

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

### **APN 031-191-013**

This Settlement Agreement (“Agreement”) is made and entered into this 15th day of May 2023 (the “Effective Date”) by and among California Native Plant Society (“CNPS”), on the one hand, and the City of Del Rey Oaks (“City” or “Del Rey Oaks”), on the other hand. CNPS and City are each sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, on June 2, 2020, the California Native Plant Society (“CNPS”) filed a Petition for Writ of Mandate under the California Environmental Quality Act (“CEQA”) and other causes of action in the Superior Court of the State of California, County of Monterey, Case No. 20CV001529 (the “Action”), challenging the actions by the Fort Ord Reuse Authority (FORA) and the City of Del Rey Oaks related to a proposed road through a rare plant reserve in the former Fort Ord within the boundaries of the City. On June 30, 2020, FORA dissolved pursuant to legislative action;

**WHEREAS**, CNPS and the City, in an effort to resolve the litigation without further expenditure of resources, have reached an agreement as set forth below; and

**NOW, THEREFORE**, in consideration of the mutual terms, covenants, and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which each of the Parties hereby acknowledges, the Parties agree as follows:

### **SETTLEMENT TERMS**

#### **1. OBLIGATIONS UNDER THIS AGREEMENT; CONSIDERATION.**

**1.1. Commitment to Acquire Property.** The City shall work diligently to obtain title to the 4.6-acre parcel (APN 031-191-013) formerly known as Fort Ord EDC parcel E29a.1 (“Property”) which is currently vested with the Fort Ord Reuse Authority which has been dissolved by operation of law, and the Property being more particularly described in Exhibit A, attached hereto, and incorporated herein. City shall provide a copy of the recorded deed that shows City ownership to counsel for CNPS.

**1.2. Protection of Property and Deed Restriction:** The parties agree to the following terms, all of which shall also be incorporated into a deed restriction that Del Rey Oaks shall record in the Official Records of the County of Monterey after the quitclaim and repudiation is filed pursuant to section 1.5 of this Agreement and the City acquires title to the Property, but prior to any other recordation that may be related to the Property.

**1.2.1.** Del Rey Oaks acknowledges that the Property, APN 031-191-013, consisting of approximately 4.6 acres (including 2.6 acres of preserve and 2 acres of buffer), formerly known as Fort Ord EDC parcel E29a.1, now referred to as CNPS Plant Reserve 1 North and/or the Del Rey Oaks Habitat Reserve, was protected as a conservation site under the California Environmental

Quality Act (CEQA) as a mitigation in the adopted 1999 Final Environmental Assessment/Initial Study for the North-South Road/Highway 218 Improvements Project.

**1.2.2.** The 2010 Environmental Assessment/Initial Study environmental documents prepared and certified by the Fort Ord Reuse Authority for a South Boundary Road roadway improvement project required Del Rey Oaks to renegotiate a possible relocation of the protected habitat area as a prerequisite to proceeding with the proposed realignment of South Boundary Road through the Property. That requirement has been satisfied as follows: a relocation of the protected habitat area has not been negotiated, instead, the parties agree South Boundary Road will not go through the Property.

**1.2.3.** The Property is hereby protected in perpetuity for its conservation values, and cannot be used as mitigation for other projects. No vegetation modification shall be allowed on the Property, unless allowed herein. "Protected in perpetuity" shall mean that nothing shall be done that may degrade or adversely impact the Property and its conservation/biological values in perpetuity, unless specifically stated otherwise herein. "Development" shall mean: the placement or erection of any solid material or structure; the discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste thereon; grading of any kind, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to any statute or regulation, and any other division of land, including lot splits; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the cutting, pruning, masticating, removal or harvesting of vegetation. Barbed-wire fencing is prohibited. However, a low wooden fence through which wildlife can pass easily may be erected on public property at the property boundaries. As used in this Agreement and the deed restriction, "structure" includes, but is not limited to, any building, road, pavement, concrete, masonry, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line, or any other utility lines.

**1.2.4.** Del Rey Oaks shall not allow actions for fire prevention purposes on the Property, with two exceptions: (a) unless mandated in writing by a public agency with preemptive authority to do so. Such agency shall have received and reviewed the deed restriction, following at least ten days' written notice to CNPS. Likewise, Del Rey Oaks may allow actions for fire prevention purposes where mandated by its insurance carrier to prevent cancellation of policy, upon receipt and review by the carrier of the deed restriction and following at least ten days' written notice to CNPS. In all cases, a prescribed burn shall be the preferred method of fire prevention, as it would preserve and potentially enhance the conservation values. CNPS acknowledges that Del Rey Oaks has no authority to mandate which fire prevention methods may be required. To the extent it has control over fire prevention methods, Del Rey Oaks shall not allow mowing, mastication, or other mechanical methods of fuel reduction. (b) the use of prescribed fire to stimulate rare plant growth and enhancement of habitat or other scientifically acceptable methods that restore or stimulate rare plant growth and enhancement of habitat but only on the condition that the method is first agreed to in a writing between the City and the California Native Plant Society prior to any actions at the Property.

**1.2.5.** The parties acknowledge that the provisions of this Agreement and the deed restriction may be preempted by State or Federal authority with respect to ordinance removal or hazardous material removal.

**1.2.6.** Del Rey Oaks shall not conduct offsite activities that would be detrimental to the conservation values of the Property, including but not limited to increasing drainage onto or off of the Property.

**1.2.7.** The conservation values of the Property are as follows: the Property contains high quality Maritime Chaparral habitat that supports a number of special status plant species, including but not limited to the California endangered Seaside Bird's Beak [*Cordylanthus rigidus* sub.sp *littoralis*], the federally threatened Monterey Spineflower [*Chorizanthe pungens* var. *pungens*], California Rare Plant Rank 1B.1 Eastwood's Goldenbush [*Ericameria fasciculata*], and California Rare Plant Rank 1B2 Toro Manzanita [*Arctostaphylos montereyensis*], Sandmat Manzanita [*Arctostaphylos pumila*], Hooker's Manzanita [*Arctostaphylos hookeri*].

**1.2.8.** Del Rey Oaks shall have no affirmative duty to actively manage the Property.

**1.2.9.** All members of the public are beneficiaries of this permanent protection, which is made in the public interest.

**1.2.10. Signage:** Del Rey Oaks shall install signage to be located on the Property at the northerly, southerly, and westerly boundaries of the site. No commercial signage will be permitted.

**1.2.10.1.** The following language is agreed to be appropriate signage: "The Del Rey Oaks Habitat Reserve is a protected rare plant habitat that conserves a small intact fragment of the unique floristic diversity of Fort Ord. This Habitat Reserve is protected in perpetuity by the City of Del Rey Oaks in exchange for road developments that impacted rare plants in Maritime Chaparral habitat. No development of any kind is allowed at the Habitat Reserve. To learn more about this 4.6-acre parcel, go to <https://chapters.cnps.org/montereybay>." A title shall be centered and placed above the above referenced language, in slightly larger font and in all capital letters, that reads "DEL REY OAKS HABITAT RESERVE."

**1.2.10.2.** The signage shall be installed no later than 60 days of the execution of this Agreement by all of the Parties, and shall be no less than nine (9) square feet (3' x 3') and be readable from a distance of 25 feet.

**1.2.10.3.** Signage with the language and format provided above shall be installed around the perimeter of the Property, with no less than 125 feet between each sign, that says "Del Rey Oaks Habitat Reserve: protected Maritime Chaparral habitat."

**1.2.10.4.** The signage at the property may be modified providing there is a prior written agreement by the City and CNPS as to the modifications.

**1.3.** CNPS will send a letter to Del Rey Oaks expressing its appreciation for the agreement of Del Rey Oaks to not pursue putting a road through the Property.

**1.4.** The City shall provide a copy of the recorded deed restriction to counsel for CNPS within 60 days of the execution of this Agreement by all of the Parties.

**1.5.** Repudiation/Abandonment of Document. Del Rey Oaks acknowledges that Document 2009070771, recorded October 30, 2009, was recorded when Del Rey Oaks did not have record title to the Parcel and thus was legally ineffective. To avoid potential future confusion

Del Rey Oaks will, within 60 days of the execution of this Agreement by all of the Parties and after City acquires title to the Property, but prior to any other recordation that may be related to the Property, record a document stating as much and abandoning and quitclaiming all interest in and claims as to Document 2009070771 and shall state that the repudiation shall at a minimum be applicable to the entire Property.

2. **RECORDATION.** Del Rey Oaks shall record this fully executed settlement Agreement as an attachment to the deed restriction called for in Section 1.4, above.

3. **DISMISSAL.** No more than three (3) court days following execution of this Agreement by all of the Parties, CNPS shall file a dismissal with prejudice of the entire Action.

4. **FULL SATISFACTION.** It is the intention of the Parties in executing this Agreement that this Agreement, including the obligations described in Paragraph 1 above, shall be effective as a full, complete and final satisfaction of CNPS's causes of action in the Action.

5. **COSTS AND EXPENSES.** As further mutual consideration for the promises set forth herein, each Party shall bear its own costs and expenses, including without limitation, attorneys' fees and costs incurred in connection with the Action, and attorneys' fees incurred in connection with the negotiation and preparation of this Agreement.

6. **MUTUAL RELEASE OF CLAIMS.** For and in consideration of the above-referenced obligations under this Agreement, each and every Party to this Agreement hereby releases, disposes, and forever discharges each and every other Party, including its officers, managers, partners, directors, boards, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, subdivisions, sections, offices, successors and assigns, and each of them, from any and all claims, complaints, demands, causes of action, obligations, damages, costs, expenses, liens, attorneys' fees, warranties, rights and liabilities that have arisen in connection with the Action. Notwithstanding any of the above, this release shall not prohibit CNPS or Del Rey Oaks and its officers, boards, agents and representatives from commenting and otherwise participating in processes, proceedings, and other actions regarding South Boundary Road and any other projects whether past, present or future, including but not limited to impacts and mitigations, and shall not prohibit CNPS or Del Rey Oaks from enforcing this Agreement and the previous agreements between FORA, Del Rey Oaks, and CNPS.

7. **WAIVER OF RIGHTS UNDER CIVIL CODE SECTION 1542.** The parties expressly agree that, except as provided below, this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, vested or contingent, as to the specific causes of action brought in the Action and that could have been raised in the Action and that as to those claims any and all rights granted under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation **ARE HEREBY EXPRESSLY WAIVED.** Section 1542 of the California Civil Code states as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

Notwithstanding any of the above, this waiver shall not prohibit CNPS or Del Rey Oaks and its officers, boards, agents and representatives from commenting and otherwise participating in processes, proceedings, and other actions regarding South Boundary Road and other projects whether past, present or future, including but not limited to impacts and mitigations, and shall not prohibit CNPS or Del Rey Oaks from enforcing this Agreement and the previous agreements between FORA, Del Rey Oaks, and CNPS.

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

8. **NO ADMISSION.** Neither this Agreement nor any of the terms or provisions hereof shall be construed as an acknowledgment or admission of wrongdoing or liability on the part of any Party.

9. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, representations, and understandings of the Parties, including, without limitation, agreements between California Native Plant Society/Del Rey Oaks/Fort Ord Reuse Authority of 1998, 1999 and 2000 which required that the habitat area, herein called the Property, be permanently protected from fragmentation and degradation in perpetuity. This Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

10. **AMENDMENTS.** No amendment, alteration, modification, or withdrawal of this Agreement shall be valid, binding, or effective unless made in writing and signed by each Party.

11. **EXECUTION OF DOCUMENTS; COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Counterparts executed and transmitted by electronic mail shall be deemed an original. The signature page of each counterpart may be detached and attached to a single copy of this Agreement which shall for all purposes be treated as a single, original document.

12. **INTERPRETATION.** The parties have arrived at this Agreement through negotiation, and each Party and the representative of each Party to this Agreement has reviewed this Agreement. Therefore, the normal rule of construction set forth in California Civil Code section 1654, to the effect that any ambiguities are to be resolved against the drafting Party, shall not be employed in any interpretation of this Agreement.

13. **HEADINGS.** The headings in this Agreement are for convenience only and shall not affect the meaning of the terms as set out in the text.

14. **AUTHORITY.** The attorneys and others executing this Agreement represent that they are authorized to do so as agents of the respective parties. Further, each Party represents and warrants that the individual executing this Agreement on its behalf possesses full authority to execute the Agreement and to bind that Party to its terms.

15. **ATTORNEYS' FEES.** If any action is taken to enforce this Agreement or any of its terms, including but not limited to, the deed restriction, the prevailing party shall be entitled to attorney fees, expert fees, and out-of-pocket expenses regardless of whether litigation is filed as part of the enforcement efforts.

16. **MEDIATION.** In the event of any dispute arising under or in connection with this Agreement, before either party may initiate litigation, they must attempt to resolve the dispute through mediation in good faith. If mediation fails or if circumstances do not allow time for mediation, then any Party may initiate litigation.

17. **GOVERNING LAW; VENUE.** This Agreement shall be governed by and interpreted by and in accordance with the laws of the State of California, with venue in Monterey County.

18. **CCP § 664.6.** The Parties hereby expressly agree and stipulate that the Court shall retain jurisdiction over this matter pursuant to provisions the California Code of Civil Procedure §664.6.

19. **NOTICES.** All notices shall be delivered as follows:

For California Native Plant Society:

California Native Plant Society,

Monterey Bay Chapter

Attn.: President

P.O. Box 221303

Carmel, CA 93922

Email to: [brian@brianleneve.com](mailto:brian@brianleneve.com) and [nikki@ventanaview.net](mailto:nikki@ventanaview.net)

Executive Director, California Native Plant Society

2707K Street, Suite 1

Sacramento CA 95816-5130

Email to: [cnps@cnps.org](mailto:cnps@cnps.org)

For City of Del Rey Oaks:

Attention City Manager

650 Canyon Del Rey Blvd.

Del Rey Oaks, CA 93940

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement as of the date set forth below their signature.

**CITY OF DEL REY OAKS**

By: John Guenther  
Name: John Guenther  
Its: City Manager  
Dated: 5-15-23

Approved as to form:

By: [Signature]  
Dated: 5/15/23  
Name: Alex Lopez, City Attorney

**CALIFORNIA NATIVE PLANT SOCIETY,  
MONTEREY BAY CHAPTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Name: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement as of the date set forth below their signature.

**CITY OF DEL REY OAKS**

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

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

Its: \_\_\_\_\_

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

Approved as to form:

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

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

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

**CALIFORNIA NATIVE PLANT SOCIETY,  
MONTEREY BAY CHAPTER** JB 5/15/2023

By: Jun Bando

Name: Jun Bando

Its: Executive Director

Dated: May 15, 2023

Approved as to form:

By: Brian L

Dated: May 15, 2023

Name: BRIAN L 20202

MONTEREY BAY CNPS  
PAST PRESIDENT

EDC Parcel E29a.1  
FOST 10  
Fort Ord Military Reservation  
City of Del Rey Oaks  
Monterey County, California

Legal Description

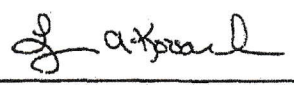
SITUATE in a portion of the former Fort Ord Military Reservation as it is shown on that certain map recorded in Volume 19 of Surveys at Page 1, and being a portion of Parcel 1 as it is shown on that certain map recorded in Volume 23 of Surveys at Page 103, Official Records of Monterey County, being within Monterey City Lands Tract No. 1, County of Monterey, State of California; being more particularly described as follows:

BEGINNING at a point on the northerly boundary of South Boundary Road shown as Parcel 18 on that certain map recorded in Volume 20 of Surveys at Page 110, being also "Point B" in the legal description of EDC parcel E29a, said parcel being shown as Parcel A on that certain map recorded in Volume 28 of Surveys at Page 40; thence from said Point of Beginning along said northerly boundary

1. North 50° 41' 04" West for a distance of 511.18 feet to the beginning of a tangent curve; thence
2. Along a curve to the right, through a central angle of 73° 55' 59", having a radius of 150.00 feet, for an arc length of 193.56 feet, and whose long chord bears North 13° 43' 04" West for a distance of 180.40 feet to a point of intersection with a tangent line being also a point on the easterly boundary of General Jim Moore Boulevard as shown on said map; thence along said easterly boundary
3. North 23° 14' 55" East for a distance of 271.56 feet to an angle point in the boundary of said Parcel A; thence leaving said easterly boundary and following the boundary of said Parcel A
4. North 84° 50' 03" East for a distance of 36.80 feet; thence
5. South 14° 52' 39" East for a distance of 90.78 feet; thence
6. South 45° 00' 00" East for a distance of 565.69 feet; thence
7. South 26° 00' 01" West for a distance of 293.98 feet to the POINT OF BEGINNING.

Containing an area of 4.628 acres, more or less.

This legal description was prepared by



Lynn A. Kovach L.S. 5321  
My license expires December 31, 2009



EXHIBIT  
of  
EDC Parcel E29a.1  
City of Del Rey Oaks  
Fort Ord FOST 10  
Being a Portion of  
Parcel 1 as shown on Vol. 23 of Surveys at Page 103  
Lying within the Fort Ord Military Reservation  
as shown on Vol. 19 of Surveys at Page 1  
Being also within Monterey City Lands Tract No. 1  
Monterey County, California

Note: Course Numbers Refer to the  
Legal Description.



Not to Scale

"ORDINANCE REMOVAL  
LIMITS"  
27 SURVEYS 14

EDC PARCEL E29a

PARCEL 1  
23 SURVEYS 103

PARCEL A  
28 SURVEYS 40

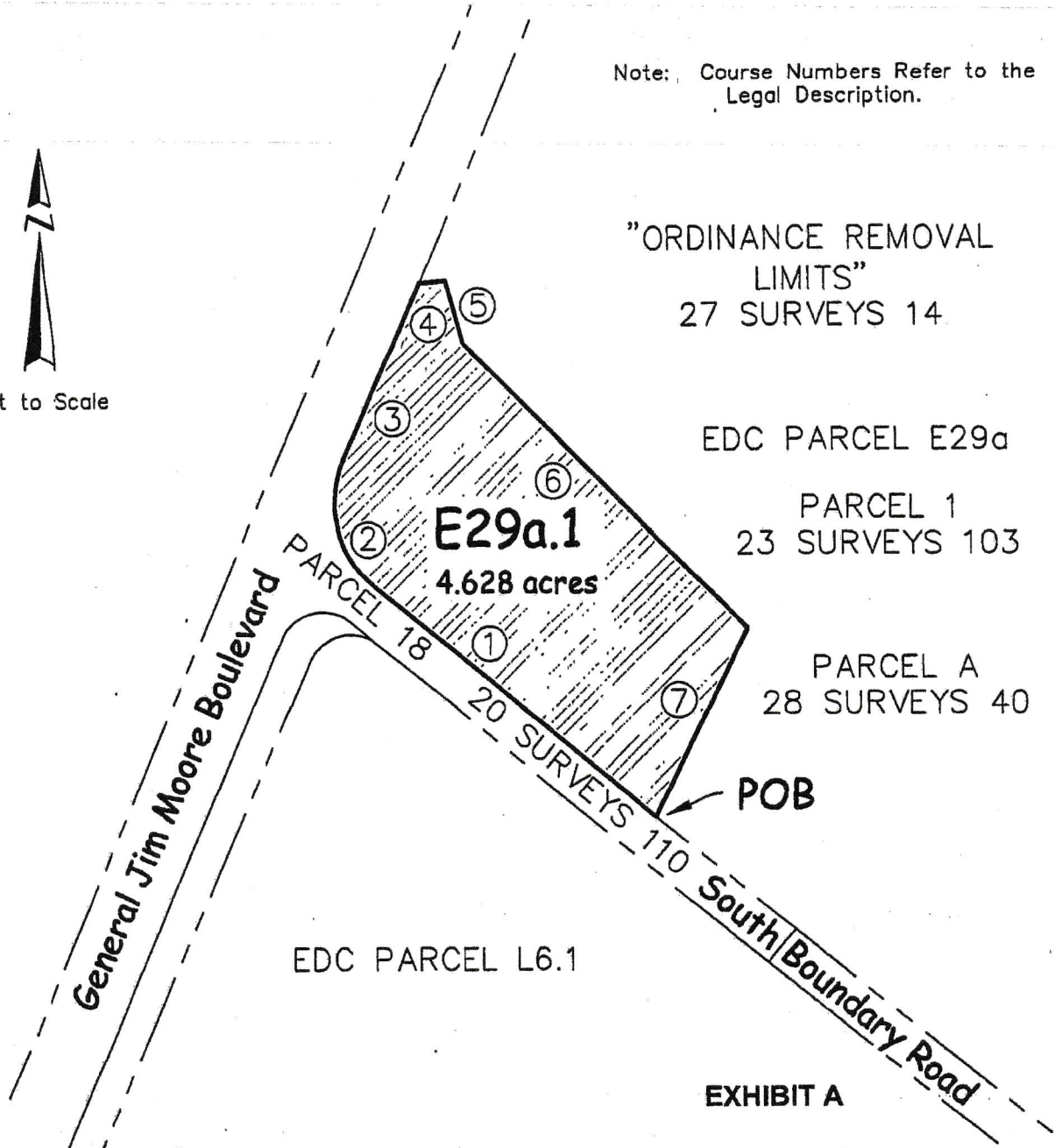


EXHIBIT A