



CITY OF DEL REY OAKS

Staff Report

DATE: March 25, 2025

TO: Honorable Mayor and City Council

FROM: John Guertin, City Manager

SUBJECT: Authorize the City Manager to Sign a Termination of Agreement Irrevocable Offer to Dedicate with Caltrans for the South Fort Ord Corridor

CEQA: This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378 as it is an administrative activity of the City that will not result in direct or indirect physical changes in the environment.

Recommendation

Approve a Resolution authorizing the City Manager to execute a Termination of Agreement and Irrevocable Offer to Dedicate with Caltrans terminating the 2005 Irrevocable Offer to Dedicate (Instrument No. 2005119491) for the South Fort Ord Corridor.

Summary & Discussion

On September 13, 2005, the City and State (Caltrans) executed an Agreement and Irrevocable Offer to Dedicate by Gift (IOD) which conveyed property rights to the State in the form of an easement for a future new alignment of State Route 68 through a portion of the parcels transferred to the City (via its former Redevelopment Agency) from the Fort Ord Reuse Authority. The parcel that includes the easement is now owned by Monterey Peninsula Properties, LLC (MPP).

In recent years, Caltrans and the Transportation Agency for Monterey County (TAMC) have abandoned plans for the new alignment of the State Route in favor of planned improvements to the existing alignment. Therefore, pursuant to section 6a of the IOD, Caltrans must convey the Easement to the City.

Considering this, MPP has requested that Caltrans and the City release their interests in the easement. Execution by Caltrans and the City of the attached Termination of Agreement and Irrevocable Offer to Dedicate by Gift would accomplish as much.

Fiscal Impacts

There will be no direct financial impact as a result of this action.

ATTACHMENTS:

- Resolution 2025-03
- Termination Of Agreement and Irrevocable Offer to Dedicate by Gift

- 2005 Agreement and Irrevocable Offer to Dedicate by Gift

Respectfully Submitted,

John Guertin
City Manager

RESOLUTION NO. 2025-03

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL REY OAKS
AUTHORIZING THE CITY MANAGER TO EXECUTE A TERMINATION OF
AGREEMENT AND IRREVOCABLE OFFER TO DEDICATE BY GIFT TERMINATING
PROPERTY RIGHTS ON THE FORMER FORT ORD CONVEYED TO CALTRANS**

WHEREAS, City and State are parties to that certain Agreement and Irrevocable Offer to Dedicate by Gift dated September 13, 2005, and recorded as Instrument No. 2005-119491 in the Monterey County Recorder's Office ("IOD"), which provided for the conveyance of property rights, including an easement to State for a future alignment of State Route 68 in the County of Monterey (Easement); and

WHEREAS, the easement passes through a parcel now owned by Monterey Peninsula Properties, LLC (MPP); and

WHEREAS, MPP has requested that Caltrans and the City release their interests in the easement; and

WHEREAS, Pursuant to clause 6a. of the IOD Terms and Conditions, the State has made the decision not to use the Easement to realign State Route 68.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Del Rey Oaks hereby authorizes the City Manager to execute such documents effectuating the termination the 2005 Agreement and Irrevocable Offer to Dedicate by Gift, in substantially the form as attached hereto, and as finally approved by the City Attorney.

PASSED AND ADOPTED by meeting of City of Del Rey Oaks duly held on the 25nd day of March 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Scott Donaldson, Mayor

ATTEST:

Karen Minami, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Attention: _____

Space above this line for Recorder's Use

**TERMINATION OF AGREEMENT AND IRREVOCABLE
OFFER TO DEDICATE BY GIFT**

THIS TERMINATION OF AGREEMENT AND IRREVOCABLE OFFER TO DEDICATE BY GIFT (this "Termination") is entered into as of _____, 2025 by and between the CITY OF DEL REY OAKS ("City"), and the STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION ("State").

RECITALS:

A. City and State are parties to that certain Agreement and Irrevocable Offer to Dedicate by Gift dated September 13, 2005, and recorded as Instrument No. 2005-119491 in the Monterey County Recorder's Office ("IOD"), which provided for the conveyance of property rights, including an easement to State for a future alignment of State Route 68 in the County of Monterey (Easement).

B. As contemplated by the IOD, the City acquired that certain real property from the Fort Ord Reuse Authority pursuant to that certain Quitclaim Deed recorded on March 7, 2006, as Instrument No. 2006-020190 in the Monterey County Recorder's Office.

C. Pursuant to clause 6a. of the IOD Terms and Conditions, the State has made the decision to not use the Easement to realign State Route 68.

NOW THEREFORE, the parties agree as follows:

1. Termination of IOD. The parties have agreed that all rights, obligations, and current and future interests in property in and created by the IOD are hereby terminated and the IOD shall have no further force and effect.

2. Counterparts. This Termination may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.
SIGNATURES FOLLOW.]**

IN WITNESS WHEREOF, this Termination has been executed by the City and State as of the date first set forth above.

CITY:

CITY OF DEL REY OAKS

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

STATE:

STATE OF CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: _____
Name: _____
Title: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRMARIA
11/08/2005
15:32:46

Recording requested by
and when recorded mail to:

DAVID MURRAY
50 Higuera Street
San Luis Obispo, CA
93401

DOCUMENT: **2005119491**

Titles: 1/ Pages: 40

Fees....
Taxes...
Other...
AMT PAID

(Space above line for Recorder's use only)

AGREEMENT AND IRREVOCABLE OFFER TO DEDICATE BY GIFT

This Agreement and Irrevocable Offer to Dedicate by Gift ("Agreement") is made on this 13TH day of September, 2005 by the Redevelopment Agency of the City of Del Rey Oaks ("Agency" or "Grantor"), to the State of California Department of Transportation ("State" or "Grantee"), hereinafter collectively referred to as the "Parties."

RECITALS

A. This Agreement involves a parcel of land owned by the United States of America, known as the former Fort Ord, part of which is commonly referred to as the "Corridor." This Corridor, known in State studies as the South Fort Ord Corridor, is being considered as an alternative corridor for State Route 68.

B. The Corridor traverses the southerly corner of Fort Ord. The Agency, and the Fort Ord Reuse Authority ("FORA"), have submitted to the United States of America a request for an Economic Benefit Conveyance to FORA and then to the Agency of a portion of the former Fort Ord which is described in Exhibit A attached hereto, for the future development and uses including but not limited to resort hotel and golf course, timeshares, commercial/retail facilities, offices and associated infrastructure. The State, through its federal sponsor, has submitted to the United States of America a request for a Public Benefit Conveyance of a dominant easement of the Corridor for transportation purposes within the land described in Exhibit B ("Easement").

C. This Agreement is intended to grant the right to the State to accept the Agency's irrevocable offer to dedicate the land described in Exhibit B, and establish the right of the State regarding the potential use of the Corridor for future transportation purposes, upon the conveyance of the land described in Exhibit A to the Agency from FORA.

Recording requested by
and when recorded mail to:

DAVID MURRAY
50 Higuera Street
San Luis Obispo, CA
93401

(Space above line for Recorder's use only)

AGREEMENT AND IRREVOCABLE OFFER TO DEDICATE BY GIFT

This Agreement and Irrevocable Offer to Dedicate by Gift ("Agreement") is made on this 13~~TH~~ day of September, 2005 by the Redevelopment Agency of the City of Del Rey Oaks ("Agency" or "Grantor"), to the State of California Department of Transportation ("State" or "Grantee"), hereinafter collectively referred to as the "Parties."

RECITALS

A. This Agreement involves a parcel of land owned by the United States of America, known as the former Fort Ord, part of which is commonly referred to as the "Corridor." This Corridor, known in State studies as the South Fort Ord Corridor, is being considered as an alternative corridor for State Route 68.

B. The Corridor traverses the southerly corner of Fort Ord. The Agency, and the Fort Ord Reuse Authority ("FORA"), have submitted to the United States of America a request for an Economic Benefit Conveyance to FORA and then to the Agency of a portion of the former Fort Ord which is described in Exhibit A attached hereto, for the future development and uses including but not limited to resort hotel and golf course, timeshares, commercial/retail facilities, offices and associated infrastructure. The State, through its federal sponsor, has submitted to the United States of America a request for a Public Benefit Conveyance of a dominant easement of the Corridor for transportation purposes within the land described in Exhibit B ("Easement").

C. This Agreement is intended to grant the right to the State to accept the Agency's irrevocable offer to dedicate the land described in Exhibit B, and establish the right of the State regarding the potential use of the Corridor for future transportation purposes, upon the conveyance of the land described in Exhibit A to the Agency from FORA.

D. This Agreement will provide the State with the means to preserve a viable transportation corridor. It is recognized that corridor preservation in transportation planning is a vital component of early systems planning, promoting the integration of land use, transportation and environmental planning. Corridor preservation allows for orderly development, provides adequate infrastructure to support this development, reduces future project costs, and can avoid or minimize potential environmental impacts.

E. Through this Agreement the Agency and the State will be able to, and will in fact, engage in cooperative joint planning, to satisfy the requirements of Section 4(f) of the Federal Department of Transportation Act [codified at 49 United States Code section 303(c)], and to avoid conflicts in future land use. This joint planning is in accordance with the joint planning regulations (23 CFR 771.135(p)(5)(V)).

F. This Agreement will also encourage consistent land management policies with adjacent lands, provide for the planning, construction and operation of recreational facilities for the benefit of the Agency, and in a manner consistent with the potential use of the land for transportation purposes of the State.

G. The Agency is required to provide the Easement to the State and is therefore making this irrevocable offer to dedicate property interests in the Corridor to the State.

H. Subject to the normal planning, design, environmental review and approval process by the State, it is the intent of the Parties by this Agreement to allow the State to realign State Route 68 within the Easement in the future.

AGREEMENT AND IRREVOCABLE OFFER TO DEDICATE BY GIFT

The Agency, on behalf of its successors and assigns, hereby irrevocably offers to dedicate as a gift by grant deed to the State, its successors and assigns, an easement on the real property referred to as the Corridor, lying within the land described as Exhibit A attached hereto. The legal description for this easement is attached hereto as Exhibit B. The Parties understand that this real property described in Exhibit A has yet to be conveyed to the Agency. It is the intent of the Parties to create this irrevocable dedication in anticipation of the conveyance of this real property described in Exhibit A, and this Agreement shall be an encumbrance on this real property, and it shall be contained in and be made a part of the deed conveying the real property described in Exhibit A by the United States of America to FORA and subsequently to the Agency.

In consideration of the mutual promises and covenants made herein, Agency and State agree to the following terms and conditions:

TERMS AND CONDITIONS

1. For any future development of the land described in Exhibit B by the Agency and/or its assigns, the Agency and/or its assigns shall engage in cooperative joint planning with the State, in order to satisfy the requirements of Section 4(f) of the Federal Department of Transportation Act [codified at 49 United States Code section 303(c)], and to avoid conflicts with

the State's future public project as described herein. This joint planning is in accordance with the joint planning regulations [23 CFR 771.135 (p)(5)(V)].

2. Any construction or other activities undertaken by the State pursuant to or permitted under this Agreement shall be in compliance with the Memorandum of Agreement Regarding Endangered Species Act Enforcement of Development Restrictions on the Del Rey Oaks Portion of the Former Fort Ord, executed by and between FORA, the City of Del Rey Oaks, Agency and Federal Development LLC, dated July 3, 2005, attached hereto as Exhibit C and the Deed from FORA to the Agency conveying the land described in Exhibit A hereto.

3. Temporary Right of Way for Construction Purposes.

a. Right of Entry for Planning and Construction Activities. Subject to the terms and conditions set forth herein, and in connection with the State's planning and construction of the public project, or portion thereof, to which this Agreement pertains, the State, through its agents, contractors, employees, licensees, permittees, and/or representatives, shall be entitled to have access to and enter upon the Corridor to design, survey, study, construct, and/or perform activities related to the planning and construction of the public project prior and/or subsequent to the State's acceptance of this irrevocable offer. The access and activities authorized under this Section 3.a. shall be conducted only in a manner which shall not unreasonably interfere with the Agency's use or enjoyment of the property described in Exhibit A attached hereto.

b. Indemnification by Grantee. The State shall indemnify, defend, assume all liability for, and hold harmless the Agency and its employees, agents, representatives and assigns ("Indemnified Parties") from and against any and all obligations, liabilities, claims, damages, costs, expenses and fees (including reasonable attorneys' and experts' fees and costs) caused by any entry or activities related to the entry under Section 3.a. above, except to the extent caused by the negligence or willful misconduct of the Indemnified Parties.

4. Reservation of Rights. The Agency, its successors and assigns reserve the right to use or authorize others to use its property within the Corridor, or any portion thereof, for any and all purposes which are not inconsistent with, and which will not unreasonably interfere with the State's rights hereunder. In the event the Agency causes the property described in Exhibit B to be used in a manner inconsistent with the intent and purpose of this Agreement, the Agency shall, upon the request of the State, restore the property to a condition which would not conflict with the potential use of the Corridor by the State. In the event the Agency fails to restore the property to a condition satisfactory to the State, the State, through its agents, contractors, employees, licensees, permittees, and/or representatives, shall have the option and the right to enter upon any portion of the property described in Exhibit B for the restoration, and the State shall have no obligations to indemnify and/or defend the Agency and/or its employees, agents, representatives and assigns from or against any and all obligations, liabilities, claims, damages, costs, expenses and fees caused by any entry or activities related to the entry.

5. Review of Status of State's Use of the Easement. State shall keep the Agency informed as to the status of any study of the use of the Corridor and its plans therefor, Agency, its successors and assigns, may request from State, at intervals not to exceed once every five (5) years a written update of the status of the Corridor. State shall provide such update within forty-five (45) days of the receipt of such a request.

6. Determination of use of the Easement. Upon State making its determination as to the use of the Easement, State shall complete the following:

a. If the decision is to not use the Easement to realign State Route 68, State shall convey the Easement to the Agency within one (1) year of that determination,

b. If the decision is to use the Easement to realign State Route 68, State shall convey to the Agency the portion of the Easement not being used for the realignment, within one (1) year of the completion of construction. In such event, Agency, its successors or assigns shall provide to State a Right of Entry for Planning and Construction Activities over that portion of the Easement being conveyed to the Agency, similar to that described in Section 3.a above, if State requires same.

7. Interpretation. If any provision of this Agreement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

8. Captions. The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this Agreement and shall have no effect upon construction or interpretation.

9. Perpetual Duration. The rights and obligations created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Agreement that applies to Grantor and Grantee shall also apply to and be binding upon their respective agents, heirs, executors, administrators, successors and assigns. The rights reserved and retained herein by Grantor are appurtenant to the property described in Exhibit A, run with the land and accrue to the benefit of Grantor and Grantor's successors.

10. Notices. Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by United States mail, addressed as follows or such other address as either Party from time to time shall designate by written notice to the other.

To Grantor: Executive Director
Redevelopment Agency
City of Del Rey Oaks
650 Canyon Del Rey Boulevard
Del Rey Oaks, CA 93940

To Grantee: District Director
California Department of Transportation
District 5
50 Higuera Street
San Luis Obispo, CA 93401-5415

11. Laws Currently in Effect. All references in this Agreement and Irrevocable Offer to Dedicate by Gift to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable).

12. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to all parts of the Corridor and supersedes all prior discussions, negotiations, understandings or agreements relating to any aspect of the Corridor, all of which are herein merged.

13. Attorney's Fees. Should proceedings be brought to enforce or interpret any of the terms of this instrument, the prevailing Party in any such proceedings shall be entitled to recover from the non-prevailing Party its reasonable costs, including reasonable attorney's and expert's fees.

14. Permission. Whenever permission, consent or approval is required pursuant to this Agreement, such permission shall be obtained in advance and in writing signed by the Party from whom permission is to be obtained. Whether permission should be granted or denied shall be determined based upon the purposes of this Agreement, and shall not be unreasonably withheld, unless the consent or permission is specified in the Agreement as being within the sole discretion of a Party.

15. Exhibits. The exhibits attached hereto are incorporated herein by this reference:

Exhibit A: The description of land sought by the Agency to be conveyed to FORA and then to the Agency from the United States of America.

Exhibit B: The legal description of the easement offered for dedication by the Agency.

Exhibit C: Memorandum of Agreement Regarding Endangered Species Act Enforcement of Development Restrictions on the Del Rey Oaks Portion of the Former Fort Ord,

16. Effective Date. This Agreement is effective as of the date of the conveyance of the land described in Exhibit A by FORA to the Agency.

17. Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties authorize each other to detach and combine, or cause to be detached and combined, original signature pages and consolidate them into a single identical original for the recordation of this Agreement and Irrevocable Offer to Dedicate by Gift in the official records.

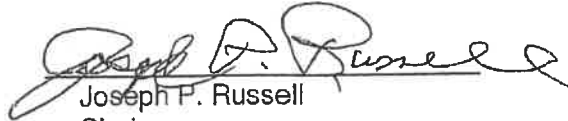
AGREED TO AND EXECUTED BY:

Dated:

9/13/05

GRANTOR:

REDEVELOPMENT AGENCY OF
THE CITY OF DEL REY OAKS



Joseph P. Russell
Chair

APPROVED AS TO FORM:

WELLINGTON LAW OFFICES

Dated:

9/12/05



Robert R. Wellington
City Attorney for the City of Del Rey Oaks

Dated:

9/9/05

GRANTEE:


STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION


R. Gregg Albright
District Director

Dated:

9/9/05

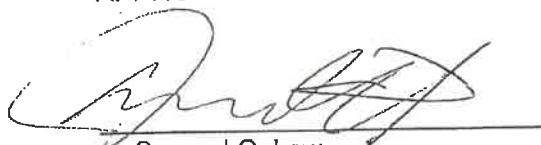
RECOMMENDED FOR APPROVAL:


Richard L. Krumholz
Deputy District Director
Planning and Local Program

Dated:

9/8/05

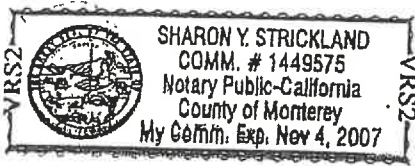
APPROVED AS TO FORM:


Samuel C. Law
Deputy Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Monterey
On 9-13-05 before me, Sharon Y. Strickland
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Joseph P. Russell
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sharon Y. Strickland
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement and Irrevocable Offer to
Deedate by letter
Document Date: September 13, 2005 Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Luis Obispo

} ss.

On 4 November 2005, before me, John T. Magorian, Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

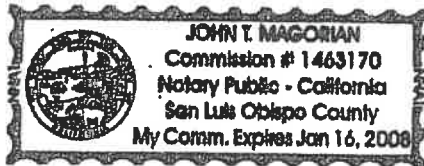
personally appeared R. Gregg Albright

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that (he) ~~she~~ ~~they~~ executed the same in (his) ~~her~~ ~~their~~ authorized capacity(ies), and, that by (his) ~~her~~ ~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

John T. Magorian

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

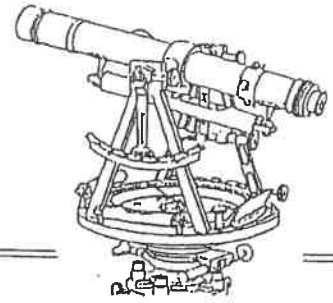
RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

H.D. Peters Co., Inc. and Associates

Engineering - Surveying - Planning

119 Central Avenue Salinas, California 93901

Tel. (831) 424-3961 Fax. (831) 424-2746



August 29, 2005

LEGAL DESCRIPTION

305.161 AND 18.532 ACRE PARCELS OF LAND
FOR ECONOMIC DEVELOPMENT CONVEYANCE
"DEL REY OAKS"

Parcels "A" and "B" as said parcels are shown and so designated upon map entitled "Record of Survey showing boundary of a 323.72 acre parcel of land for Economic Development Conveyance, "Del Rey Oaks" filed for record in Volume 28 of "Surveys" at Page 40, Records of Monterey County, California, said Parcels being more particularly described as follows:

PARCEL "A"

Beginning at the most northeasterly corner of said Parcel "A" being on the northeasterly line of a 200 foot wide transportation right-of-way as shown on said map, being also a westerly city limits line of Del Rey Oaks; thence run along said northeasterly line of transportation right-of-way and said westerly city limits line with the following (3) three courses and distances

- (1) Southerly along the arc of a non-tangent circular curve, the center of circle of which bears North $82^{\circ} 26' 08''$ East, 3310.00 feet distant, through a central angle of $39^{\circ} 08' 26''$, for an arc distance of 2261.17 feet; thence
- (2) South $46^{\circ} 42' 15''$ East, 1055.75 feet; thence
- (3) Southerly along the arc of a tangent circular curve, concave to the southwest, having a radius of 3060.00 feet, through a central angle of $24^{\circ} 44' 56''$, for an arc distance of 1321.77 feet; thence leave said northeasterly line of transportation right-of-way and continue along said westerly city limits line
- (4) South $21^{\circ} 57' 19''$ East, 1618.78 feet to the southeast corner of said Parcel "A", said corner being on the southerly line of a proposed Cal-Trans right-of-way as shown on said map; thence leave said westerly city limits line and run along the southerly boundary of said Parcel "A" and southerly line of proposed right-of-way with the following (2) courses and distances

LEGAL DESCRIPTION
305.161 AND 18.532 ACRE PARCELS OF LAND
FOR ECONOMIC DEVELOPMENT CONVEYANCE
"DEL REY OAKS"
Page 2

- (5) Westerly along the arc of a non-tangent circular curve, the center of circle of which bears South 10° 30' 54" West, 2518.61 feet distant, through a central angle of 24° 30' 21", for an arc distance of 1077.23 feet; thence
- (6) South 76° 00' 33" West, 279.77 feet to the southwest corner of said Parcel "A", said corner being on the northeasterly line of South Boundary Road, 60 feet wide as shown on said map; thence leave said southerly line of proposed right-of-way and run along the southwesterly boundary of said Parcel "A" and said northeasterly line of road with the following (6) six courses and distances
- (7) Northwestery along the arc of a non-tangent circular curve, the center of circle of which bears South 42° 45' 22" East, 2930.00 feet distant, through a central angle of 1° 04' 31", for an arc distance of 54.99 feet; thence
- (8) North 48° 19' 09" West, 1403.07 feet; thence
- (9) Northwestery along the arc of a tangent circular curve, concave to the northeast, having a radius of 3570.00 feet through a central angle of 6° 02' 20", for an arc distance of 376.27 feet; thence
- (10) North 42° 16' 49" West, 1710.56 feet; thence
- (11) Northwestery along the arc of a tangent circular curve, concave to the southwest, having a radius of 2430.00 feet; through a central angle of 8° 24' 15", for an arc distance of 356.43 feet; thence
- (12) North 50° 41' 04" West, 1835.50 feet; thence leave said northeasterly line of road
- (13) North 26° 00' 01" East, 293.99 feet; thence
- (14) North 45° 00' 00" West, 565.69 feet; thence
- (15) North 14° 52' 39" West, 90.78 feet; thence
- (16) South 84° 50' 03" West, 36.80 feet to the southeasterly line of an 85 foot wide road right-of-way as shown on said map; thence run along said southeasterly line of right-of-way

LEGAL DESCRIPTION
305.161 AND 18.532 ACRE PARCELS OF LAND
FOR ECONOMIC DEVELOPMENT
"DEL REY OAKS"

- (17) North 23° 14' 55" East, 843.97 feet to the northerly corner of said Parcel "A", being also a city limits line of Del Rey Oaks as shown on said map; thence run along the northeasterly boundary of said Parcel "A" and said city limits line
- (18) South 88° 47' 40" East, 2398.95 feet to the place of beginning.

Containing 305.161 acres of land, more or less.

PARCEL "B"

Beginning at the northwesterly terminus of course numbered (12) of the above described Parcel "A", being on the northeasterly line of South Boundary Road, 60 feet wide as shown on said Volume 28 of "Surveys" at Page 40; thence run along said line of road

- (1) South 50° 41' 04" East, 537.49 feet to a point labeled "A" on said map; thence run across said South Boundary Road
- (2) South 39° 18' 56" West, 60.00 feet to the True Point of Beginning, said point labeled "B" on said map lying on the southwesterly line of South Boundary Road; thence from said True Point of Beginning run along said line of road
- (3) South 50° 41' 04" East, 955.37 feet to the easterly corner of Parcel "B"; thence run along the boundaries of said Parcel "B" with the following (3) courses and distances
- (4) South 47° 26' 06" West, 913.35 feet; thence
- (5) North 50° 05' 20" West, 838.25 feet; thence
- (6) North 40° 04' 21" East, 895.56 feet to the True Point of Beginning

Containing 18.532 acres of land, more or less.

Prepared by





Virgil L. Williams, L.S. 3304

Exhibit B

PROPOSED CALTRANS RIGHT OF WAY PORTION PARCEL 1, VOL.27, "SURVEYS", PG. 54

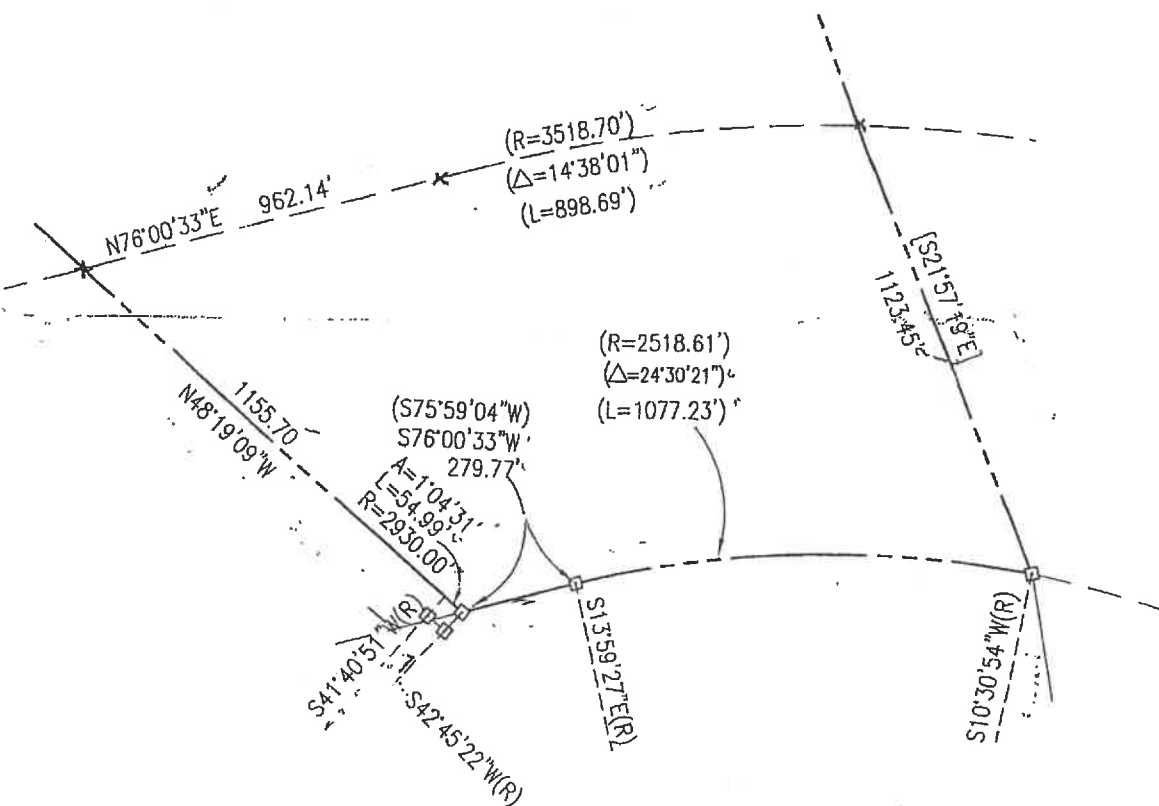


EXHIBIT "G"
Page 13 of 41



H. D. PETERS CO.
ENGINEERING - SURVEYING - LAND PLANNING
119 CENTRAL AVENUE SALINAS, CALIFORNIA 93902
PH (831) 424-3961

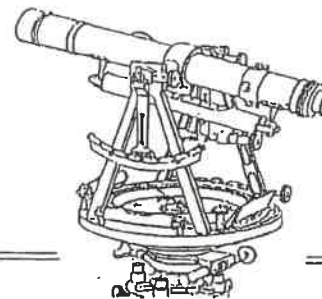
SCALE 1"=400'	DRAWN S.S.
DATE 8-2005	DESIGNED

H.D. Peters Co., Inc. and Associates

Engineering - Surveying - Planning

119 Central Avenue Salinas, California 93901

Tel. (831) 424-3961 Fax. (831) 424-2746



August 2005
Job No. 3350

Proposed CALTRANS Right of Way
Portion Parcel 1, Vol:27, "Surveys", Pg. 54

All that certain real property situate in the City of Del Rey Oaks, County of Monterey, State of California, described as follows:

A portion of Lot 1 of the Fort Ord Military Reservation as said Military Reservation is shown and so designated upon map filed for record in Volume 19 of "Surveys" at page 1, Records of Monterey County, California, said portion being a portion of "Parcel 1" as said Parcel is shown and so designated upon map filed for record in Volume 27 of "Surveys" at page 54, records of said County; said portion being more particularly described as follows:

Beginning at the most easterly corner of said Parcel 1, being also the northeasterly corner of Parcel C as said Parcel is shown and so designated upon map filed for record in Volume 23 of "surveys", at page 26, records of said County; thence run along the boundaries common to said Parcel 1 and Parcel C with the following two courses

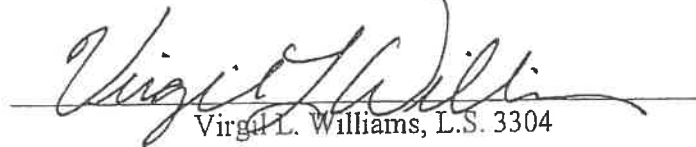
- (1) Westerly along the arc of a non-tangent circular curve, concave to the Southwest, the center of circle of which bears South $10^{\circ}30'54''$ West, 2518.61 feet distant, through a central angle of $24^{\circ}30'21''$ for an arc distance of 1077.23 feet; thence tangentially
- (2) South $76^{\circ}00'33''$ West, 279.77 feet to the northeasterly line of South Boundary Road, 60.00 feet wide; thence along said line of road with the following two courses
- (3) Northeasterly along the arc of a non-tangent circular curve, concave to the Southwest, the center of circle of which bears South $42^{\circ}45'22''$ West, 2930.00 feet distant, through a central angle of $01^{\circ}04'31''$, for an arc distance of 54.99 feet; thence tangentially
- (4) North $48^{\circ}19'09''$ West, 1155.70 feet; thence leave said line of road and run across said Parcel 1 with the following two courses
- (5) North $76^{\circ}00'33''$ East, 962.14 feet; thence
- (6) Northeasterly along the arc of a tangent circular curve, concave to the Southeast, having a radius of 3518.70 feet, through a central angle of $14^{\circ}38'01''$, for an arc distance of 898.69 feet to the

northeasterly boundary of said Parcel 1; thence along said boundary

(5) South 21°57'19" East, 1123.45 feet to the place of beginning.

Containing 36.84 acres of land, more or less.

Prepared by


Virgil L. Williams, L.S. 3304
License Expires June 30, 2008



RECORDING REQUESTED BY:

FORT ORD REUSE AUTHORITY

100 12th Street, Building 2880

Marina, CA 93933

ATTN: MICHAEL A. HOULEMARD, JR.

(Space Above This Line For Recorder's Use Only)

**MEMORANDUM OF AGREEMENT
REGARDING ENDANGERED SPECIES ACT ENFORCEMENT OF
DEVELOPMENT RESTRICTIONS ON THE DEL REY OAKS PORTIONS
OF THE FORMER FORT ORD, CALIFORNIA**

This Memorandum of Agreement Regarding Endangered Species Act Enforcement of Development Restrictions on the Del Rey Oaks Portion of the Former Fort Ord, California ("Agreement") is made and entered into among the **FORT ORD REUSE AUTHORITY ("FORA")**, **CITY OF DEL REY OAKS, CALIFORNIA ("City")**, **REDEVELOPMENT AGENCY OF THE CITY OF DEL REY OAKS ("Agency")**, and **FEDERAL DEVELOPMENT LLC ("Federal")** (hereinafter referred to collectively as the "Parties").

WITNESSETH THAT:

WHEREAS, FORA, created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, is a regional agency established under Government Code Section 67650 to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (hereinafter referred to as the "Army") to the governing local jurisdictions or their designee(s). FORA has been designated as the Local Redevelopment Authority for the former Fort Ord Military Installation located in Monterey, California ("Former Fort Ord"), by the Office of Economic Adjustment on behalf of the Secretary of Defense;

WHEREAS, FORA, will acquire portions of the Former Fort Ord from the United States of America, through the Secretary of the Army ("Army"), under the *Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort*

EXHIBIT C

EXHIBIT "G"
Page 16 of 41

ESA MOA – DEL REY OAKS PORTION OF THE FORMER FORT ORD

Ord Reuse Authority For the Sale of Portions of the Former Fort Ord, California, dated the 20th day of June 2000, and *Amendment No. 1*, dated the 23rd day of October 2001 (collectively "MOA"), which sets forth the specific terms and conditions of the sale of portions of the Former Fort Ord;

WHEREAS, pursuant to the MOA the Army intends to convey to FORA by quitclaim deed a portion of the Former Fort Ord known as Parcels E29a, E29b.1, E36, E31a, E31b, and E31c, totaling approximately 321 acres, more or less, together with improvements thereon, as more particularly described and depicted in Exhibit "A" ("Developer Property");

WHEREAS, upon transfer of the Developer Property from the Army, FORA intends to execute a quitclaim deed transferring the Developer Property to the Agency, the City or directly to Federal as the City's designee. If FORA transfers the Developer Property to the Agency or the City, the Agency or City then intends to transfer the Developer Property of Federal.

WHEREAS, the City, a political subdivision of the State of California, has jurisdiction over the Developer Property and the authority to approve and impose conditions on any development of the Developer Property, and the authority to enforce those conditions pursuant to its police powers;

WHEREAS, Federal is seeking an agreement with and approvals and related actions from the City to allow it to develop the Developer Property;

WHEREAS, closure, disposal and reuse of the Former Fort Ord requires consultation between the Army and the U.S. Fish and Wildlife Service ("Service") under Section 7 of the federal Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.*, because the Army's actions regarding closure, disposal and reuse of the Former Fort Ord potentially affect several species listed as threatened or endangered or proposed for listing under the ESA. As a result of prior Section 7 consultations, the Service issued a biological opinion on October 19, 1993, and subsequent biological and conference opinions on January 31, 1997; April 11, 1997; and March 30, 1999 which concluded the Army's actions are not likely to jeopardize the continued existence of any listed species or species proposed for listing under the ESA. A key component of the Army's proposed action was the development and implementation of a habitat management plan to minimize incidental take of listed species and their habitats and to mitigate impacts to vegetation and wildlife resources resulting from the Army's actions. In the 1993 biological opinion, the Service recommended that the Army consider all proposed and candidate species for federal listing and other special-status species in the habitat management plan;

WHEREAS, the Army developed an Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California, dated December 1994, as revised and amended by the *"Installation-Wide Multispecies Habitat Management Plan for Former*

ESA MOA – DEL REY OAKS PORTION OF THE FORMER FORT ORD

Fort Ord, California” dated April 1997 (“HMP”), to assure that disposal and reuse of Former Fort Ord is in compliance with the ESA;

WHEREAS, the Army developed the HMP with input from federal, state, and local agencies and organizations concerned with the natural resources and reuse of Former Fort Ord. The Service, the Bureau of Land Management (“BLM”), California Department of Fish and Game (“CDFG”), the California Department of Parks and Recreation (“State Parks”), the University of California, FORA and other members of the local Monterey Bay area community were all active participants in the development of the HMP.

WHEREAS, the HMP establishes land use categories and habitat management requirements for all lands on the Former Fort Ord. Developable lands and habitat reserve areas are defined along with habitat corridors and restricted development areas. Resource conservation and management requirements are described and responsible parties for each designated habitat area on the Former Fort Ord are identified.

WHEREAS, on August 4, 2004, the Service listed the California Tiger Salamander (“CTS”) as a threatened species under the ESA and, on August 10, 2004, proposed to designate as critical habitat portions of the Former Fort Ord. Pursuant to 50 C.F.R. 402.16(d) the Army was required to reinitiate consultation to insure that its actions with regard to the disposal and reuse of Former Fort Ord lands are not likely to jeopardize the continued existence of the CTS. At the conclusion of the reinitiated consultation the Service issued a biological opinion (“2004 CTS biological opinion”) that concludes that the Army’s proposed action will not result in jeopardy to the CTS. The Service also issued an incidental take statement (“CTS ITS”) allowing take of CTS in accordance with the terms and conditions of the CTS ITS. The CTS ITS contemplates actions by the Parties to convey, permit the development of, and develop the Developer Property, and will provide the Parties an exemption for the “take” prohibitions of the ESA if they comply with the requirements of the CTS ITS, including the execution, recordation and implementation of this Agreement.

WHEREAS, FORA along with other state and local agencies is developing a Habitat Conservation Plan (“HCP”) under Section 10(a)(1)(B) of the ESA. The HCP is intended to address conservation and development of Former Fort Ord lands transferred by the Army under the Former Fort Ord disposal and reuse process in a manner consistent with the HMP, including protection of the CTS. The HCP will, in the case of non-federal recipients of Former Fort Ord lands, support the issuance of incidental take permits from the Service under Section 10(a)(1)(B) of the ESA and from the CDFG under Section 2081 of the California Fish and Game Code in compliance with the California Endangered Species Act (“CESA”).

WHEREAS, the Service has identified several Development Restrictions (“Restrictions”) attached hereto as Exhibit “B” and incorporated herein by this reference that must be incorporated into any future development of the Developer Property to ensure that such development is carried out in a manner consistent with the HMP, CTS

ESA MOA – DEL REY OAKS PORTION OF THE FORMER FORT ORD

ITS, and the future HCP, and in accordance with the ESA. The Restrictions are intended to incorporate the terms and conditions of the HMP and CTS ITS and increase consistency with the future HCP.

WHEREAS, the Parties enter into this Agreement to ensure that the Restrictions are fully implemented as part of any future development of the Developer Property and requested the Army to submit the terms and conditions of this Agreement to the Service as part of the reinitiated consultation to demonstrate the Parties' commitment to condition, enforce and implement development of the Developer Property in a manner consistent with the HMP, the CTS ITS, and future HCP and in compliance with the ESA, and to provide the Parties assurance that their actions in accordance with the Restrictions will be exempt from the "take" prohibitions of the ESA.

WHEREAS, the Parties acknowledge the unique circumstances surrounding the Army's disposal of the Developer Property and, in particular, the need for expeditious transfer of the Developer Property to enable the City to meet its commitments to early redevelopment of Developer Property in advance of completion of the Former Fort Ord HCP and issuance of incidental take permits to one or more of the Parties based thereon. The Parties further acknowledge the continuing authority and commitment of the United States to enforce the HMP, as refined by the Restrictions, with regard to the Developer Property, including the reservation of a right of reentry to ensure compliance. The Parties acknowledge that, as provided in the HMP, future disposals of land by the Army at the Former Fort Ord, including any future Section 7 consultations with the Army on such land disposals, will not include any authorization under the ESA of take of listed species incidental to post disposal reuse of the lands unless such authorization occurs through issuance of incidental take permits associated with an approved Former Fort Ord HCP or other approved HCP or through post disposal individual Section 7 consultations where an independent federal nexus is present.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Parties agree as follows:

I. OBLIGATIONS OF THE PARTIES

A. FORA

In order to render FORA exempt under the CTS ITS from the prohibitions against "take" of CTS under the ESA resulting from FORA's ownership and transfer of the Developer Property, FORA must 1) incorporate the Restrictions identified in Exhibit "C" in any deed document conveying an interest in the Developer Property to the Agency, the City, Federal, or any third party; 2) record this Agreement, together with all referenced exhibits, in the Office of the County Recorder, County of Monterey within (10) days of FORA's receipt of a fully executed original and prior to any transfer of the Developer Property from FORA and; 3) fully implement each of the Restrictions, in any, assigned to it under this Agreement and/or under a future approved HCP ("HCP Requirements") applicable to the Developer Property.

EXHIBIT "G"
Page 19 of 41

ESA MOA – DEL REY OAKS PORTION OF THE FORMER FORT ORD

B. City

In order to render the City exempt under the CTS ITS for the prohibitions against “take” of CTS under the ESA resulting from approval of development activities on the Developer Property, the City must include the Restrictions identified in Exhibit “C” as enforceable conditions of development in any development permit, agreement or other Development approval issued by the City to Federal, its successors or assigns, or to any third party (hereafter collectively “Del Rey Oaks Developer”) for development of the Developer Property. The City shall provide notice in any such development approval that upon approval by the Service of an HCP covering the Developer Property, the HCP Requirements, to the extent feasible and appropriate, as determined by the City and the Service in consultation with the Del Rey Oaks Developer and the authorization for “take” provided by associated Incidental Take Permits (“ITP”), shall apply in lieu of the Restrictions and the CTS ITS. The City shall, in the exercise of its police power, fully enforce the Restrictions and/or HCP Requirements, as applicable, against the Del Rey Oaks Developer, its successors and assigns and fully implement each of the Restrictions, if any, assigned to it under this Agreement and/or HCP Requirements with regard to the Developer Property.

C. Federal

In order to render Federal exempt under the CTS ITS from the prohibitions against “take” of CTS under the ESA arising from its development of the Developer Property, should any interest in the Developer Property be transferred to Federal, Federal, its successors and assigns, must fully implement applicable Restrictions and/or HCP Requirements in connection with any future development of the Developer Property.

D. Agency

In order to render the Agency exempt under the CTS ITS from the prohibitions against “take” of CTS under the ESA resulting from the Agency’s ownership and transfer of the Developer property, the Agency must 1) incorporate the Restrictions identified in Exhibit “C” in any deed or other document conveying an interest in the Developer Property to the City, Federal, or any third party and; 2) fully implement each of the Restrictions, if any, assigned to it under this Agreement and/or under a future approved HCP (“HCP Requirements”) applicable to the Developer Property.

II. TAKE AUTHORIZAION

A. The Parties acknowledge that the exemption from the prohibition against “take” under Section 9 of the ESA provided pursuant to Section 7(o) of the ESA and 50 C.F.R. 402.14(i) through the CTS ITS accompanying the 2004 CTS biological opinion shall become effective as to the Parties upon recordation of this Agreement in the Office of the Recorder, County of Monterey, following its execution by all of the Parties.

ESA MOA – DEL REY OAKS PORTION OF THE FORMER FORT ORD

B. The Parties further acknowledge that the exemption from the prohibition against “take” under Section 9 of the ESA provided to the Parties through the CTS ITS accompanying the 2004 CTS biological opinion shall remain in effect so long as the Restrictions are fully implemented as required by 50 C.F.R. 402.14(i)(5) and as set forth in this Agreement. The Parties further acknowledge that any future amendment of this Agreement to alter the Restrictions without the prior written consent of the Service shall automatically terminate the exemption from take provided through the CTS ITS accompanying the 2004 CTS biological opinion.

C. The Parties acknowledge and agree that upon approval of the HCP and issuance of associated ITPs to FORA and the City, the HCP Requirements shall, to the extent provided in Section I.B of this Agreement, apply to the Parties with regard to the Developer Property in lieu of the take exemption provided in the CTS ITS.

D. In addition to any liability under Section 9 of the ESA, the failure by any Party to comply with its specific obligations regarding the Restrictions, shall subject such Party to civil and criminal penalties under the Section 11 of the ESA to the extent such failure constitutes a violation of the ESA.

III. FUTURE PARTIES AND SUCCESSORS AND ASSIGNS

A. Should the Developer Property be transferred by FORA, the City or the Agency to a third party other than Federal, the remaining Parties shall amend this Agreement to substitute such third party in place of Federal prior to such transfer of any interest in the Developer Property to such third party. FORA shall record the amended Agreement in the Office of the Recorder, County of Monterey, within ten (10) days of FORA’s receipt of a fully executed original amended Agreement. The exemption from the prohibition against “take” provided to the Parties through the CTS ITS accompanying the 2004 CTS biological opinion shall not become effective as to any such third party until and unless this Agreement is amended to include such third party as a signatory and the amended Agreement is so recorded. The failure of the Parties to amend the Agreement to include any such third party and to execute and record the amended Agreement in accordance with this paragraph shall have the effect of automatically terminating the exemption from the prohibitions against take provided to each Party under the CTS ITS. FORA shall provide written notice to the Service of any amendment to this Agreement under this paragraph, along with a copy of the amended Agreement, within 30 days of its recordation.

B. This Agreement and each of its covenants and conditions shall be binding on, and inure to the benefit of the Parties and any of their respective successors and assigns involved in the development of the Developer Property, or any portion thereof, provided that the exemption from the prohibitions against “take” of CTS provided through the CTS ITS accompanying the 2004 CTS biological opinion, and/or ITPs associated with the HCP, shall remain effective as to the parties and their successors or assigns subject to their compliance with the Restrictions and/or HCP requirements as

ESA MOA – DEL REY OAKS PORTION OF THE FORMER FORT ORD

provided in Section I.B of this Agreement and their compliance with the procedural requirements of Section III.A of this Agreement.

IV. NOTICE

Formal notices, demands, and communications among the Parties shall not be deemed given unless sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt or facsimile, to the principal office of the Parties as follows:

Fort Ord Reuse Authority:

ATTN: Michael A. Houlemard, Jr.,
Executive Officer
100 12th Street, Bldg. 2880
Marina, CA 93933

City of Del Rey Oaks, California:

ATTN: City Manager
650 Canyon Del Rey
Del Rey Oaks, CA 93940

Redevelopment Agency of the City of Del Rey Oaks

ATTN: Executive Director
650 Canyon Del Rey
Del Rey Oaks, California 93940

Federal Development LLC

ATTN: John Infantino
1300 Pennsylvania Ave. NW, Suite 700
Washington, D.C. 20004

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt shall be deemed to have occurred on the date marked on written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

In addition, a copy of all notices under this Agreement shall be contemporaneously provided to the Service at the following address:

US Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

ESA MOA – DEL REY OAKS PORTION OF THE FORMER FORT ORD

VIII. LIST OF EXHIBITS

The following listed Exhibits are made a part of this Agreement:

- Exhibit A: Description of Developer Property
- Exhibit B: Restrictions on Developer Property

[Signatures pages follow]

EXHIBIT "G"
Page 23 of 41

ESA MOA - DEL REY OAKS PORTION OF THE FORMER FORT ORD

In Testimony Whereof witness the signature of Parties this 2nd day of August, 2004 and hereby accepts and approves this Agreement for itself, its successors and assigns, and agrees to all the conditions and terms contained therein.

FORT ORD REUSE AUTHORITY

BY: 

MICHAEL A. HOULEMARD, JR.
Executive Officer

CITY OF DEL REY OAKS

BY: 

**REDEVELOPMENT AGENCY OF THE
CITY OF DEL REY OAKS**

BY: 

FEDERAL DEVELOPMENT LLC

BY: 

ESA MOA - DEL REY OAKS PORTION OF THE FORMER FORT ORD

In Testimony Whereof witness the signature of Parties this ____ day of _____, 2004 and hereby accepts and approves this Agreement for itself, its successors and assigns, and agrees to all the conditions and terms contained therein.

FORT ORD REUSE AUTHORITY

BY: _____
MICHAEL A. HOULEMARD, JR.
Executive Officer

CITY OF DEL REY OAKS

BY: _____

**REDEVELOPMENT AGENCY OF THE
CITY OF DEL REY OAKS**

BY: _____

District of Columbia

Subscribed and sworn to before me this

25 September 2004
day of 2004
P. Marvette Moore
Notary Public, D.C.
My Commission Expires 09/30/2008

FEDERAL DEVELOPMENT LLC

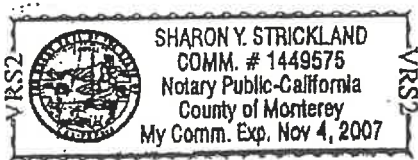
BY: _____

P. MARVETTE MOORE
NOTARY PUBLIC
DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES SEPTEMBER 30, 2008

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Monterey
On August 2, 2005 before me, Sharon Y. Strickland, Notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Joseph P. Russell
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sharon Y. Strickland
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Agreement - Endangered Species

Document Date: August 2, 2005 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

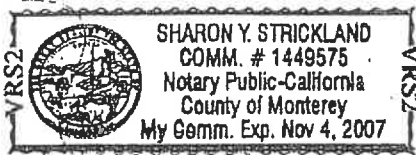
RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of Monterey
 On August 2, 2005 before me, Sharon Y Strickland, Notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Michael Houliard
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sharon Y. Strickland
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Agreement Endangered Species

Document Date: August 2, 2005 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

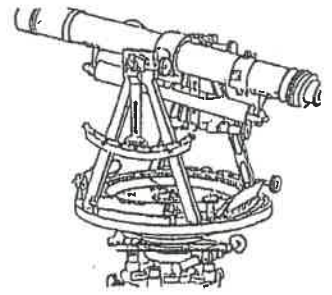
EXHIBIT A

H.D. Peters Co., Inc. and Associates

Engineering - Surveying - Planning

119 Central Avenue Salinas, California 93901

Tel. (831) 424-3961 Fax. (831) 424-2746



August 29, 2005

LEGAL DESCRIPTION

305.161 AND 18.532 ACRE PARCELS OF LAND
FOR ECONOMIC DEVELOPMENT CONVEYANCE
"DEL REY OAKS"

Parcels "A" and "B" as said parcels are shown and so designated upon map entitled "Record of Survey showing boundary of a 323.72 acre parcel of land for Economic Development Conveyance, "Del Rey Oaks" filed for record in Volume 28 of "Surveys" at Page 40, Records of Monterey County, California, said Parcels being more particularly described as follows:

PARCEL "A"

Beginning at the most northeasterly corner of said Parcel "A" being on the northeasterly line of a 200 foot wide transportation right-of-way as shown on said map, being also a westerly city limits line of Del Rey Oaks; thence run along said northeasterly line of transportation right-of-way and said westerly city limits line with the following (3) three courses and distances

(1) Southerly along the arc of a non-tangent circular curve, the center of circle of which bears North 82° 26' 08" East, 3310.00 feet distant, through a central angle of 39° 08' 26", for an arc distance of 2261.17 feet; thence

(2) South 46° 42' 15" East, 1055.75 feet; thence

(3) Southerly along the arc of a tangent circular curve, concave to the southwest, having a radius of 3060.00 feet, through a central angle of 24° 44' 56", for an arc distance of 1321.77 feet; thence leave said northeasterly line of transportation right-of-way and continue along said westerly city limits line

(4) South 21E 57' 19" East, 1618.78 feet to the southeast corner of said Parcel "A", said corner being on the southerly line of a proposed Cal-Trans right-of-way as shown on said map; thence leave said westerly city limits line and run along the southerly boundary of said Parcel "A" and southerly line of proposed right-of-way with the following (2) courses and distances

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(5) Westerly along the arc of a non-tangent circular curve, the center of circle of which bears South 10E 30' 54" West, 2518.61 feet distant, through a central angle of 24E 30' 21", for an arc distance of 1077.23 feet; thence

(6) South 76E 00' 33" West, 279.77 feet to the southwest corner of said Parcel "A", said corner being on the northeasterly line of South Boundary Road, 60 feet wide as shown on said map; thence leave said southerly line of proposed right-of-way and run along the southwesterly boundary of said Parcel "A" and said northeasterly line of road with the following (6) six courses and distances

(7) Northwesterly along the arc of a non-tangent circular curve, the center of circle of which bears South 42E 45' 22" East, 2930.00 feet distant, through a central angle of 1E 04' 31", for an arc distance of 54.99 feet; thence

(8) North 48E 19' 09" West, 1403.07 feet; thence

(9) Northwesterly along the arc of a tangent circular curve, concave to the northeast, having a radius of 3570.00 feet through a central angle of 6E 02' 20", for an arc distance of 376.27 feet; thence

(10) North 42E 16' 49" West, 1710.56 feet; thence

(11) Northwesterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2430.00 feet; through a central angle of 8E 24' 15", for an arc distance of 356.43 feet; thence

(12) North 50E 41' 04" West, 1835.50 feet; thence leave said northeasterly line of road

(13) North 26E 00' 01" East, 293.99 feet; thence

(14) North 45E 00' 00" West, 565.69 feet; thence

(15) North 14E 52' 39" West, 90.78 feet; thence

(16) South 84E 50' 03" West, 36.80 feet to the southeasterly line of an 85 foot wide road right-of-way as shown on said map; thence run along said southeasterly line of right-of-way

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(17) North 23E 14' 55" East, 843.97 feet to the northerly corner of said Parcel "A", being also a city limits line of Del Rey Oaks as shown on said map; thence run along the northeasterly boundary of said Parcel "A" and said city limits line

(18) South 88E 47' 40" East, 2398.95 feet to the place of beginning.

Containing 305.161 acres of land, more or less.

PARCEL "B"

Beginning at the northwesterly terminus of course numbered (12) of the above described Parcel "A", being on the northeasterly line of South Boundary Road, 60 feet wide as shown on said Volume 28 of "Surveys" at Page 40; thence run along said line of road

(1) South 50E 41' 04" East, 537.49 feet to a point labeled "A" on said map; thence run across said South Boundary Road

(2) South 39E 18' 56" West, 60.00 feet to the True Point of Beginning, said point labeled "B" on said map lying on the southwesterly line of South

Boundary Road; thence from said True Point of Beginning run along said line of road

(3) South 50E 41' 04" East, 955.37 feet to the easterly corner of Parcel "B"; thence run along the boundaries of said Parcel "B" with the following (3) courses and distances

(4) South 47E 26' 06" West, 913.35 feet; thence

(5) North 50E 05' 20" West, 838.25 feet; thence

(6) North 40E 04' 21" East, 895.56 feet to the True Point of Beginning

Containing 18.532 acres of land, more or less.

Prepared by

Virgil L. Williams, L.S. 3304

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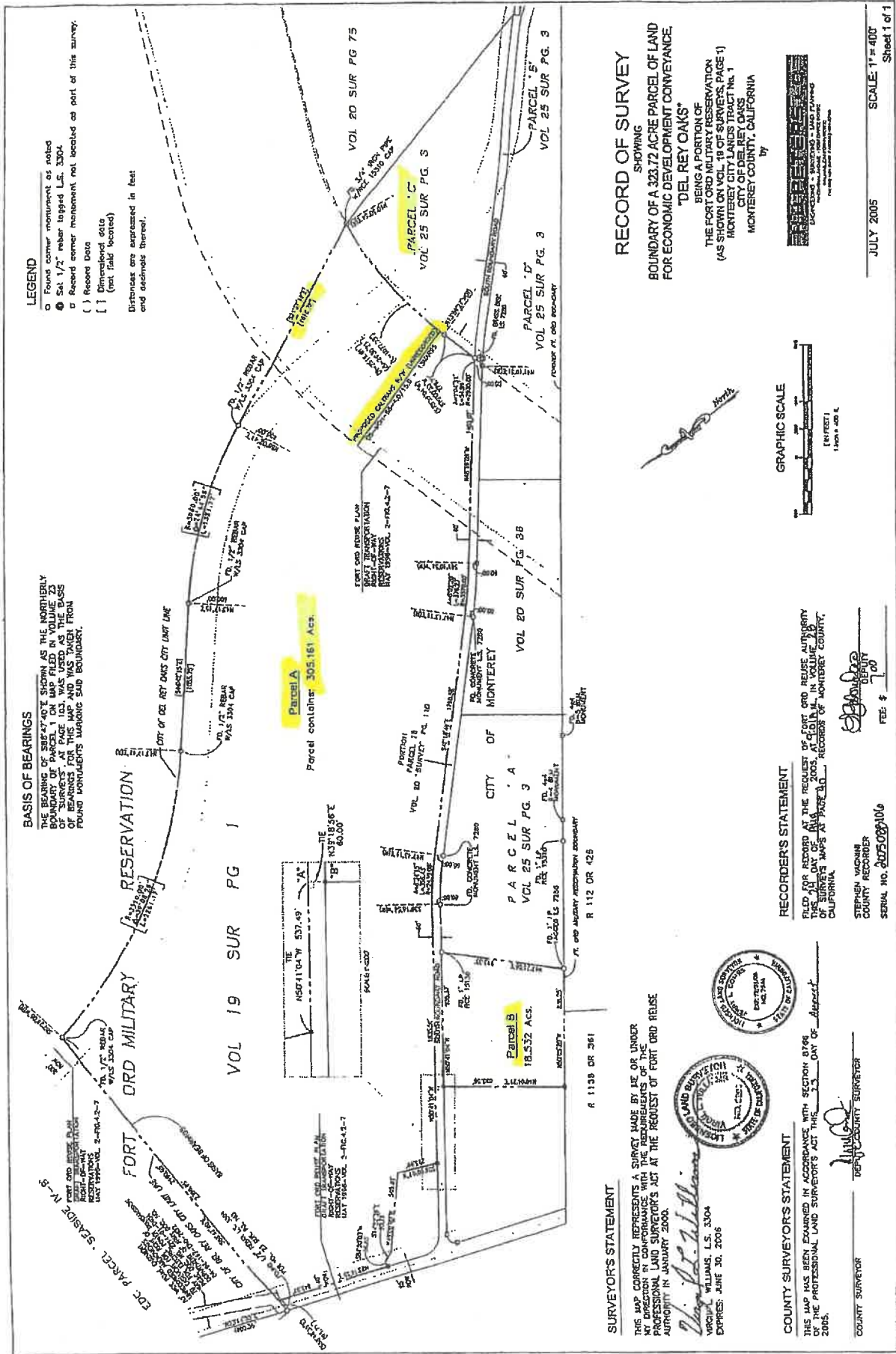


EXHIBIT B

Del Rey Oaks Development Restrictions:

Parcels E29a, E29b.1, E36, E31a, E31b, and E31c ("Developer Property")

The restrictions contained in this Exhibit B ("Restrictions") to the Memorandum of Agreement Regarding Endangered Species Act Enforcement of Development Restrictions on the Del Rey Oaks Portions of the Former Fort Ord ("Agreement") shall be fully funded, implemented, enforced, and managed as appropriate, by the party or parties designated as the Responsible Party ("RP") for the specific requirements herein.

A. DEFINITIONS

The following definitions apply to this Exhibit B:

1. **Borderland.** The parcels within the Developer Property, which border the Conserved Habitat Areas on the former Fort Ord (as delineated in Attachment 1 of this Exhibit B.)
2. **Conserved Habitat Areas.** The portion of the former Fort Ord designated for the conservation of Covered Species and their habitat as delineated in Attachment 1 to this Exhibit B.
3. **Natural Area Expansion.** The portion of the Conserved Habitat Areas known as Parcel L6 as delineated in Attachment 1 to this Exhibit B.
4. **Project Site.** The portion of the Developer Property on which project development activities are being conducted by the Developer, including surveying, grading, excavation, and construction.
5. **Service-Approved Biologist.** A person approved by the U.S. Fish and Wildlife Service ("Service") under a biological opinion covering activities on the Developer Property, or other written approval document, to perform the activities as required in this Exhibit B. To identify a Service-Approved Biologist, the Developer shall submit, to the Service, the credentials of the biologist who they wish to conduct the work. These should be provided for the Service's review and written approval at least 30 days prior to the planned onset of any such activities.
6. **Covered Species.** Those species addressed in the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California, dated December 1994, as revised and amended by the "*Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California*" dated April 1997 ("HMP").

B. GENERAL PROJECT DEVELOPMENT REQUIREMENTS

1. **Site Assessment (RP: Del Rey Oaks Developer as defined in the Agreement and hereinafter referred to as "Developer").**

At least 1.5 years prior to proposed grading of a project site on any portion of the Developer Property, the Developer shall have a qualified biologist conduct a site assessment ("Site Assessment") for California tiger salamanders (*Ambystoma californiense*) on the project site. The Site Assessment shall include, at a minimum, the information in the Service's most current site assessment guidance for the California tiger salamander (currently, the Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003) and a field evaluation of potential breeding habitat of the California tiger salamander on the former Fort Ord that is on and within 1 km of the project site. After completion of the Site Assessment, the Developer shall submit a report of its Site Assessment to the Service. Following review of the report, the Service shall direct the Developer on whether a salvage plan shall be developed and implemented to minimize take of California tiger salamanders.

2. Salvage Program (RP: Developer).

If after reviewing the Site Assessment report submitted by the Developer, the Service determines that a salvage plan is required, the Developer shall have a Service-Approved Biologist develop, and shall implement, a plan to salvage adult and juvenile California tiger salamanders from Project Sites via drift fence and pitfall trap captures prior to grading. The purpose of the capture shall be to both minimize mortality of adult California tiger salamanders on Project Sites and to provide information on the level of upland habitat use in the area to promote more effective conservation of the species in adjacent Conserved Habitat Areas.

The salvage plan shall be approved in writing by the Service and shall include at least the following: (1) salvaging shall be via drift fence and pitfall trap captures along a sufficient amount of a Project Site boundary to intercept the majority of the adult population migrating to or from known and potential breeding ponds in the year the captures take place; (2) drift fence installation shall be timed to capture and repel individuals migrating to and from breeding areas; (3) identification of appropriate areas where captured California tiger salamanders shall be released.

Only a Service-Approved Biologist may capture and handle California tiger salamanders. Before project activities begin, a Service-Approved Biologist shall identify appropriate areas to receive relocated California tiger salamanders. These areas must be outside the Developer Property boundaries in a designated Conserved Habitat Area, in proximity to the capture site, and support suitable vegetation for the California tiger salamander. The Service-Approved Biologist must maintain detailed records of any California tiger salamanders that are moved (e.g., size, coloration, any distinguishing features, photographs [digital preferred]) to assist him or her in determining whether translocated animals are returning to the original point of capture.

3. Water Features (RP: Developer). Projects on the Developer Property shall be designed so that any storm water detention basins or other water features created on the property do not attract breeding California tiger salamanders. A Service-approved strategy shall be developed and implemented to ensure that water features do not become a source for nonnative species, such as bullfrogs, which could move into nearby Conserved Habitat Areas.

4. Construction Personnel Training (RP: Developer). Before grading or construction work begins on a Project Site, a Service-Approved Biologist shall conduct a training session for all construction personnel who may be working on the Project Site. At a minimum, the training shall include a description of the California tiger salamander and its habitat, the specific measures that are being implemented to conserve it, and the boundaries of the project site.

5. Demarcation of Project Site Boundary (RP: Developer). Project Site boundaries shall be clearly demarcated by construction fencing or other materials to ensure that grading and the staging of equipment or supplies do not exceed the Project Site boundaries.

6. Trash and Pets (RP: Developer). During project construction activities, all trash that may attract predators shall be properly contained and removed from the work site. Pets shall not be permitted at the Project Site.

7. Discovery During Construction (RP: Developer). During project construction activities, any California tiger salamanders that are discovered shall be recorded and measured by a Service-Approved Biologist. If alive, the California tiger salamander(s) shall be relocated to the appropriate pre-determined area outside the Developer Property boundaries.

8. Reporting (RP: Developer). The Developer shall report the results of its salvage operations (e.g., number, size, condition, location, and dates of capture and release of individual California tiger salamanders; problems encountered during capture, handling, or release) to the Service upon completion of each salvage operation conducted on a Project Site. Developer shall report on Developer's compliance with these Restrictions within 90 days of the completion of all planned development on the Developer Property.

C. BORDERLAND MANAGEMENT

The designated RP(s), as set forth below, shall be responsible for funding and implementation of all long-term Borderland management requirements. Long-term Borderland management addresses construction and management of development to minimize impacts of Borderland development on adjacent Conserved Habitat Areas. Long-term management requirements for Borderland parcels are described below. Wherever Developer is referred to in this Section C, it shall include its successors and assigns, Community Service Districts, Homeowners Associations, and other responsible entities, created to carry out Developer responsibilities in this Section C.

1. Borderland Management Plan (RP: Fort Ord Reuse Authority ("FORA")).

OBJECTIVE: To provide a greater level of detail about environmental conditions, project impacts, and site-specific management actions.

FORA shall develop a Borderland Management Plan, which shall include the following:

- a. Specific Action: Describe existing environmental conditions within the Borderland, including habitat types, hydrological resources, topography, and fuel loads.
- b. Specific Action: Describe procedures for controlling non-native invasive plants and exotic animals within the Borderland.
- c. Specific Action: Describe long-term development plans for the Borderland.
- d. Specific Action: Describe how firewise planning will be incorporated into development plans for the Borderland and encouraged within Borderland management activities.
- e. Specific Action: Describe how development plans will incorporate the long-term management activities discussed in Section C.2 of these Restriction consistent with the objectives and requirements of these Restrictions.

2. Long Term Management Activities (RP: as designated).

a. Access Control.

OBJECTIVE: To direct public access from the Borderland to Conserved Habitat Areas in a manner that promotes the enjoyment, appreciation, and conservation of the species and ecosystems of former Fort Ord.

- i. Specific Action: Coordinate with the adjacent Conserved Habitat Area manager to identify levels and locations of public and other access from the Borderland into Conserved Habitat Areas. **RP: Developer**
- ii. Specific Action: Except for roads that are managed for public access, secure any points of entry that could be used by motorized vehicles from the Borderland into Conserved Habitat Areas with either a gate or a vehicle barrier. **RP: Developer**
- iii. Specific Action: Where fencing is utilized along the perimeter of a Conserved Habitat Area, gates shall be installed at appropriate points in the barrier between the Conserved Habitat Area and the Borderland to allow for emergency access. The managing agency, the Developer, and other appropriate agencies shall be provided keys to the gates. **RP: Developer**
- iv. Specific Action: Trails extending from the boundary of the Borderland into the Conserved Habitat Areas that are officially closed to public use, as determined by the Service and/or the California Department of Fish & Game ("CDFG"), shall be made inaccessible through the use of "Trail Closed" signs, brush piles, or fencing at appropriate points along the boundary of the Borderland. **RP: Developer**

v. Specific Action: Maintain regular security patrols to help control pedestrian, pet, bicycle, and motorized vehicle trespass from the Borderland onto Conserved Habitat Areas. **RP: FORA**

vi. Where pedestrian access is permitted from the Borderland onto the Conserved Habitat Area, as determined by the RP in cooperation with the Service and the CDFG, install interpretive signs/displays that describe the importance of the Conserved Habitat Area and methods for maintaining values such as trash removal, limiting ground disturbance, restraining pets, discouraging capture or harassment of wildlife, and prohibiting the collection of Covered Species. **RP: Developer**

b. Non-native Species Control.

All invasive non-native plant species shall be managed within the Borderlands to prevent their spread into the adjacent Conserved Habitat Area.

OBJECTIVE: Control populations of non-native or feral animals and plants to prevent the spread of these populations into the adjacent Conserved Habitat Area.

i. Specific Action: Prohibit establishment of feeding stations for feral animals on the Borderland. **RP: Developer**

ii. Specific Action: Control invasive plants such as ice plant, scotch broom, and pampas grass that may be present on the Borderland to prevent their spread into the adjacent Conserved Habitat Areas. **RP: Developer**

c. Fuelbreaks.

Fuelbreaks are required in the Borderland to separate the Conserved Habitat Area from development. Potential fuelbreaks include greenbelts, fuel reduction zones, fire roads, paved roads, tilled firebreaks, and parking lots.

OBJECTIVE: Construct and maintain fuelbreaks to provide a defensible space between Conserved Habitat Areas habitat areas and structures within development parcels.

i. Specific Action: Design fuelbreaks to: 1) stop fire movement across the Borderland/Conserved Habitat Areas boundary, 2) provide adequate access for fire suppression and fire prevention equipment and personnel to conduct controlled burns, and 3) provide adequate access for fire suppression and fire prevention equipment and personnel to fight wildfires. The RP is responsible for defining an adequate fuelbreak width by incorporating, in the design stage, a process (e.g. working with fire-wise consultants, and/or informed local fire departments, and reserve managers) that considers topography, surrounding vegetation (fuels), type of development and configuration of the applicable

Project Site. Fuelbreak width is to be designed considering all of the above factors. **RP: Developer**

ii. Specific Action: All fuelbreaks shall be at the Borderland/Conserved Habitat Areas boundary, not necessarily at the parcel boundary, and shall be installed within the Borderland, not within the Conserved Habitat Area. Fuelbreaks on adjacent parcels shall be contiguous. **RP: Developer**

iii. Specific Action: Maintain fuelbreaks on the Borderland regularly, to ensure they continue to provide access for the proper management and utilization of prescribed fire and control of wildfire. In the case of an emergency the managing agency, Developer, and any other appropriate agency should have access to adjacent Conserved Habitat Areas and should, therefore, possess gate keys required to obtain access as stated in the section on Access Control. **RP: Developer and FORA**

iv. Specific Action: Project development activities on a Project Site boundary shall be restricted within 200 feet of the Borderland/Conserved Habitat Area boundary until the provisions of defensible space and fuelbreak access are ensured through a plan prepared in consultation with fire wise consultants, and/or informed local fire departments, and reserve managers for the Project Site. **RP: Developer**

d. Storm Water Control and Groundwater Recharge.

The conversion of the Borderlands from open space to urban and other uses would alter site runoff peaks and duration. This could reduce the volume of groundwater infiltration by increasing the area of impervious surfaces and causing runoff to move across areas suitable for infiltration at a faster rate, which could interfere with groundwater recharge, as well as lead to siltation of drainages and erosion.

OBJECTIVE: Protect the Conserved Habitat Area from hydrologic modifications and erosion problems resulting from altered stormwater runoff caused by development on the Borderland.

i. Specific Action: Implement a stormwater drainage plan ("Drainage Plan") for development adjacent to Conserved Habitat Areas. The Drainage Plan shall describe 1) how storm water will be captured and directed off Project Sites, 2) what measures will be employed to prevent degradation and siltation of ephemeral drainages from Borderland run-off, 3) what specific erosion control measures will be implemented, and 4) what measures will be taken to protect the Conserved Habitat Areas. All Borderland development must comply with the Drainage Plan as well as employ Best Management Practices during construction. **RP: Developer**

- ii. Specific Action: Take all measures to ensure that on-site drainage systems are designed to capture and filter out urban pollution, to the extent feasible. **RP: Developer**

OBJECTIVE: Protect the Conserved Habitat Area from hydrologic modifications resulting from interference with groundwater recharge.

- iii. Prior to beginning project development activities on a Project Site within the Borderland, demonstrate that all reasonable measures will be taken to ensure that runoff is minimized and infiltration maximized in groundwater recharge areas on the Project Site. **RP: Developer**

e. Firewise Planning.

OBJECTIVE: To prevent the spread of fire across the Borderland/Conserved Habitat Area boundary by applying principles of firewise planning in the design, construction, and maintenance of the Borderland.

- i. Specific Action: The Developer shall illustrate to the City how firewise planning principles are incorporated in the project design for development projects in the Borderland. **RP: Developer**
- ii. Specific Action: The Developer shall develop and implement an educational program to encourage ongoing maintenance and construction, such as landscaping, fencing, outbuildings, and housing additions, be done in a firewise manner. **RP: Developer**

f. Facilities Planning.

OBJECTIVE: To minimize indirect effects on the Conserved Habitat Area resulting from the placement or operation of facilities within the Borderland.

- i. Specific Action: To the extent feasible, all artificial night lighting within the Borderland shall be directed away from the Conserved Habitat Area. **RP: Developer**
- ii. Specific Action: Construct a low wall or other suitable barrier to migration along the Borderland/Conserved Habitat Area boundary where habitat in the Borderland will no longer exist and where this interface comes within 0.7 km of a known California tiger salamander breeding pool, unless California tiger salamander absence has been demonstrated using the survey protocol approved by the Service or the Service determines this barrier is unlikely to substantially minimize take of California tiger salamanders. **RP: Developer**

g. Facilities Maintenance.

OBJECTIVE: Maintain facilities within the Borderland/Conserved Habitat Area boundary to prevent degradation of habitat in the Conserved Habitat Area.

i. Specific Action: Install signs at the Borderland/Conserved Habitat Area boundary that prohibit the dumping of garbage and establish patrols to periodically remove garbage dumped into the Conserved Habitat Area from the Developer Property. **RP: Developer**

h. Construction Activities.

OBJECTIVE: To minimize direct and indirect effects of construction activities on vegetation and animals in the Conserved Habitat Area.

For construction activities on the Borderland, the designated RP shall comply with the following requirements in addition to Section B of these Restrictions.

i. Specific Action: Prepare and implement a hazardous substance control plan for all construction activities on the Borderland involving the handling, storing, transport, or disposal of hazardous waste materials. **RP: Developer**

ii. Specific Action: Determine the potential for construction projects within the Borderland to exceed the 82-pound inhalable particulate threshold established by the Monterey Bay Unified Air Pollution Control District (MBUAPCD 1995). A general rule of thumb to determine if a project may have a significant construction related impact is to determine if the project would disturb 2.2 acres of land on or adjacent to the Project Site per day through grading and/or excavation. Projects on the Borderland with the potential to exceed this threshold shall implement measures to substantially reduce the amount of airborne dust or particulate matter. **RP: Developer**

iii. Specific Action: Prepare a Storm Water Pollution Prevention Plan ("SWPPP") that describes the Best Management Practices to be implemented and monitored during construction on the Borderland. **RP: Developer**

i. Drainage Controls on Parcels 31a-c for Protection of Natural Area Expansion.

In addition to the requirements of Section C.2 for all Borderlands, the following shall apply to Borderland Parcels 31a-c:

OBJECTIVE: To maintain the quality, quantity, and seasonal pattern of water drainage from Borderland Parcels E31a-c to the adjacent Natural Area Expansion to avoid adversely affecting Covered Species or their habitat in the Natural Area Expansion or in drainages beyond the Natural Area Expansion (for example, the "frog pond").

i. The direct discharge of stormwater or other drainage from new impervious surfaces created by development on Parcels 31a-c into the ephemeral drainage in the Natural Area Expansion is prohibited. No increase in the rate of flow of stormwater runoff beyond predevelopment levels will be allowed. **RP: Developer**

ii. Specific Action: Stormwater runoff from Project Sites on Parcels 31a-c in excess of predevelopment quantities shall be managed through the use of basins, detention/retention ponds, percolation wells, pits, infiltration galleries, or any other technical or engineering methods that are appropriate to accomplish the objectives and requirements of this Section C.2.i. Indirect subsurface discharge is acceptable. **RP: Developer**

iii. Specific Action: As part of the project design process for development on Borderland Parcels 31a-c, a qualified hydrologist shall conduct a Hydrology and Drainage Assessment for Project Site(s) on Borderland Parcels 31a-c to determine baseline drainage conditions, including analyzing existing drainage patterns and calculating existing runoff rates into the ephemeral drainage in the Natural Area Expansion. The assessment shall include recommendations for maintaining pre-project development activity drainage and water quality conditions after completion of development on such Project Site(s). **RP: Developer**

iv. Specific Action: Drainage systems on Project Site(s) on Borderland Parcels 31a-c shall be designed to accomplish the objectives and requirements of this Section C.2.i and shall include installation and maintenance of oil/grease filters, fossil filters, or other pollution prevention devices to prevent non-point source pollutants in any drainage flowing to the Natural Area Expansion. The devices shall be maintained on a regular basis to remove pollutants, reduce high pollutant concentrations, prevent clogging of the downstream conveyance system, and maintain the sediment trapping capacity. Best Management Practices shall be implemented during project development activities on Project Site(s) on Borderland Parcels 31a-c to prevent sediments or other pollutants from entering stormwater discharge. **RP: Developer**

EXHIBIT "G"
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