed at a later date.” (EA/IS.) Public records show
11 that FORA’s biological consultant had found the state endangered Seaside bird’s beak
12 at the existing intersection of General Jim Moore Boulevard and South Boundary Road.
13 42. In or around September 2005, the FORA Board adopted the EA/IS,
14 adopted a mitigation monitoring and reporting program, and approved the project. The
15 adopted Biological Resources mitigations included Mitigation Measures (MM) 5 and 6,
16 as follows:

17 **MM-5**

18 If the Habitat Conservation Plan and Implementation
19 Agreement are not fully executed prior to initiation of
20 construction, then a preconstruction biological survey shall
21 be performed by a Qualified Biologist and independent
22 authorization for incidental take for sand gilia and seaside
23 bird’s beak shall be obtained from the California Department
24 of Fish and Game. The incidental take authorization will
25 likely require mitigation for the loss of plants and suitable
26 habitat for sand gilia and seaside bird’s beak. FORA is
27 currently undertaking efforts to mitigate sand gilia losses for
28 other road improvement projects on the former Landfill [at

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the far north end of Fort Ord adjacent to Imjin Road]. Mitigation would follow what was approved with the issuance of take authorizations for previous road projects and result in an appropriate replacement ratio and creating suitable habitat as determined by the biologist hired to perform the preconstruction survey and consistent with California Department of Fish and Game requirements. This mitigation will not need to be implemented if there is an approved base wide Habitat Conservation Plan in place.

MM-6

To obtain incidental take authorization for seaside bird's beak, the actual extent of Seaside bird's beak habitat and the number of individuals to be removed shall be determined through appropriately timed directed surveys in the summer of 2005. Based on California Department of Fish and Game recommendations for previous mitigation proposals for seaside bird's beak, both the area impacted as well as the number of individuals lost should be mitigated at an appropriate replacement ratio as determined by the biologist hired to perform the time-directed surveys. . . .

This mitigation will not need to be implemented if there is an approved base wide Habitat Conservation Plan in place.

43. 2005 General Jim Moore Boulevard Mitigation Measures MM-5 and MM-6 have not been implemented. Both mitigations are legally required to be implemented because no Habitat Conservation Plan is in place and none is expected to be in place before FORA sunsets. The mitigation monitoring plan stated for both mitigations as follows:

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Party Responsible for Implementation: FORA

Party Responsible for Monitoring/Reporting: FORA

44. FORA has not acknowledged that these mitigations have not been implemented and has not assigned responsibility for implementing them.

2010 – FORA’s South Boundary Road realignment project.

45. In 2010 FORA prepared and adopted an EA/IS for the FORA South Boundary Road realignment and widening project. The road realignment would go directly through the protected 4.6-acre CNPS habitat area. The 2010 EA/IS Map 5a, the “South Boundary Road Habitat Map,” is attached to this petition as Exhibit E.

46. The EA/IS states 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 FORA included as part of the project description that a renegotiated agreement with CNPS is required before FORA can proceed with the road widening project.

47. FORA did not consult with CNPS before FORA prepared and adopted the EA/IS for the South Boundary Road project, and CNPS was unable to comment on the EA/IS because FORA did not contact CNPS. The requirement to renegotiate the CNPS contract is not listed as a mitigation in the EA/IS.

48. In 2014, the public interest organization Keep Fort Ord Wild made a California Public Records Act Request to FORA for the records showing “The current status of any of the following regarding South Boundary Road: construction, approvals,

1 and implementation” and “The CEQA review to date of South Boundary Road.” In
2 March 2014, FORA responded that there had been no project-specific review and
3 “South Boundary Road CEQA review to date was limited to its inclusion in the basewide
4 transportation network as presented in the Base Reuse Plan Environmental Impact
5 Report” that FORA had adopted in 1997. FORA project manager James Arnold stated
6 that environmental review under CEQA would take place in the future and “the timing of
7 environmental review, plan preparation and potential construction will be moved out in
8 time to correspond with Habitat Conservation Plan approval and development fee
9 projections.” In a March 2014 email, FORA project manager Arnold explained the
10 status of South Boundary Road:

11 Some biological resource studies were done by an earlier
12 DRO [Del Rey Oaks] proposed developer which indicated
13 that there were listed plant species in the road corridor.
14 Lacking the HCP [Habitat Conservation Plan] there was no
15 mitigation for the takes [of endangered species] that would
16 be required and, therefore; there was no point in undertaking
17 an environmental document knowing that, until the HCP was
18 adopted, there was no way to deal with loss of plants.

19 49. As stated above, FORA has not approved a Habitat Conservation Plan
20 and has stated that one will not be approved before FORA sunsets.

21 50. FORA’s 2014 response as to the project-specific CEQA review was
22 contradicted by FORA in 2018 and 2019 during the KFOV v. FORA litigation, when
23 FORA claimed to have approved project-specific CEQA review of South Boundary Road
24 in 2010, and FORA prevailed in that litigation primarily for that reason – that the
25 statutory time to challenge the approvals had expired.

26 51. Under CEQA the environmental document must clearly identify and
27 describe all significant effects of the project on the environment, and discuss feasible
28 mitigation measures for each significant environmental effect that is identified. (§ 21100,
 subd. (b); CEQA Guidelines, §§ 15126.2, subd. (a), 15126.4, subd. (a)(1).) Where the

1 initial study identifies potentially significant environmental effects but those effects can
2 be fully mitigated by changes in the project and the project applicant agrees to
3 incorporate those changes, the agency may prepare a mitigated negative declaration.
4 This ends CEQA review. (Pub. Resources Code, § 21080, subs. (c), (d).) Here,
5 FORA was the project applicant for the South Boundary Road realignment. The initial
6 study indicated potentially significant environmental effects of the realignment on the
7 CNPS plant reserve. FORA incorporated into the project the requirement that CNPS
8 agreement would be required to realign the road as proposed. FORA thus proceeded
9 with a mitigated negative declaration.

10 52. Public Resources Code section 21002.1, subdivision (b) states: that
11 "Each public agency shall mitigate or avoid the significant effects on the environment of
12 projects that it carries out or approves whenever it is feasible to do so." Furthermore,
13 "[a] public agency shall provide that measures to mitigate or avoid significant effects on
14 the environment are fully enforceable through permit conditions, agreements, or other
15 measures." Section 21003.1 states that "The purpose of these requirements is to
16 ensure that feasible mitigation measures will actually be implemented as a condition of
17 development, and not merely adopted and then neglected or disregarded." The
18 appellate courts have recognized that CEQA requires an agency to take steps to ensure
19 that mitigation measures " 'will actually be implemented as a condition of development,
20 and not merely adopted and then neglected or discarded.' " (*Napa Citizens for Honest*
21 *Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 358-359.)
22 There is a presumption that the governing body adopted the mitigation measure in the
23 first place only after due investigation and consideration. (*Id.*)) The lead agency is
24 under a continuing duty to ensure the project's conditions of approval are fulfilled.
25 (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1167-1168.)

26 53. FORA's failures to implement the past mitigations for the three road
27 projects and to list the unimplemented mitigations to ensure they are assigned to parties
28 who accept them and carry them out, FORA's denials that the FORA-CNPS-Del Rey

1 Oaks contract is enforceable after FORA's sunset, FORA's passing off the South
2 Boundary Road project to Del Rey Oaks for construction despite the opposition of
3 CNPS, are inadequate and contrary to law. FORA has reneged on the position it took
4 with regard to the necessary successful renegotiation with CNPS of the reserve
5 location. That FORA action effectively negates the Mitigation 3 adopted for the General
6 Jim Moore/Highway 218 project, is inconsistent with the law, with public policy, and with
7 FORA's 1999 approvals of the project. FORA has not reviewed the continuing need for
8 the mitigation, has not stated a legitimate or legally adequate reason for its actions, and
9 has not followed a transparent public process in effectively deleting the mitigation.
10 (*Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.4th
11 342, 359; *Katzeff v. Department of Forestry & Fire Protection* (2010) 181 Cal.App.4th
12 601, 614.)

13 54. The public interest in public agencies enforcing their adopted
14 environmental mitigations is high. There is strong public policy and public interest in
15 favor of ensuring an public agency's commitment to and implementation of its CEQA
16 mitigations adopted at the time of the agency's project approvals, which is legally
17 required. There is strong public policy and public interest in favor of ensuring the
18 compliance with FORA's adopted mitigations for the loss of habitat and individual
19 species in Fort Ord. California Native Plant Society in this action is representing the
20 public and the public interest with regard to the mitigation of impacts resulting from harm
21 to protected species and habitat and the injury to the public interest will be irreparable if
22 the petition is not heard. If not redressed, FORA's actions would perpetuate public
23 wrongs and would burden the public and the public resources of the region with the
24 effects of the illegal deletion of environmental mitigations that FORA had adopted to
25 help alleviate the projects' significant and unavoidable impacts.

26 55. FORA's failure to implement mitigation measures is particularly egregious
27 where, as here, two of the large road projects are already mostly built. Respondent's
28 actions include but are not limited to FORA's failures to implement its adopted CEQA

1 conditions for its own road projects, and FORA's failure to carry out its own commitment
2 as project proponent and lead agency to ensure CNPS's consent to the South Boundary
3 Road realignment. FORA now wants to construct the South Boundary Road
4 realignment as well as a relocated intersection with General Jim Moore Boulevard which
5 FORA apparently now proposes as a roundabout that would require an even larger
6 footprint and incursion into the Plant Reserve 1 North than a traditional intersection.

7 56. In 2017, CNPS first learned of the approved realignment of South
8 Boundary Road and of the statement in the EA/IS that CNPS had to agree to a
9 "relocation" of the plant Reserve 1 North. FORA did not give this information to CNPS.
10 The information came from Keep Fort Ord Wild, which discovered the 2010 EA/IS that
11 FORA had denied existed. CNPS promptly contacted FORA Board in writing and in
12 person. FORA did not respond for more than a year.

13 57. In 2018, in a legal brief filed by FORA as part of a different CEQA litigation
14 involving South Boundary Road project approvals, FORA stated "The EA/IS also
15 addresses and provides for Project impacts upon the "reserve" created by agreement
16 between FORA and the California Native Plant Society (CNPS) generally recognizing
17 that the proposed project alignment can only proceed if a modification can be
18 negotiated with CNPS." The FORA brief further states "[T]he CNPS preserve must
19 remain untouched unless the agreement regarding that preserve is successfully
20 renegotiated."

21 58. In February of 2019, FORA counsel, as part of the same CEQA litigation
22 involving South Boundary Road, stated in open court: The FORA EA/IS "states
23 squarely that FORA is going to have to reach an agreement with the California Native
24 Plant Society or - and that's the purpose of alternative two, that if it can't then it [FORA]
25 would proceed with the second alternative project under the Initial Study."

26 59. In February 2019, at the Monterey Superior Court hearing, the judge,
27 having reviewed the EA/IS and having heard the arguments of the parties stated "My
28 understanding is that actually the Plant Society is in the driver's seat currently with

1 respect to where the road ultimately is, whether it's in the approved roadway or whether
2 it is alternative 2. Alternative 2 was specifically put in there because of FORA's
3 recognition that the Native Plant Society may say . . . we don't see a way that you can
4 have your new extension and still preserve our area. So, it still seems like the Native
5 Plant Society is in the driver's seat, not FORA."

6 60. Since February 2019, FORA's actions have contravened its CEQA
7 commitments, its stated position in briefing to the Court, and the Superior Court judge's
8 view. FORA finally met with CNPS for the first time in December 2018, more than eight
9 years after FORA approved the South Boundary Road project. FORA sought
10 alternately to avoid the issue, and to persuade CNPS to consent to the "relocation" of
11 the habitat reserve. FORA and Del Rey Oaks have destroyed, lost or failed to disclose
12 their records of the March 2000 acceptance and the February 2000 map of the "Habitat
13 Area" accepted by Del Rey Oaks and CNPS, and FORA and Del Rey Oaks tried to
14 obtain a strategic advantage over CNPS by hiding the information. In response CNPS
15 has steadfastly expressed its concern as to the harmful impacts of the realignment on
16 the habitat area that is Plant Reserve 1 North. CNPS has explained in person and in
17 writing to FORA the scientific reasons for CNPS's opposition to putting a road through
18 the habitat area.

19 61. Respondent's actions, and each of them, as described above and as
20 shown in the record of proceedings herein, constitute a prejudicial abuse of discretion.
21 Respondent failed to proceed in the manner required by law, did not apply or satisfy the
22 procedural and substantive safeguards and requirements of CEQA, and did not
23 adequately mitigate impacts.

24 62. Petitioner complied with Public Resources Code section 21167.5 by, on
25 May 31, 2020 mailing notice to the FORT ORD REUSE AUTHORITY, CITY OF DEL
26 REY OAKS, and LOCAL AGENCY FORMATION COMMISSION OF MONTEREY
27 COUNTY, of Petitioner's intent to file an action under CEQA. A certificate of service of
28 that letter is attached to this pleading as Exhibit F.

1 63. To the extent that Respondents or Real Parties may argue that the FORA
2 memorandum of agreement (MOA) with Del Rey Oaks that FORA approved on May 22,
3 2020 addresses the issues identified in this petition, the argument fails.

4 64. The purpose of the FORA-Del Rey Oaks MOA is primarily to
5 transfer some \$8.8 million from FORA to Del Rey Oaks to construct two specified
6 road projects.

7 65. The MOA makes no mention of the need for implementation of the
8 adopted specific mitigations identified here. The FORA-Del Rey Oaks MOA does
9 not include the General Jim Moore Boulevard/Highway 218 project as an
10 "Improvement" for which mitigations must be implemented.

11 66. The MOA makes no mention of the need for compliance with the
12 CNPS contract and the FORA commitment to ensure CNPS agreement with the
13 location of the South Boundary Road realignment or else an alternative to the
14 realignment project must be pursued.

15 67. Recital E says that Del Rey Oaks shall carry out all responsibilities
16 as *lead agency* for the Improvements" but nothing says that Del Rey Oaks will
17 step into FORA's shoes as the South Boundary Road project proponent and
18 either get CNPS consent or not realign the road as currently designed and
19 approved by FORA. In any event, CEQA only authorizes the transfer of lead
20 agency under specific circumstances not present here, so the legality and
21 effectiveness of this very recent FORA-Del Rey Oaks MOA term is unreliable at
22 best.

23 68. CNPS consent to the realignment through Plant Reserve 1 North
24 not listed as a formal mitigation and thus is not addressed in the MOA either by
25 implication or as a mitigation, and the EA/IS does not call it a mitigation. FORA
26 counsel has described the required CEQA consent as a "mitigation" to the
27 Superior Court. (Nov. 2018 brief of FORA, Case no. 17CV004540, *Keep Fort*
28 *Ord Wild v. FORA.*)

1 69. MOA paragraph 27 says "This MOA contains the entire
2 understanding between the Parties and supersedes any prior written or oral
3 understandings and agreements regarding the subject matter of this MOA.
4 There are no representations, agreements, arrangements or understandings, or
5 written, between the Parties relating to the subject matter of this MOA which are
6 not fully expressed herein." This integration clause essentially abandons the
7 FORA commitment to get CNPS consent to the realignment, because it is not
8 "fully expressed" in the MOA and nothing in the MOA assigns that role to Del Rey
9 Oaks. The integration clause also effectively says that the FORA position is that
10 the FORA-CNPS-Del Rey Oaks contract is of no force and effect.

11 70. CNPS objected in writing and in person to the FORA-Del Rey Oaks
12 MOA before FORA approved it.

13 71. Once a public agency incorporates the mitigation measures into the
14 project as conditions of approval, as here, the agency is bound to them. "Having placed
15 these conditions on the project, the [agency] cannot simply ignore them. Mitigating
16 conditions are not mere expressions of hope." (*Lincoln Place Tenants Association v.*
17 *City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.) The public policy behind the
18 commitment to mitigations is perhaps even more significant when the public agency is
19 also the project proponent. The mitigations at issue here remain practical and
20 workable. The law does not condone FORA's effort to abandon responsibility through
21 FORA's dissolution regarding FORA's unimplemented mitigations for projects that
22 FORA has already constructed in large part.

23 72. CNPS and others have presented to FORA and Del Rey Oaks in person
24 and in writing the concerns and issues addressed in this action, and provided copies to
25 LAFCO. CNPS has standing to pursue this matter.

26 73. CNPS twice has offered to meet with FORA and Del Rey Oaks and has
27 proposed prompt mediation. FORA and Del Rey Oaks have not accepted the offers to
28 meet or the proposed mediation.

1 74. After the parcel E29a.1 left Army ownership, the parcel was given an
2 assessor parcel number and designated APN 031-191-013. As of the preparation of
3 this pleading in late May 2020, public records show that FORA is the owner of record of
4 APN 031-191-013, the 4.6-acre Reserve 1 North parcel.

5 75. The Monterey County Local Agency Formation Commission (LAFCO) is
6 aware of the disputes addressed in this action and LAFCO staff has urged FORA to
7 resolve the disputes prior to FORA's sunset on June 30, 2020.

8 WHEREFORE, Petitioner prays for relief and for entry of judgment as described
9 below.

10 **Second Claim – Mandate – California Public Records Act**
11 **(Against Fort Ord Reuse Authority and City of Del Rey Oaks)**

12 76. Petitioner incorporates and realleges the preceding paragraphs 1 through
13 75, as if fully set forth herein.

14 77. On December 6, 2019, CNPS made separate California Public Records
15 Act requests to FORA and to Del Rey Oaks. Each request had the subject line
16 “Subject: Del Rey Oaks/Fort Ord/plant reserve areas.” The requests and asked for
17 access to the records in the following categories.

- 18 1. All deeds and deed restrictions for and applicable to the rare
19 plant reserve 1A, also referred to as rare plant reserve 1 North. It is
20 called Army Corps of Engineer Parcel Number: E29a.1.
- 21 3. All maps and other graphic, visual, and written references that
22 show and/or refer to one or more of the following: parcel number
23 E29a.1, rare plant preserve 1A, rare plant reserve 1 North, the
24 habitat reserve area(s) at the sites, and/or any aspect(s) thereof,
25 including boundaries and acreage.
- 26 7. All records of communications involving FORA and Del Rey
27 Oaks regarding one or both of the following: South Boundary Road,
28 and plant reserve 1A (aka 1 North)

1 8. All agreements of any kind, including but not limited to ...
 2 memoranda, ... negotiation agreements, term sheets, contracts,
 3 etc., that reference and/or apply to plant reserve 1A,.

4 78. The March 2, 2000 meeting minutes and the attached February 2000 map
 5 are responsive to categories 3, 7 and 8 of the requests. Neither FORA nor Del Rey
 6 Oaks produced the minutes or the map. FORA and Del Rey Oaks destroyed, withheld
 7 or lost the minutes and the map. The minutes shows the acceptance of the parties of
 8 the 4.6-acre habitat area shown on the map and shows the reasons behind the
 9 acceptance of the parties, and the reasons for the forbearance by CNPS. These are
 10 public records related to land use, real property contracts and CEQA mitigations, and
 11 they should have been preserved in perpetuity by the agencies. Instead, FORA and Del
 12 Rey Oaks withheld them, lost them, or destroyed them in violation of law, and the
 13 agencies did not produce the records in response to the California Public Records Act
 14 requests of CNPS.

15 WHEREFORE, Petitioner prays for relief and for entry of judgment as described
 16 below.

17 **COMPLAINT FOR DECLARATORY RELIEF**

18 **(Breach of contract – against Fort Ord Reuse Authority and Del Rey Oaks)**

19 79. Petitioner incorporates and realleges the preceding paragraphs 1 through
 20 78, as if fully set forth herein.

21 80. FORA has failed to preserve in perpetuity the habitat area in the manner
 22 that was agreed upon by contract executed by FORA, CNPS and Del Rey Oaks. FORA
 23 got the benefit of the contract. FORA also has breached the FORA-CNPS-Del Rey
 24 Oaks contract by FORA’s anticipatory repudiation when FORA failed to place the
 25 contract on the official list of contracts to be assigned due to FORA’s dissolution and
 26 when FORA stated on May 14, 2020 that FORA’s “Legal counsel has reviewed all
 27 agreements and believes that all have been satisfied and/or may no longer be
 28 enforceable post FORA sunset,” and by the breach of the covenant of good faith and

1 fair dealing by losing, destroying, or failing to disclose the minutes and map that
2 document and show the accepted habitat area, by the failure to communicate and
3 consult with CNPS prior to the adoption of the South Boundary Road EA/IS, by the
4 failure over nine years to reach out to CNPS to discuss the approved realignment until
5 FORA is on the brink of dissolution, by the inaccurate representations of the habitat
6 area as the small 2.25-acre area shown in the South Boundary Road EA/IS, and by
7 improper behavior toward CNPS to try to get CNPS to agree to the realignment and
8 accept a “relocated” habitat area that is smaller than 2 acres.

9 81. FORA as a public entity is going to sunset in June 30, 2020 and still has
10 not reached a resolution with CNPS with regard to this controversy. FORA has not
11 assigned a successor agency, and no agency has accepted the responsibility, to carry
12 out FORA commitments and FORA mitigations for the FORA projects that would harm
13 Plant Reserve 1 North.

14 82. An actual, present controversy exists as to the legal rights and duties of
15 the parties in that Petitioner contends that FORA has a duty to carry out its end of the
16 bargain, and to ensure that a party will step into the shoes of FORA and implement
17 FORA’s promises in the FORA-CNPS-Del Rey Oaks contract. Petitioner further
18 contends that FORA and Del Rey Oaks have a duty to deal with Petitioner in good faith
19 and fair dealing under the contract, to provide the FORA and Del Rey Oaks records that
20 documented the acceptance of the 4.6 acre parcel as the Habitat Area, and to inform
21 Petitioner of the proposed road project that would harm the intent of the FORA-CNPS-
22 Del Rey Oaks contract and the rights of CNPS as described in the contract. FORA
23 denies that it has such duties.

24 83. Petitioner has no adequate and speedy remedy to resolve the parties’
25 dispute other than by declaratory judgment from this Court. Because of the urgency
26 and importance of the issues presented by the parties’ dispute, it is necessary and
27 appropriate for the Court to resolve this dispute by issuing a judicial declaration
28 determining the respective rights and obligations of the parties.

1 **Mandate – second claim – California Public Records Act**
2 **(against Fort Ord Reuse Authority and Del Rey Oaks)**

3 **WHEREFORE**, Petitioner prays for:

- 4 1. For immediate disclosure of the March 2, 2000 minutes and the February
5 2000 map, which are public records that CNPS requested in December 2019.
- 6 2. An order requiring FORA and Del Rey Oaks to ensure that the March 2, 2000
7 FORA minutes and the February 2000 map of the “Habitat Area” are made part of their
8 agency’s permanent public records of the CNPS contract and of the records of the
9 property.
- 10 3. An award of attorney fees and costs to Petitioner as permitted by law,
11 including Code of Civil Procedure section 1021.5.
- 12 4. Other temporary and permanent injunctive relief.
- 13 5. Such other relief that the Court considers just and proper.

14 **COMPLAINT**

15 **(Declaratory relief – against Fort Ord Reuse Authority and Del Rey Oaks)**

16 **WHEREFORE**, Petitioner prays for:

- 17 1. Injunctive relief that requires FORA to include the FORA-CNPS-Del Rey Oaks
18 contract on the list of FORA obligations that must be assigned and accepted by a
19 successor public agency prior to FORA’s dissolution, or other similar relief, or an order
20 that prohibits FORA from excluding the FORA-CNPS-Del Rey Oaks contract from the
21 list of FORA obligations that must be assigned and accepted by a successor public
22 agency prior to FORA’s dissolution, or other similar relief, such that there is a successor
23 in interest to FORA’s responsibilities in the contract.
- 24 2. A judicial determination and a declaration of the rights and duties of the
25 parties in regard to the FORA-CNPS-Del Rey Oaks contract for Plant Reserve 1 North
26 and the alleged breaches of contract by FORA and Del Rey Oaks.
- 27 3. Specific performance of the contract between FORA, CNPS and Del Rey
28 Oaks.

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- 4. An award of attorney fees and costs to Petitioner as permitted by law, including Code of Civil Procedure section 1021.5.
- 5. Other temporary and permanent injunctive relief.
- 6. Such other relief that the Court considers just and proper.

Respectfully submitted,
Dated: June 2, 2020

STAMP | ERICKSON



by: Molly Erickson

WITTWER PARKIN
William P. Parkin
Pearl Kan

Attorneys for Petitioner and Plaintiff
CALIFORNIA NATIVE PLANT SOCIETY

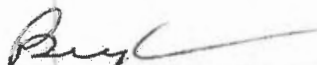
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VERIFICATION

I, Brian LeNeve, declare as follows:

I am the president of the Board of Directors of the Monterey Bay Chapter of the California Native Plant Society, petitioner and plaintiff in the above matter. I have read the petition and complaint in this matter, and know the contents thereof. The same is true of my own knowledge, except as to matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed this 2d day of June, 2020, in Cerritos, California.



Brian LeNeve

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INDEX OF EXHIBITS

	<u>Exhibit</u>	<u>Page(s)</u>
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B	March 2, 2000 meeting minutes and attached map of "Habitat Area"	44-46
C	2003 U.S. Army FOSET Plate 1	47
D	2004 U.S. Army walkabout report and map	48-51
E	2010 South Boundary Road Environmental Assessment / Initial Study (EA/IS) map showing proposed realignment through habitat area	52-53
F	Proof of service of California Native Plant Society notice of intent to initiate litigation	54

Monterey Bay Chapter

California Native Plant Society

April 22, 1998

Fort Ord Reuse Authority
100 12th 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

Richard D. Houben

FORA Representative

April 23, 1998

Date

Paul D. Beal

City of Del Rey Oaks

April 22, 1998

Date

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




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)

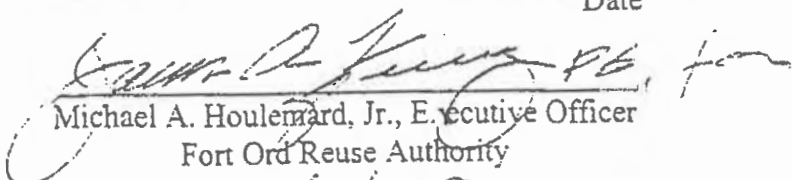
Signatures below constitute concurrence with the terms set forth above:


 Mary Ann Matthews, Conservation Chair
 California Native Plant Society

 Jack D. Barlich, Mayor
 City of Del Rey Oaks

Date

Date


 Michael A. Houlemard, Jr., Executive Officer
 Fort Ord Reuse Authority
 3/4/99

 Date

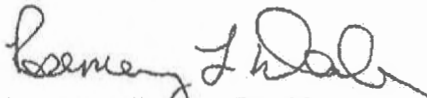
Page 2

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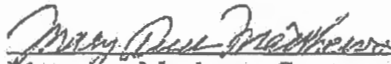
Sincerely Yours,



Rosemary Doolan, 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

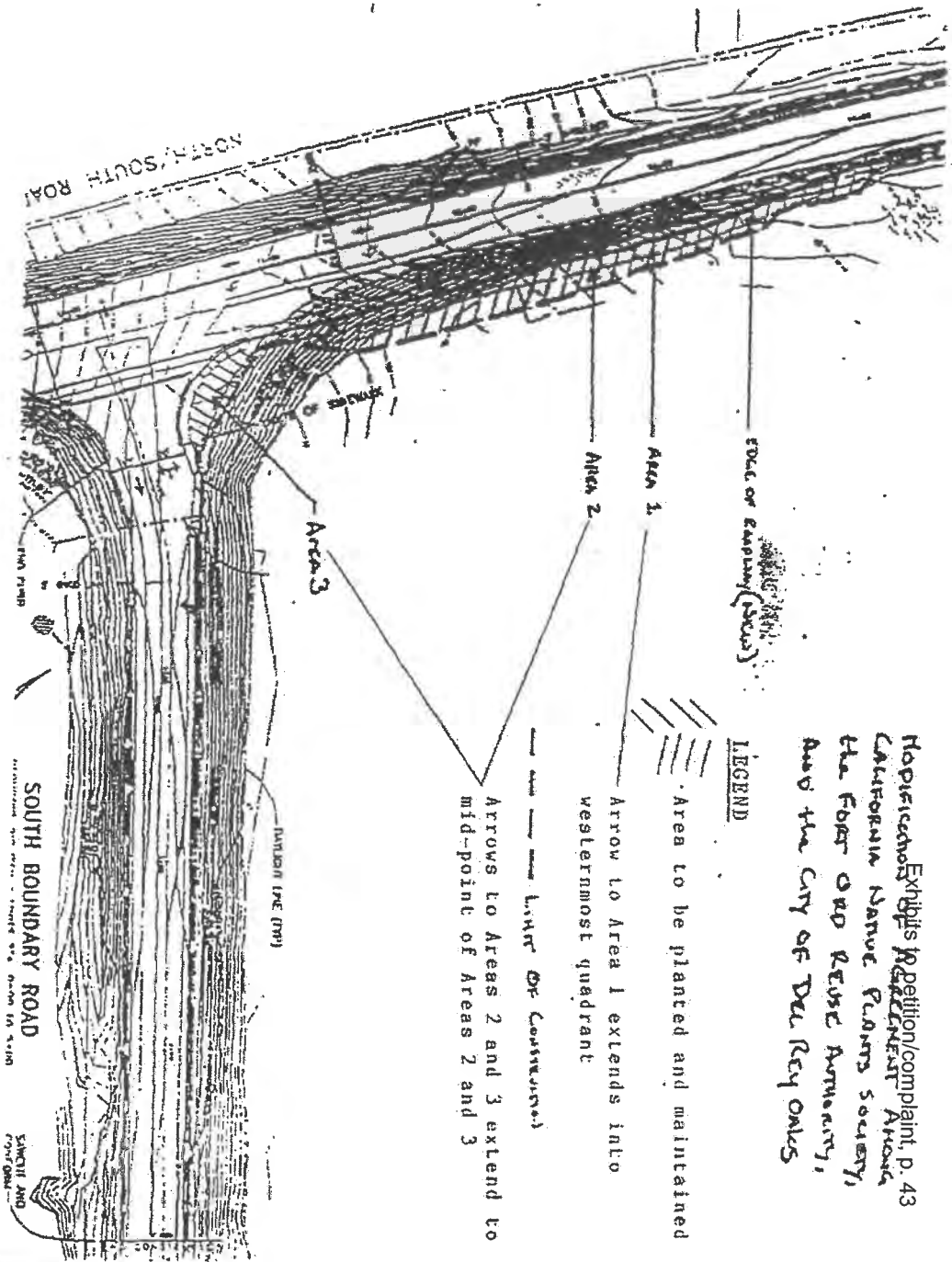
Date

8/27/98

Date

Michael A. Houlemard, Jr., Executive Officer
Fort Ord Reuse Authority

Date



Hopicichno Exhibits to Petition/complaint, p. 43
 California Native Plant Society, the Forest Old Rest Armory, and the City of Del Rey Oaks

LEGEND




-  Area to be planted and maintained
-  Arrow to Area 1 extends into westernmost quadrant
-  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, CA 93933
Phone: (831) 883-3672 - Fax: (831) 883-3675

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

Fax: 649-0394 ✓
Fax: 659-0304
Fax: 394-8511

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

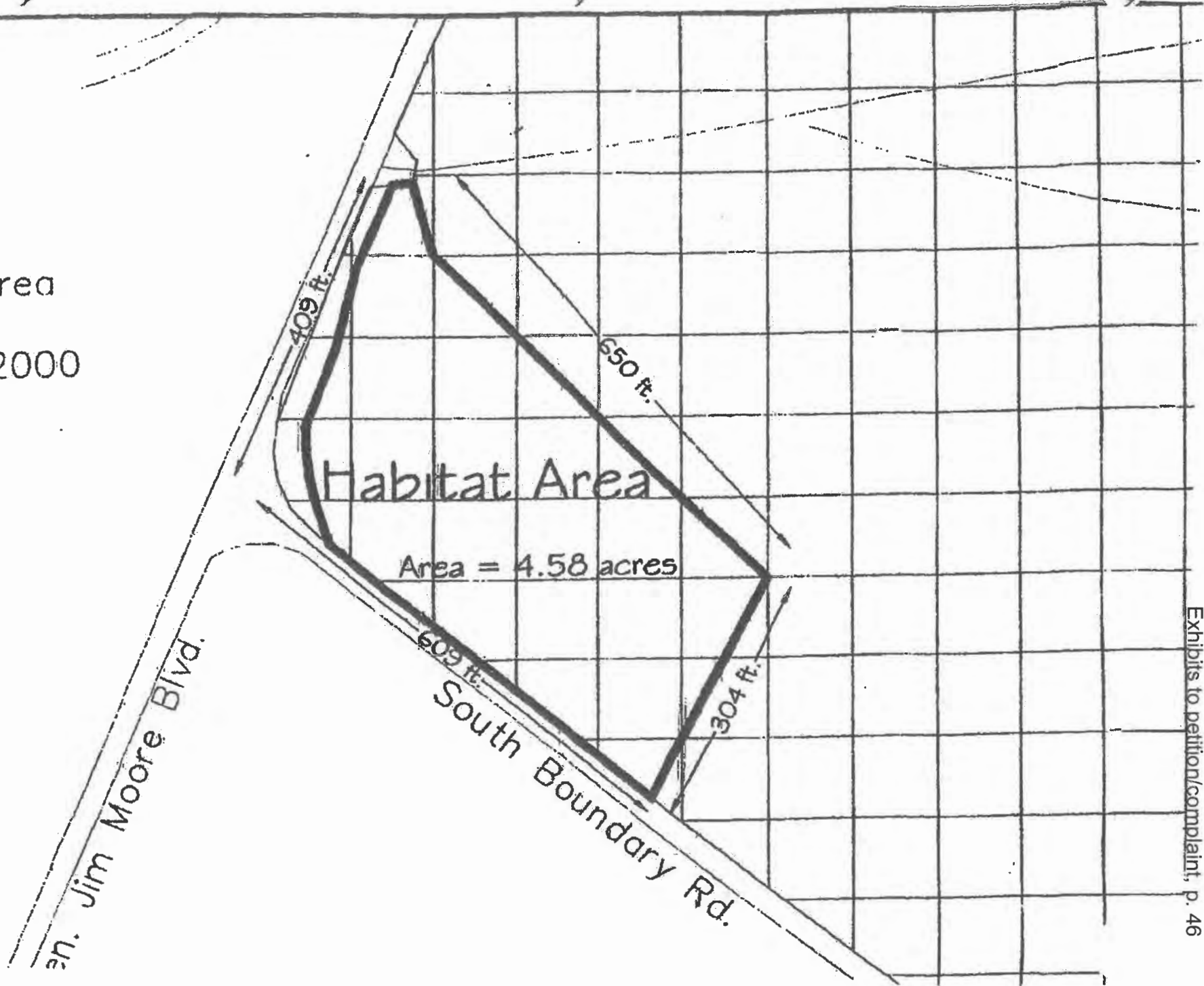
People Present:

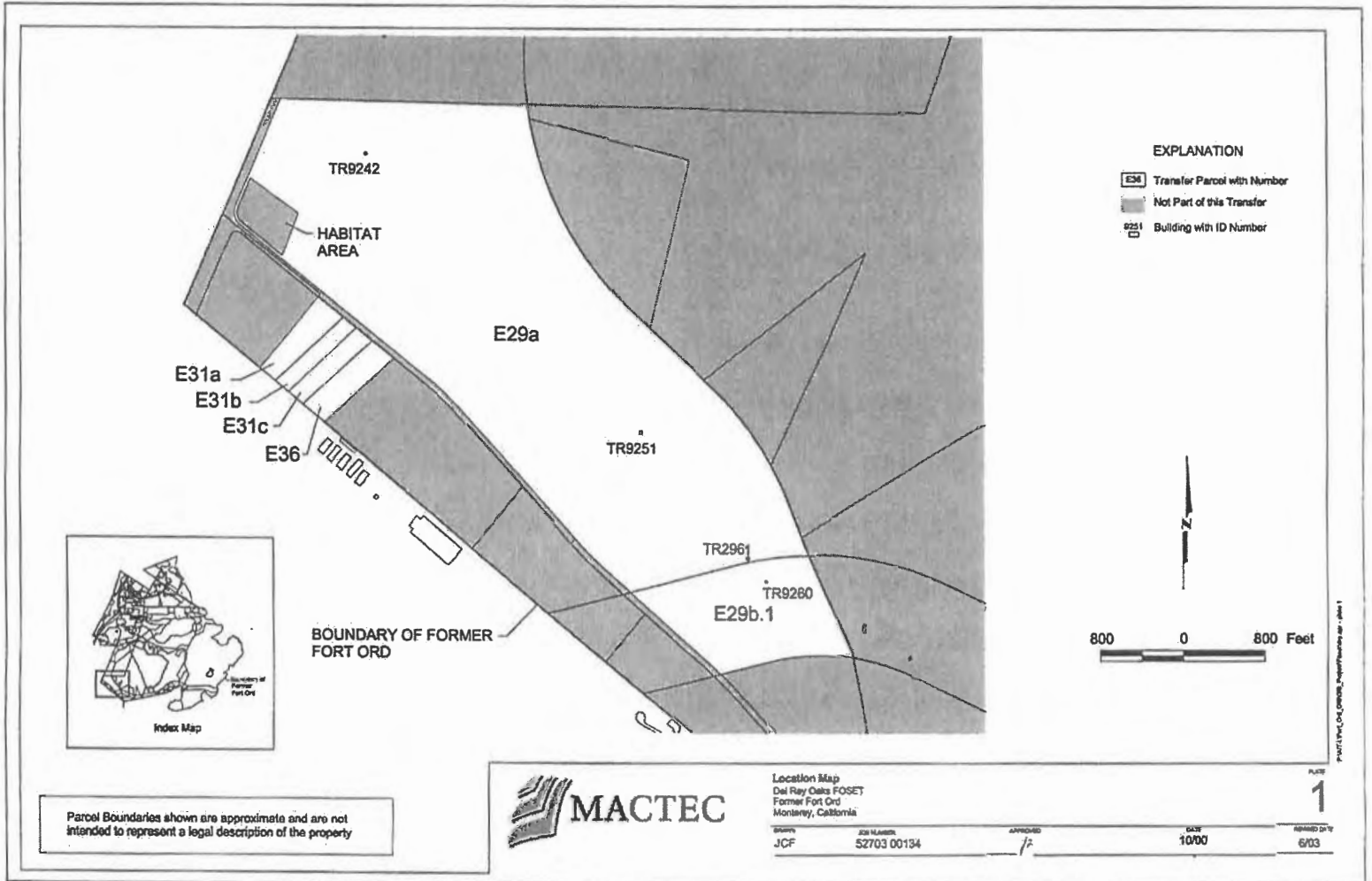
Birchard Ohlfinger	FORA	(831) 883-3672
Ron Langford	Del Rey Oaks	(831) 394-8511
David Miller	DBO Devel.	(831) 649-0394
Mary Mathews	CNPS	(831) 659-2528

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







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 FORMs. 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.

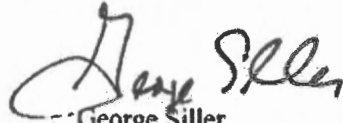
2. At the request of the US Army Corps of Engineers, Sacramento District, Parsons conducted a "walkabout – A Schonstedt assisted visual reconnaissance" over a 5-acre parcel known as "DRO Habitat Area" on 7 June 2004. The walkabout was limited to accessible areas only (attached map). Additional details 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.

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 7th, 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



Environmental Assessment (EA)/Initial Study (IS)

FOR

South Boundary Road/Gigling Road Improvement Project

Volume II of II

Prepared For:

Fort Ord Reuse Authority (FORA)
100 12th Street, Bldg. 2880
Marina, CA 93933
Contact: James Arnold
Tel: (831) 883-3672

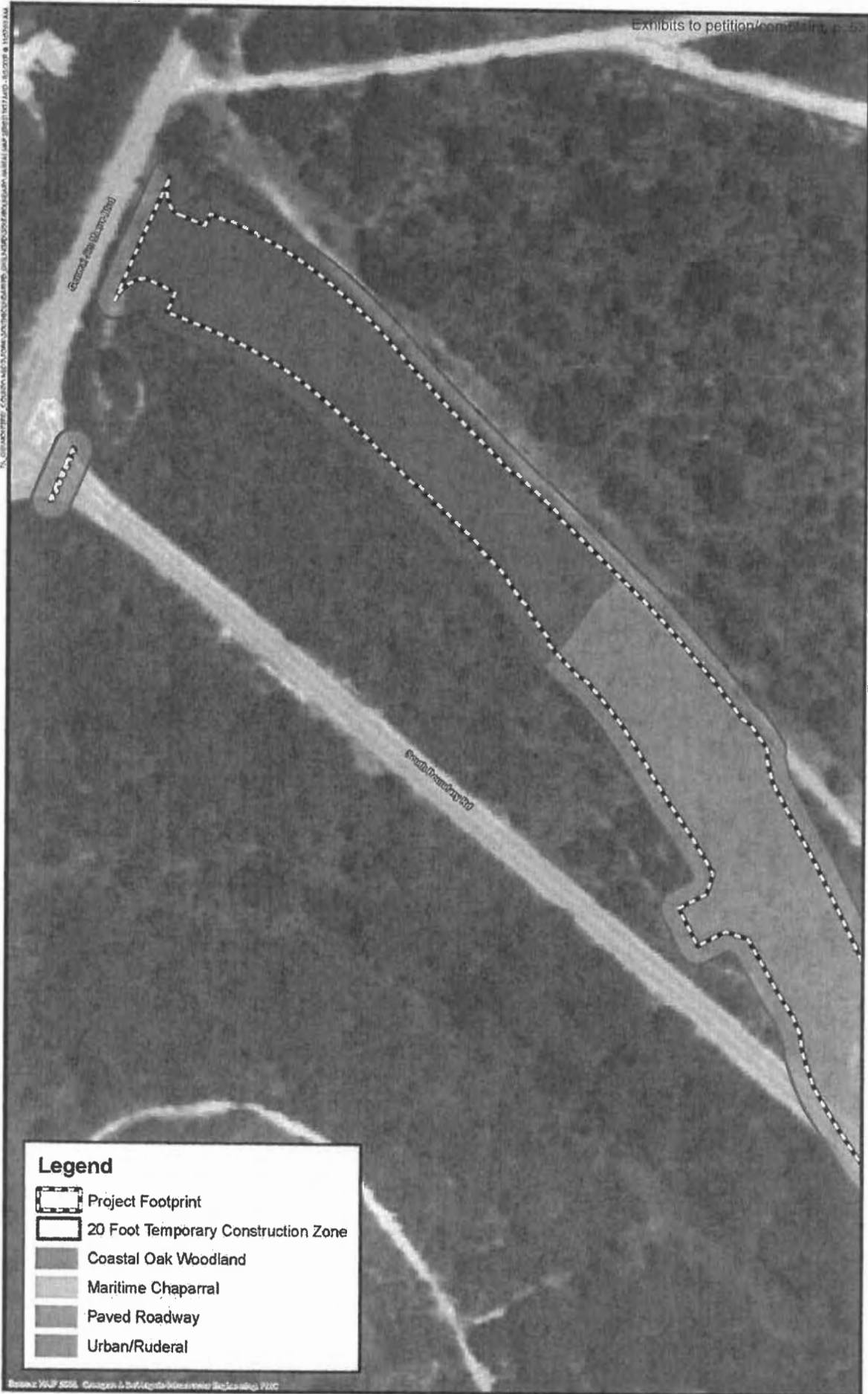
Prepared by:

PMC[®]








585 Cannery Row, Suite 304
Monterey, CA 93940
Tel: (831) 644-9174

Creegan and D'Angelo Consulting Engineers
225 H Cannery Row
Monterey, CA 93940
Tel: (831) 373-1333

May 2010



Legend

-  Project Footprint
-  20 Foot Temporary Construction Zone
-  Coastal Oak Woodland
-  Maritime Chaparral
-  Paved Roadway
-  Urban/Ruderal

Source: WUP 2006. Courtesy of San Diego State University and the San Diego State University PWC



Map 5a
 South Boundary Road Habitat Map
 PMC

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MONTEREY

I am employed in the County of Monterey, State of California. I am over the age of 18, and not a party to the within action. My business address is Box 2448, Monterey, California 93942. My email address is erickson@stamplaw.us.

On May 31, 2020, I served the one-page document described as follows:

Letter on behalf of California Native Plant Society with "Subject: Notice of intent to initiate litigation under the California Environmental Quality Act and California Public Records Act"

(X) via mail through the United States Postal Service in separate envelopes addressed as shown below, and via email and no error message was received, to addresses as stated below.

Mailed on May 31, 2020 by delivery to the U.S. Post Office in envelopes addressed as follows:

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Ave.
Marina, CA 93933

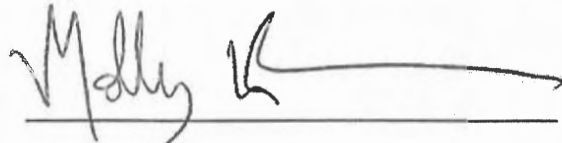
Alison Kerr, Mayor
City Council
City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940

LAFCO of Monterey County
c/o Kate McKenna, Executive Officer
132 W. Gabilan St., #102
Salinas, CA 93901

Emailed on May 31, 2020

To: Josh Metz <josh@fora.org>; Supervisor Jane Parker <district4@co.monterey.ca.us>; Alison Kerr <akerr@delreyoaks.org>; Dino Pick <dpick@delreyoaks.org>; Kate X5016 McKenna <mckennak@monterey.lafco.ca.gov>

Mailed and emailed on May 31, 2020. Executed on June 1, 2020 at Monterey, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Molly Erickson

Molly Erickson
erickson@stamp.law.us

STAMP | ERICKSON
Attorneys at Law

Monterey, California
T: (831) 373-1214

Attachment 2

May 31, 2020

Via U.S. mail and email

Jane Parker, Chair
Board of Directors
Fort Ord Reuse Authority
920 2nd Ave.
Marina, CA 93933

LAFCO of Monterey County
c/o Kate McKenna, Executive Officer
132 W. Gabilan St., #102
Salinas, CA 93901

Alison Kerr, Mayor
City Council
City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940

Subject: Notice of intent to initiate litigation under the California Environmental Quality Act and California Public Records Act

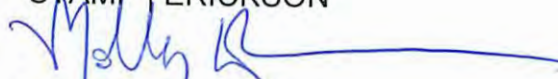
Dear Chair Parker and members of the FORA Board of Directors, Mayor Kerr and members of the Del Rey Oaks city council, and LAFCO Monterey County:

I represent the California Native Plant Society (CNPS) in this matter. This letter follows on the numerous letters from CNPS to FORA starting in 2017. CNPS gives notice under Public Resources Code section 21167.5 that CNPS intends to initiate legal action against FORA and Del Rey Oaks, and to name LAFCO as a real party in interest. The lawsuit will be brought under CEQA, the California Public Records Act, California contract law, and other applicable laws. The lawsuit will be primarily regarding the failure by FORA to honor its commitment to obtain CNPS consent before proceeding with the South Boundary Road realignment project that would harm the CNPS Reserve 1 North, the failure by FORA to implement adopted mitigations for the North-South Road (General Jim Moore)/Highway 218 project, the failure by FORA to implement adopted mitigations for the General Jim Moore/Eucalyptus Road project, violations of the California Public Records Act by FORA and Del Rey Oaks when the agencies withheld or destroyed 2000 documents regarding the 1998 contract between Fort Ord Reuse Authority, Del Rey Oaks, and CNPS, as amended, and breaches of the contract.

My client remains willing to address the issues promptly. Thank you.

Sincerely,

STAMP | ERICKSON



Molly Erickson