

April 14, 2020

Via email

Kate McKenna, AICP, Executive Officer
Local Agency Formation Commission of Monterey County
132 W. Gabilan Street, #102
Salinas, CA 93901

Subject: Failure by FORA to name a successor agency to FORA for (1) contracts with the California Native Plant Society and (2) as CEQA lead agency for road projects that would cause harm to Rare Plant Reserve 1North.

Dear Ms. McKenna:

I represent the California Native Plant Society, Monterey Bay Chapter (CNPS). This letter addresses the failure by FORA to name and ensure successor agencies for the FORA agreements with CNPS and the FORA-approved road development projects that affect rare native plants. These road projects have not yet been constructed.

Background

The California Native Plant Society is a § 501(c)3 non-profit dedicated to conserving California native plants and their natural habitats. It is a leading voice in plant science and native plant appreciation. Starting in the 1960s CNPS and its members worked cooperatively with the U.S. Army at Fort Ord to preserve approximately a dozen rare plant reserves. The plant reserves were officially formalized as protected areas through binding mitigations for the Army's Ammunition Supply Depot Project in the early 1990's. After the Army left, CNPS continued to work to protect the small areas of rare plants that remain, despite efforts by FORA and others to encroach on them with harmful development. Fort Ord contains rare plants found in very few places in the world, and the reserves protect the remaining areas that are a tiny fraction of the original spread of the rare plants. As part of its efforts the CNPS negotiated with FORA and put written contracts in place regarding the Rare Plant Reserve 1North that is located at the northeast corner of South Boundary Road and General Jim Moore Boulevard.

CNPS has grave concerns about foreseeable potential imminent harm to Rare Plant Reserve 1North.

LAFCO's March 2020 letter to FORA identified two concerns at issue here:

- "FORA has certified a number of CEQA documents and approved projects as a CEQA lead agency. FORA will need to identify its lead agency CEQA projects, identify its responsibilities for mitigation measures implementation, enforcement, and monitoring, and take actions such as making assignments or successor agency designations to FORA member agencies before June 30;" and

- “The possibility of additional FORA-related litigation that could occur in the future (such as challenges to transition plan implementation steps, enforcement of a FORA contract, or transfer of FORA’s assets or liabilities).”

CNPS is concerned because:

- FORA has not designated FORA’s successor in interest with regard to the CNPS contracts as to the Rare Plant Reserve 1North and nearby area.
- FORA has not named a successor in interest with regard to the South Boundary Road and General Jim Moore projects that FORA approved and has not yet constructed, and CNPS has key role in the projects.

South Boundary Road: In 2010 FORA as the CEQA and NEPA lead agency approved environmental review for the South Boundary Road realignment and widening project. The FORA-approved initial study specifically addresses and refers to the Rare Plant Reserve 1North as a “habitat preserve area,” and acknowledges the FORA-CNPS contract and the proposed realignment’s significant and unavoidable impacts on the reserve. The initial study states as follows:

Widening of South Boundary Road within the alignment as proposed by the project would be largely dependent upon the outcome of negotiations with the California Native Plant Society (CNPS) to relocate a currently identified habitat preserve area further south. CNPS has be [sic] designated . . . land for a habitat preserve area along General Jim Moore Boulevard, . . . approximately where the proposed project would realign South Boundary Road and relocate the South Boundary Road/General Jim Moore Boulevard intersection. Therefore, implementation of the proposed project would require successful negotiations with CNPS to relocate their habitat preserve area to an area south of the currently identified location

(Initial study, ch. 3, emph. added.) The initial study says that “If negotiations with CNPS are unsuccessful,” then there is an alternate alignment, called Alternative #2, that could be considered. FORA approved the initial study and the proposed realignment that would harm the rare plant reserve. Prior to approving the project FORA had not discussed it with the CNPS. FORA did not approve the Alternative #2 alignment.

After approving the realignment/widening project in 2010, FORA made no effort to contact CNPS for nine years. CNPS made repeated statements in writing and in person to the FORA Board of Directors pointing out that CNPS had to be consulted in order for the project to proceed. In 2019, FORA asked to meet with CNPS. At the meetings FORA did not negotiate with CNPS. Instead, FORA essentially argued that the road realignment was a done deal.

CNPS objects and has objected to the proposed approved alignment due to the impacts on the rare plant reserve. CNPS has informed FORA that no "relocation" of a reserve area is possible without significant impacts on the rare plants. Rare plants grow in specific locations for specific reasons that are not fully understood. If another area was suitable for rare plants then they already would be growing there. In sum, there have not been successful negotiations regarding the rare plant reserve and to "relocate it" to a different area as the FORA-certified initial study requires. This means that the FORA has not met the terms of the FORA initial study. FORA has not finalized the South Boundary Road project design and FORA has not implemented the mitigations.

In presiding over a CEQA challenge to the FORA actions, the superior court carefully reviewed the initial study and stated as follows:

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

The superior court judge separately stated that in the initial study FORA "did provide for if [C]NPS blocks this, then we have to go with alternative 2." (Transcript, Feb. 11, 2019, case no. 17CV004540, *Keep Fort Ord Wild v. Fort Ord Reuse Authority*.) The judge was right. The CNPS is the key decision maker as to the location of any realignment and widening of the South Boundary Road, and FORA must abide by the CNPS decision. There should be a successor in interest to the commitments by FORA with regard to the road project.

General Jim Moore Boulevard: Years ago FORA approved a General Jim Moore Boulevard project that included a traditional intersection with South Boundary Road and a widening of General Jim Moore from the new intersection to highway 218. The project has not been constructed. FORA certified the environmental review for the intersection/widening project and it is not clear who would take over as lead agency for it and who would be responsible for any subsequent modifications and environmental review. Recently the intersection has been proposed to be changed to a roundabout which would have significant, unanalyzed and unmitigated impacts on Rare Plant Reserve 1 North, in the expert opinion of CNPS board members. Not only would a roundabout have significant impacts on Plant Reserve 1 North, any widening of General Jim Moore Boulevard in the segment from the roundabout to Highway 218 would severely impact Seaside bird's beak, a California Endangered plant, which flanks the existing roadway. These potential impacts have not been adequately considered in an environmental document.

Status.

FORA and the City of Del Rey Oaks are pushing for development of the South Boundary Road project and the General Jim Moore intersection/roundabout and widening projects. FORA has not named a successor agency that would be required to stand behind the adopted environmental analysis and have the responsibility for ensuring that the initial study language is fully complied with, the mitigations are fully implemented, and any changes to the project description undergo the appropriate level of environmental review. Further, it is possible that additional environmental analysis would be required by one or more regulatory agencies due to the passage of more than ten years from the original environmental review and the likelihood that the environmental data would be deemed stale for purposes of current permitting.

Plea.

CNPS has raised these concerns with FORA and Del Rey Oaks, to no avail. FORA and Del Rey Oaks have taken a confrontational attitude with CNPS. The approach of FORA and Del Rey Oaks has been neither cooperative nor consistent with the written agreements, with the approved CEQA documents, and with the public interest. CNPS is very concerned about the risk of harm to Rare Plant Reserve 1 North and the rare plants along General Jim Moore Boulevard. FORA has not identified the successor agency as to each of the written contracts and the road projects, and has not identified which agency would be the appropriate defendant/respondent in any litigation for declaratory relief and to enforce CEQA and other laws should such litigation become necessary following FORA's dissolution. These are all reasons why LAFCO should ensure that FORA name a successor lead agency for each project and a successor in interest for each contract. For the FORA projects which FORA as lead agency has approved, and for which FORA has not named a successor agency, and the decision makers of the named successor agency have not affirmatively and formally accepted the assignment prior to the dissolution of FORA, the FORA project approvals and environmental actions should be deemed null and void as of the date of dissolution of FORA. If one of those project is proposed in the future, the future efforts would be required to start the CEQA process from the beginning.

CNPS asks for LAFCO's assistance in addressing these important issues.
Thank you.

Very truly yours,
STAMP | ERICKSON
/s/ Molly Erickson
Molly Erickson

Attachment: Excerpts from initial study approved by FORA as lead agency for the South Boundary Road project

Environmental Assessment (EA)/Initial Study (IS)

FOR

South Boundary Road/Gigling Road Improvement Project

Volume I of II

Prepared For:

Fort Ord Reuse Authority (FORA)

100 12th Street, Bldg. 2880

Marina, CA 93933

Contact: James Arnold

Tel: (831) 883-3672

Prepared by:



585 Cannery Row, Suite 304

Monterey, CA 93940

Tel: (831) 644-9174

Creegan and D'Angelo Consulting Engineers

225 H Cannery Row

Monterey, CA 93940

Tel: (831) 373-1333

May 2010

SUMMARY AND CONCLUSIONS

Proposed Action/Project

This Environmental Assessment/Initial Study (EA/IS) has been prepared to assess the environmental impacts associated with the roadway widening and associated improvements of approximately 12,476 linear feet (2.36 miles) right-of-way along South Boundary Road and Gigling Road on the former Fort Ord Army Base. The scope of the project includes roadway improvements, intersections, sidewalks, bicycle paths/lanes, water and recycled water transmission lines, wastewater gravity and force main pipelines, gas lines, electric lines, cable television and communication facilities, and street lighting. For the purpose of environmental review, proposed intersections and roadway connections were included in this analysis of the proposed action/project, although these improvements may be constructed at a later date.

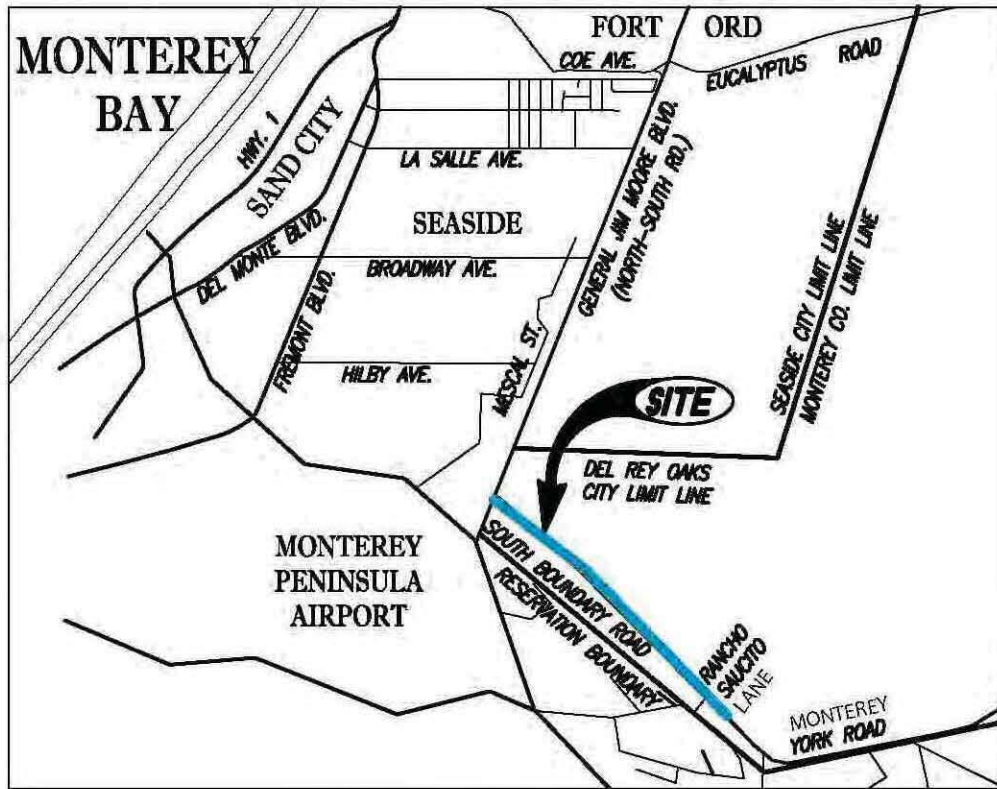
The roadway and associated improvements are proposed by the Fort Ord Reuse Authority (FORA) for South Boundary and Gigling Roads (hereinafter "proposed action/project"). The purpose of the proposed action/project is to: 1) provide adequate roadway capacity to mitigate future traffic volumes resulting from the buildout of the Fort Ord Reuse Plan; and 2) upgrade the roadways to current safety and design standards and improve the present level of service (LOS).

This EA/IS has been prepared pursuant to the National Environmental Policy Act (NEPA), the regulations of the Federal Council on Environmental Quality (40 CFR, Part 1500 et seq.), the Department of the Army (Army Regulation [AR] 200-2), and the California Environmental Quality Act (CEQA).

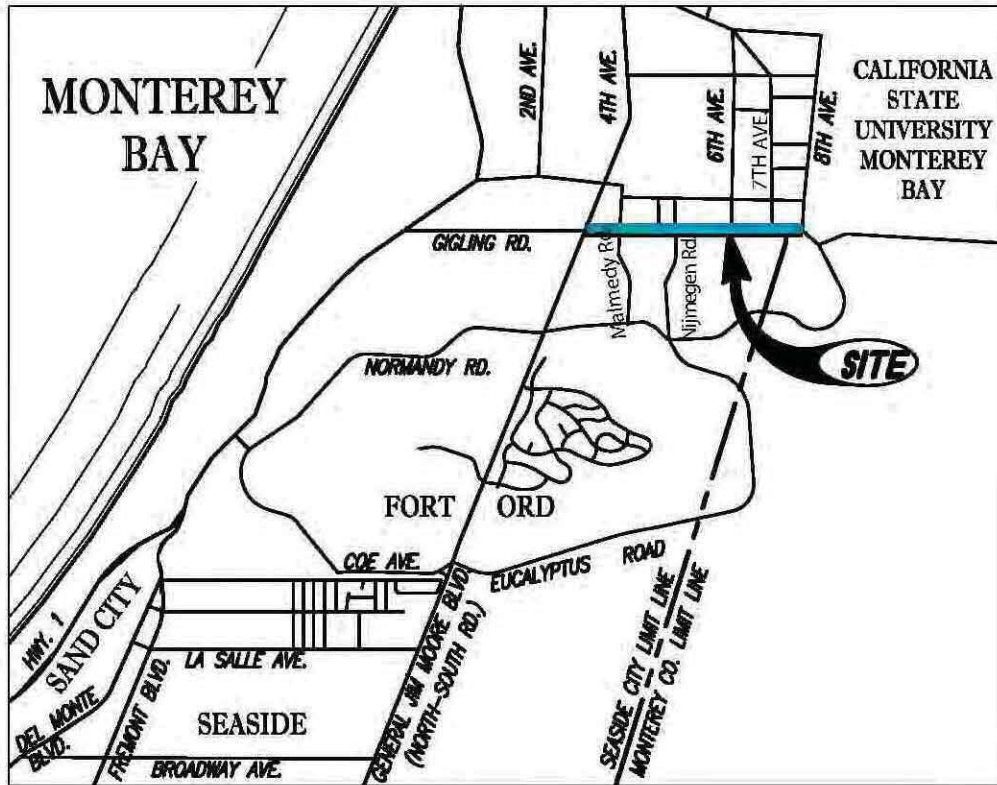
South Boundary Road

The proposed action/project involves improving and realigning the South Boundary Road/General Jim Moore Boulevard Intersection to approximately 300 feet north of the existing intersection and continuing for approximately 600 feet eastward, where the realignment meets up with the existing alignment to continue on for an additional 7,050 linear feet, for a total of approximately 7,593 linear feet (1.44 miles). Realignment would be from a point approximately 300 feet north of the existing South Boundary Road/General Jim Moore Boulevard intersection extending 600 feet eastward, for a total realignment length of 600 linear feet. The existing roadway would be improved from this point to approximately 200 linear feet east of Rancho Saucito. South Boundary Road would be improved as a 2-lane arterial roadway with median and left turn channelization, and 8-foot wide shoulders. The proposed roadway will include the construction of a new intersection at proposed South Boundary Road/General Jim Moore Boulevard intersection. South Boundary Road is located within the City of Del Rey Oaks Sphere of Influence and proposed annexation area.

South Boundary Road Improvement Area



Gigling Road Improvement Area



Source: Creagan + D'Angelo 2007, PMC 2009

NOT TO SCALE



Figure 2-2
Vicinity Map

Grading

In previously unpaved areas, the proposed action/project would involve clearing of vegetation and grading at the realigned South Boundary Road/General Jim Moore Boulevard intersection and where the realigned South Boundary Road joins the existing alignment, which is approximately 600 linear feet east of General Jim Moore Boulevard. Native soil would be removed and replaced with aggregate base prior to paving.

Approximately 19.5 acres would be disturbed by the proposed improvements along South Boundary Road, which would result in the export of approximately 2,200 cubic yards (yd³) of soil (21,500 yd³ of cut, 19,300 yd³ of fill). Approximately 15.7 acres would be disturbed by the proposed improvements along Gigling Road, which would result in the import of approximately 11,100 yd³ of soil (19,000 yd³ of cut, 30,100 yd³ of fill).

Tree and Vegetation Removal

Implementation of the proposed action/project would result in tree and vegetation removal within the project footprint (proposed rights-of-way) and may disturb trees and vegetation within a 20-foot buffer or Temporary Construction Zone (TCZ) surrounding the project footprint. Based on field surveys conducted by PMC, the proposed action/project would result in the removal of approximately 13.3 acres of Maritime Chaparral, and 5.1 acres of Coast Live Oak woodland. In addition, the proposed action/project would result in a direct loss of approximately 0.05 acres of Monterey spineflower habitat, and may result in a loss and/or disturbance of sandmat Manzanita, Hickman's onion and Santa Cruz microseris within the Maritime Chaparral habitat. Furthermore, implementation of the proposed action/project would result in the removal of Coast live oak, Monterey pine, and Monterey cypress trees. Coast live oak trees are located within the Coast oak woodland habitat (5.1 acres) and Maritime Chaparral (13.3 acres). Non-native Monterey pine and Monterey cypress trees are located throughout the project area.

Drainage

Drainage from the proposed action/project would be conveyed via curb and gutters along the edges of the South Boundary Road improvements to underground infiltration systems, which will include oil and sediment interceptor tanks, designed to accommodate runoff up to 100-year storm events. Eight underground infiltration systems are proposed along the northern side of South Boundary Road. Improvements along Gigling Road would include a similar underground infiltration system as proposed along South Boundary Road. The underground infiltration system is shown in South Boundary Road improvement plans included in **Appendix B**.

Landscaping and Erosion Control

The proposed action/project would include hydroseeding of all exposed surfaces after grading is complete and implementation of irrigation and landscaping plan consistent with Recreation Policies B-2 and G-3 in the BRP and the FORA "In Tract vs. Basewide Policy." The proposed landscaping plans would be developed according to the FORA minimum standards.

Reallocation Study prepared in April 2005. Since the 1997 *TAMC Fort Ord Transportation Study*, FORA has reviewed and reassessed obligations as determined in 1997 due to potential inconsistency with the *Regional Transportation Plan (RTP)* and because current projects and land uses proposed were not included in the 1997 analysis. Based on current land use and road network data and projections, the *Fee Reallocation Study* identified transportation improvements that would better improve operations.

Under **Alternative 2-Revised Project Design** the proposed project design would be revised to be consistent with the projects identified in FORA's *Fee Reallocation Study* and *CIP*, and *TAMC's RTP*. Although the proposed action/project is mostly consistent with the *Fee Reallocation Study*, *CIP*, and *RIP* there are some slight differences in design. Under **Alternative 2-Revised Project Design**, South Boundary Road would be upgraded to a 2-lane arterial along the existing alignment to York Road, which would increase the total improvement area by approximately 1,650 feet (0.30 miles); the existing South Boundary Road/General Jim Moore intersection would remain in place; and a new South Boundary Road/York Road intersection would be required. Gigling Road would be upgraded as a new 4-lane arterial between General Jim Moore Boulevard and the proposed Eastside Parkway, which would increase the total improvement area by approximately 875 feet longer (0.17 miles). However, extending Gigling Road to Eastside Parkway would be unnecessary until the final alignment of that roadway has been defined or constructed.

Under this alternative, the effects to biological resources, soil, water quality, noise and air quality would be slightly increased within the Gigling Road improvement area due to more area of disturbance. South Boundary Road may be subject to increasing congestion as development occurs within the City of Del Rey Oaks since the roadway would no longer provide direct access to the City of Del Rey Oaks property designated for commercial development, which is anticipated to generate substantial trips. In addition, additional trips to and from State Route 68 would likely be redistributed to York Road and South Boundary Road. This may cause additional congestion on these roadways. This potential increased congestion could result increased noise and air quality impacts. However, these impacts may be offset by improved operations along State Route 68, which operates at LOS F under existing conditions.

Widening of South Boundary Road within the alignment as proposed by the project would be largely dependent upon the outcome of negotiations with the California Native Plant Society (CNPS) to relocate a currently identified habitat preserve area further south. CNPS has been designated approximately 2-acres of land for a habitat preserve area along General Jim Moore Boulevard, adjacent to the proposed Del Rey Oaks Resort, and approximately where the proposed project would realign South Boundary Road and relocate the South Boundary Road/General Jim Moore Boulevard intersection. Therefore, implementation of the proposed project would require successful negotiations with CNPS to relocate their habitat preserve area to an area south of the currently identified location, which would be adjacent to the existing South Boundary Road alignment (to be abandoned under the proposed project description). If negotiations with CNPS are unsuccessful, **Alternative #2** provides an alternate alignment for South Boundary Road, if necessary. However, this

resort is no longer proposed

would require re-design of the access point to the proposed Del Rey Oaks Resort. This alternative would have similar impacts to biological resources as the proposed project. However, relocating the habitat preserve area south of the currently designated location may result in more benefits to habitat preserve as it would no longer be located sandwiched between a proposed retail center/roadway and a boutique hotel. Instead the habitat preserve would be adjacent to the abandoned existing South Boundary Road with additional habitat to the south and the proposed boutique hotel.

Alternative 2-Revised Project Design would be considered an option if negotiations with CNPS are unsuccessful and if the alignment of Eastside Parkway is identified. However, this alternative would likely result in greater impacts to biological resources, soil, water quality air quality and noise.

no reliable evidence of this

retail center and boutique hotel are no longer proposed



ATTORNEYS AT LAW

318 Cayuga Street
Salinas, CA 93901
831.754.2444
JRGattorneys.com

April 15, 2020

VIA EMAIL (josh@fora.org)

Josh Metz
Executive Officer
Fort Ord Reuse Authority
920 2nd Avenue, Ste. A
Marina, CA 93933

Re: Committee for Sound Water and Land Development of Fort Ord
v. City of Seaside
Monterey Co. Superior Court No. 20CV001203

Dear Mr. Metz:

This firm represents the Committee for Sound Water and Land Development of Fort Ord (“Committee”), the Petitioner in the above matter. The Petition was filed in Monterey County Superior Court on April 6, 2020 and challenges the legal sufficiency of the EIR for the Campus Town project, approved by the City of Seaside on March 5, 2020. A file stamped copy of the Petition is attached.

The Petition raises a number of environmental issues that affect the entire Fort Ord region, including questionable water rights, limited groundwater supplies and the City’s supposed mitigation measure to use recycled water from the Bayonet and Black Horse golf courses. There are also planning issues that profoundly affect all of Fort Ord.

Principal among these is the effect Campus Town will have on new housing in all of the Fort Ord jurisdictions. FORA’s Development Resource Management Plan includes a Residential Development Program and New Residential Unit Limit that generally limit total new residential development at Fort Ord. The Residential Development Program projects 10,816 residential units, of which 6,160 are projected to be new units. The New Residential Unit Limit generally restricts total new residential units within Fort Ord to 6,160 units. The FORA Capital

PARTNERS

Aaron P. Johnson
Paul A. Rovella
Managing Partner
Jason S. Retterer
Robert E. Rosenthal
Jeff R. Gilles
Founding Partner
Stephan A. Barber
Ren Nosky

ATTORNEYS

David W. Baleh
Peter D. Brazil
Patrick S. M. Casey
S. Craig Cox
Rudolph P. Darken
David LaRiviere
Jeffrey S. Lind
Natalie M. Lupo
Cat Mineo
J. R. Parker
Sergio H. Parra
Ronald A. Parravano
Matthew R. Rankin
Nelson T. Rivera
Logan R. Walter

OF COUNSEL

Soren E. Diaz
Doug K. Dusenbury

April 15, 2020
Letter to Josh Metz
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Improvement Program (CIP) for Fiscal Year 2019-20 through 2028-29 indicates that there are 4,665 new residential units entitled, leaving a remaining capacity of 1,495 new residential units. Because Campus Town includes 1,485 proposed new residential units, available development permits for housing would be virtually wiped out within the Fort Ord area if these units are entitled and found consistent with the Base Reuse Plan.

Accordingly, the Committee requests that FORA refrain from processing any submittal by the City of its Campus Town land use decisions for consistency findings pursuant to the Base Reuse Plan until the Committee's action against the City is resolved. In addition, we also request that FORA provide special notice to the undersigned on behalf of the Committee upon the City's submittal of these documents to you as the Executive Officer of FORA.

Thank you for your attention to this matter.

Respectfully,
JRG Attorneys at Law



Ren Nosky
Partner

REN/cf

Attachment

1 Steven A. Herum SBN: 90462
Herum Crabtree Suntag
2 5757 Pacific Avenue, Ste. 222
Stockton, CA 95207
3 Telephone: (209) 4722-7700

4 Richard E. Nosky, Jr. – SBN: 130726
Jason S. Retterer, SBN: 194651
5 Johnson, Rovella, Retterer, Rosenthal & Gilles, LLP
6 *A California Professional Corporation*
318 Cayuga Street
7 Salinas, CA 93901
Telephone: (831) 754-2444

8 Attorneys for Petitioner
9 *Committee for Sound Water and Land Development of Fort Ord*

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **IN AND FOR THE COUNTY OF MONTEREY**

15 COMMITTEE FOR SOUND WATER AND)
16 LAND DEVELOPMENT OF FORT ORD)

17 Petitioner,)

18 vs.)

19 CITY OF SEASIDE, BY AND THROUGH)
20 THE CITY COUNCIL; and DOES I)
THROUGH XXX)

21 Respondents.)

22 _____)
23 KB BAKEWELL SEASIDE VENTURE II, a)
Delaware limited liability company; and)
24 DOES XXXI-XXXXX, inclusive.)

25 Real Parties in Interest.)
26)
27)
28)

Case No.: 20CV001203
**PETITION FOR WRIT OF MANDATE
(Code of Civ.Proc. Sections 1085 and
1094.5; California Environmental Quality
Act;)**

1 Petitioner, Committee for Sound Water and Land Development of Fort Ord
2 (“Petitioner”) respectfully petitions this Court for a Writ of Mandate pursuant to Code of Civil
3 Procedure sections 1085 and 1094.5, and for a declaration of rights directed at the City of
4 Seaside (“City” or “Tracy”), by and through the City Council, to set aside the Environmental
5 Impact Report (“EIR”) (State Clearinghouse No. 2018021079), prepared for the Campus Town
6 Specific Plan, and to revoke the approval of constructing and operating of up to 1,485 housing
7 units, 250 hotel rooms, 75 youth hostel beds, 150,000 sf of retail, dining, and entertainment uses,
8 and 50,000 sf of office, flex, makerspace, and light industrial space, as well as park/recreational
9 areas (including approximately nine acres of public open space and 3.3 acres of private open
10 space), and supporting infrastructure, on approximately 122.23 acres, through the adoption of the
11 Campus Town Specific Plan and associated entitlements, including Campus Town Specific
12 Plan, Zoning Map and Text Amendments, Use Permit pursuant to Specific Plan Section 4.5,
13 Project Entitlements pursuant to Specific Plan Section 6.2, Vesting Tentative Map(s) and Final
14 Map(s), Development Agreement, Affordable Housing Plan, Improvement Plans, Building
15 Permit, Grading Permit, Tree Removal Permit, and Encroachment Permits (collectively, the
16 “Land Use Approvals” or “Project”). The City’s actions violate State and local land use and
17 environmental laws and amount to a prejudicial abuse of discretion. A writ of mandate and
18 preliminary and permanent injunctions are necessary to remedy the City’s failure to adequately
19 address the Project’s environmental impacts; to ensure that the City complies with all applicable
20 Federal, State, and local laws, and to ensure proper review and disclosure, and mitigation of the
21 potential environmental impacts resulting from the approval and development of the Project
22 pursuant to the California Environmental Quality Act (“CEQA”). By this verified Petition,
23 Petitioner presents:

24 **PARTIES**

25 1. Petitioner is, and at all times mentioned herein was, a California non-profit
26 unincorporated association. Petitioner’s members include residents, voters, property owners, and
27 taxpayers within the City of Seaside. Petitioner’s members are vitally and beneficially interested
28 in the land use decisions made by the City. Petitioner’s representatives, together with other
members of the public and various public agencies, participated in the public hearing process
regarding the Land Use Approvals by submitting written comments on the EIR concerning the

1 Project and also presenting oral and written comments at the City Council meeting on March 5,
2 2020.

3 2. Petitioner’s representatives and other members of the public presented oral and
4 written testimony during Seaside’s public hearing process objecting to the Land Use Approvals.

5 3. The City is, and all times mentioned herein was, a general law city existing under
6 the laws of the State of California. The City has a duty under state law to comply with state law
7 requirements, including CEQA and State Planning and Zoning Law, when considering land use
8 requests.

9 4. Petitioner is informed and believes and thereon alleges that Real Party in Interest,
10 KB Bakewell Seaside Venture II (“Developer”), is a Los Angeles based entity authorized to do
11 business in California.

12 5. Petitioner does not know the true names or capacities, whether individual,
13 corporate, or otherwise, of those Respondents and Real Parties in Interest sued herein as Does I
14 through XXXXX. Petitioner is informed and believes and thereon alleges that said Respondents
15 and Real Parties in Interest are in some manner responsible for the adoption of, imposition of, or
16 administration of those laws, ordinances, regulations of which Petitioner complains herein.
17 Petitioner will amend this Petition to set forth the true names and capacities of the fictitiously
18 named Respondents and Real Parties in Interest when such information has been ascertained.

19 6. Petitioner is informed and believes and thereon alleges that each fictitiously
20 named Respondent and Real Party in Interest is responsible in some manner for the occurrences
21 herein alleged.

22 **GENERAL ALLEGATIONS**

23 7. Developer submitted applications to the City for the Land Use Approvals in or
24 about 2017.

25 8. The Land Use Approvals proposed the development of an approximately 122.23-
26 acre site.

27 9. On or about February 26, 2018, the City prepared a Notice of Preparation (NOP)
28 of a Draft Environmental Impact Report (EIR) for the Campus Town Specific Plan in
Compliance with Title 14, Section 15082(a) of the California Code of Regulations, and

1 concluded that the Project could result in potentially significant environmental impacts and that
2 an EIR would be required. .

3 10. The City prepared an EIR for the Project. On or about August 21, 2019 Petitioner
4 submitted a thirty-five page comment letter concerning the draft EIR. The Petitioner's comment
5 letter focused on deficiencies in the EIR and the omission of information and data critical to
6 understand, analyzed, evaluate and mitigation significant environmental impacts. Environmental
7 effects identified by Petitioner as being defective or not complying with the minimum standards
8 required by CEQA included.

9 10.A. The draft EIR did not correlate the Project's adverse air quality impacts to
10 resultant adverse health affects;

11 10.B. The draft EIR did not satisfy Appendix F's requirements regarding the
12 minimum information concerning energy issues that must be included in a legally adequate EIR.

13 10.C. The draft EIR included a defective threshold of significance rendering the
14 draft EIR's evaluation of the Project's GHG effects legally deficient.

15 10.D. The draft EIR's evaluation of the project's direct and indirect impact to
16 global warming was legally deficient.

17 10.E. A conflict with existing plans constituted a significant impact without
18 imposing mitigation measures on the project.

19 10.F. The draft EIR did not adequately address and mitigation a significant
20 effect of the adequacy of fire protection.

21 10.G. The draft EIR's analysis of the environmental superior alternative was
22 legally deficient.

23 10.H. The draft EIR wrongly omitted studying the indirect physical impact of
24 altering patterns of urban development.

25 10.I. The draft EIR did not adequately document and evaluate project water
26 rights.

27 10.J. The draft EIR wrongly concluded that water sources other than
28 groundwater are available to MCWD and therefore underprojected potential groundwater
impacts.

10.K. The draft EIR did not take into account that continued groundwater
pumping is unsustainable.

1 10.L. The draft EIR did not take into account that the available water is
2 insufficient to meet the proposed Project’s potable water demand or that the proposed water
3 offset program was flawed and unavailable.

4 10.M. The water supply assessment was fatally flawed and the draft EIR relied
5 on paper water rather than a real supply of water.

6 10.N. The draft EIR mitigation measure UTIL-1 was not effective mitigation,
7 the overdraft of the aquifer condition was not sufficiently addressed, and pumping was not
8 sufficiently addressed or evaluated.

9 11. On or about February 12, 2020, the City Planning Commission held a public
10 hearing on the Project.

11 12. Numerous members of the public objected to approving the Project and requested
12 the City undertake additional environmental review including, but not limited to, urban decay,
13 traffic, and water. The Planning Commission recommended approval of the Project and
14 forwarded the Project to the City Council for approval.

15 13. On or about March 5, 2020, the City Council opened a public hearing to consider
16 the EIR and its consideration of the Land Use Approvals.

17 14. Petitioner and others objected to approving the Project and presented substantial
18 evidence showing the Project would have significant environmental impacts not adequately
19 evaluated and/or mitigated in the Initial EIR, including, but not limited to, impacts from or on:
20 (1) energy consumption; (2) air quality related health effects; (3) urban decay; (4) traffic; (5)
21 inadequate water supplies; and (6) the failure to recirculate the EIR.

22 15. At the close of the public hearing, the City Council voted to certify the EIR and
23 adopt a Resolution approving the Project (including the adoption of the Land Use Applications to
24 allow the construction of the proposed Project).

25 16. The Land Use Approvals were discretionary in nature, requiring mandatory
26 substantive findings. The decision-makers were required to exercise judgment and deliberation
27 in determining whether and how to approve the Project.

28 17. The City Council was presented with substantial evidence that the Project would
result in significant environmental effects that had not been adequately studied or mitigated in
the Amended EIR.

1 18. Petitioner has exhausted all administrative remedies concerning the Project.
2 Petitioner's representatives and other members of the public objected orally and in writing at the
3 March 5, 2020 City Council hearing, and presented evidence that the Project has the potential to
4 cause significant environmental impacts, and that the environmental review considered for the
5 Project does not satisfy the minimum requirements of CEQA.

6 19. Petitioner and its members have a direct and beneficial interest in the City's full
7 compliance with CEQA, State Planning and Zoning law and all other applicable laws when
8 approving the Project.

9 20. The City has a mandatory and public duty to comply with CEQA, State Planning
10 and Zoning Law, and all other applicable laws when approving the Project.

11 21. Petitioner's claim is ripe for review.

12 22. Petitioner and its members will be directly and substantially affected by the
13 adverse environmental impacts that may result from the Project.

14 23. Petitioner has standing to bring this action as its members include residents,
15 property owners, voters, and taxpayers of the City of Seaside who seek to compel a public duty
16 in the form of Respondent complying with State and local land use and environmental laws.

17 24. Petitioner has complied with the requirements of Pub. Res. Code §21167.5 by
18 mailing written notice of this action to the City.

19 25. Petitioner has complied with Pub. Res. Code §21167.7 and Code of Civ. Proc.
20 §388 by notifying the Attorney General of California of the commencement of this action.

21 26. Petitioner has a right to enforce the City's mandatory duties under State and local
22 law related to the Land Use Approvals.

23 27. Petitioner does not have a plain, speedy, or adequate remedy in the ordinary
24 course of law.

25 28. A clear and significant benefit will be conferred upon the general public and
26 Petitioner by Respondent fully satisfying the requirements of State and local law prior to
27 certifying the Amended EIR and approving the Land Use Approvals. A clear and significant
28 benefit will be independently conferred upon the general public by the Respondent fully

1 satisfying the requirements of CEQA, State Planning and Zoning Law, and applicable City
2 zoning ordinances and planning documents. In instituting this action, Petitioner seeks to procure
3 enforcement of a mandatory duty. The public of which Petitioner's members are members is
4 vitally and beneficially interested in assuring that the mandate of law is fully satisfied and
5 fulfilled. Granting the relief requested by Petitioner would confer a significant benefit on a large
6 class of persons, in that fundamental rules of law would be affected.

7 29. By the authority of Code of Civil Procedure sections 1085 and 1094.5, and Public
8 Resources Code sections 21168, 21168.5, and 21168.9, this Court has jurisdiction to issue a Writ
9 of Mandate and other appropriate equitable and injunctive relief to set aside the City's approval
10 of the Project and certification of the EIR.

11 30. Venue is proper in this Court because the causes of action alleged in this Petition
12 arose in San Joaquin County where both the Project Site and the City that approved the Project
13 are located.

14 **FIRST CAUSE OF ACTION**

15 **(The City Committed a Prejudicial Abuse of Discretion by Failing to Recirculate the EIR.)**

16 31. Petitioner realleges and incorporates herein by reference the allegations contained
17 in Paragraphs 1 through 30, above.

18 32. CEQA Guideline section 15088.5 requires a public agency to recirculate an EIR
19 under certain circumstances. Also, CEQA Guideline section 15140 explains that a draft EIR
20 should not exceed one hundred and fifty pages, except for exceptional situations.

21 33. The final EIR, including direct new textual material and new studies, analysis,
22 plans and memorandums to support the direct new textual material, exceeds two thousand three
23 hundred pages. According to CEQA Guideline section 15140 the size of the final EIR is the
24 equivalent of one hundred and fifty-three draft EIRs.

25 34. The final EIR includes new textual material and new documents presenting
26 entirely new theories and analysis regarding the significance of environmental effects. Much of
27 the entirely new theories and analysis are illogical or unsound. This includes but is not limited
28 to, for instance:

1 34.A. The new urban decay report assumes that no new retailers will enter the
2 marketplace but the marketplace will experience substantial population increases and the existing
3 population will enjoy increase disposal income that will be spent on local retailers.

4 34.B. The new urban decay report assumes that no retails dollars will be spent
5 on ecommerce transactions even though more than eleven percent of all retails transactions are
6 conducted through ecommerce.

7 34.C. The anticipated vehicular travel by customers making retail purchases
8 conflicts with the assumptions relied upon in the traffic analysis.

9 34.D. The Seven Hundred and Sixteen page revised traffic study did not take
10 into account different patterns of traffic assumed by the new urban decay report.

11 34.E. The One Hundred and Eighty-Three page Green House Gas Reduction
12 Plan and the Ninety-four page Green House Gas Emissions memorandum did not acknowledge
13 the different traffic patterns presented in the new urban decay report.

14 35. The volume of material included in the final EIR evidences the fact that the draft
15 EIR was legally deficient.

16 36. It is an abuse of discretion as a matter of law to dispense with recirculating the
17 EIR under these circumstances.

18 **SECOND CAUSE OF ACTION**

19 **(Violation of CEQA: Failure to Adequately Evaluate and Mitigate Energy Impacts)**

20 37. Petitioner realleges and incorporates herein by reference the allegations contained
21 in Paragraphs 1 through 36, above.

22 38. CEQA Guidelines Appendix F states that CEQA “requires that EIRs include a
23 discussion of the potential energy impacts of proposed projects.”

24 39. The City received substantial evidence in the form of written comments and
25 testimony that the EIR failed to perform the requisite analysis of the Project’s potential energy
26 impacts.

27 40. The EIR does not disclose the extent to which the Project will create energy
28 impacts.

1 41. The EIR inconsistently states that the Project would result in the consumption of
2 large quantities of energy, but also concludes energy consumption impacts are not significant.

3 42. The EIR does not discuss any means or methods of avoiding or reducing
4 inefficient, wasteful and unnecessary consumption of energy from this Project as required by
5 Appendix F.

6 43. The EIR fails to satisfy the minimum requirements of CEQA Guidelines
7 Appendix F, CEQA Guidelines §15126.4(a)(1), and Pub.Res.C. §21100(b)(3).

8 44. The City prejudicially abused its discretion and acted in excess of its jurisdiction
9 by certifying the EIR without first analyzing and/or mitigating the energy impacts of the Project
10 as required by CEQA.

11 **THIRD CAUSE OF ACTION**

12 **(Violation of CEQA: Failure to Adequately Evaluate and Mitigate Public Health Effects**
13 **Caused by Air Quality Impacts and Failed to Make Good Faith Responses to Comments)**

14 45. Petitioner realleges and incorporates herein by reference the allegations contained
15 in Paragraphs 1 through 44, above.

16 46. Health problems caused by a project are recognized environmental effects to be
17 considered in an EIR, including health effects caused by increases in air pollution.

18 47. *Bakersfield Citizens for Local Control v. City of Bakersfield*, (2004) 124 Cal.
19 App. 4th 1184, 1219, states that in discussing and analyzing health problems caused by the
20 physical changes a proposed project will precipitate, an EIR must “correlate the identified
21 adverse air quality impacts to resultant adverse health effects.”

22 48. The City failed to correlate the Project’s adverse air quality impacts to resulting
23 adverse health effects. The EIR provides no analysis (including correlation or quantification) of
24 the potential increase in respiratory ailments caused by these impacts.

25 49. The City received substantial evidence that the Project has the potential to create
26 significant air quality impacts not adequately addressed or mitigated in the EIR.

27 50. The City received substantial evidence in the form of numerous scientific studies
28 demonstrating that adverse health effects can in fact be correlated to increases in air pollution,

1 including, but not limited to the following: (1) C. Arden Pope II, PhD; Richard T. Burnett, PhD;
2 Michael J. Thun, MD; Eugenia E. Calle, PhD; Daniel Kreski, PhD; Kazuhiko Ito, PhD; and
3 George D. Thurston, ScD, entitled Lung Cancer, Cardiopulmonary Mortality, and Long-term
4 Exposure to Fine Particulate Air Pollution, The Journal of the American Medical Association,
5 Vol. 287 No. 9 (March 6, 2002); (2) Janneane F. Gent, PhD; Elizabeth W. Triche, PhD;
6 Theodore R. Holford, PhD; Kathleen Belanger, PhD; Michael Bracken, PhD; William S.
7 Beckett, MD; Brian P. Leaderer, PhD, Association of Low-Level Ozone and Fine Particles with
8 Respiratory Symptoms in Children with Asthma, The Journal of the American Medical
9 Association, Vol. 290 No. 14 (October 8, 2003); and (3) Nino Kunzli, Michael Jerret, Wendy J.
10 Mack, Bernardo Beckerman, Laurie LaBree, Frank Gilliland, Duncan Thomas, John Peters, and
11 Howard N. Hodis, Ambient Air Pollution and Atherosclerosis in Los Angeles, Environmental
12 Health Perspectives, Vol. 113 No. 2 (February 2005).

13 51. In addition the final EIR failed to make good faith responses to this comment.
14 The comment stated that the draft EIR did not present an adequate correlation between air
15 pollution and health ailments. The response to comment stated that the draft EIR did not find air
16 pollution to be a significant environmental effect. Yet the draft EIR omitted studying whether
17 the pollution produced by the Project would nevertheless cause significant health problems in the
18 form of cardiovascular and respiratory ailments.

19 52. The City prejudicially abused its discretion and acted in excess of its jurisdiction
20 by approving the Project without first correlating the significant adverse air quality impacts to
21 resulting adverse health effects in approve the Project.

22
23 **FOURTH CAUSE OF ACTION**

24 **(Violation of CEQA: Urban Decay)**

25 53. Petitioner realleges and incorporates herein by reference the allegations contained
26 in Paragraphs 1 through 52, above.

27 54. Urban decay is a physical change caused by an economic effect and is a
28 recognized environmental effect to be considered in an EIR.

1 55. The City did not adequately evaluate or mitigate the Project’s potential to cause
2 urban decay in Seaside and surrounding communities.

3 56. In the Final EIR it identified an Urban Decay Report as support for concluding
4 that an urban decay environmental impact is less than significant. Yet this Urban Decay Report
5 fails to provide sufficient information and data to support this conclusion and, indeed, omits
6 relevant information and data.

7 57. As a result, the Urban Decay Report fails to analyze the potential urban decay
8 impact in a manner required by law resulting in the omission of relevant data and information.
9 For instance:

10 57.A. The Urban Decay Report assumes that new retailer will enter the relevant
11 marketplace and overtime this will cause the demand for retail goods and services to equal the
12 availability of these goods and services within the market area. There is no evidence that retailers
13 will decline to locate or expand within the relevant market area or that an enforceable legal
14 structure exists to prohibit retail business location or expansion issues. This argument was
15 expressly raised at the City Council hearing; however, neither the City nor the developer
16 responded to this argument.

17 57.B. The Urban Decay Report’s assumption that disposal income will increase is
18 contradicted by the facts. According to government surveys conclude that the amount of
19 disposal income available to middle class families is declining and not growing. This argument
20 and facts were expressly raised at the City Council hearing; however, neither the City nor the
21 developer responded to the argument and facts presented by Petitioner.

22 57.C. The Urban Decay Report omitted any information, data and analysis
23 evaluating the impact of ecommerce to the demand for retail sales within the relevant market
24 area. Specifically, Petitioner expressly provided evidence that the amount of ecommerce has
25 grown from Five Billion Dollars per fiscal quarter to One Hundred and Fifty-Five Billion Dollars
26 per fiscal quarter in last twenty years. This is more than eleven percent of the retail sales. Yet
27 the existence and rapid growth of ecommerce is omitted from the Urban Decay Report and
28 dispensing with this information and data significantly under projects the demand for retail

1 goods and services. This argument and facts were expressly raised at the City Council hearing;
2 however, neither the City nor the developer responded to the arguments and facts presented by
3 Petitioner.

4 57.D. The Urban Decay Report adopted assumptions on traffic circulation, traffic
5 trips and vehicular miles travelled that conflict with the assumptions adopted by the traffic study
6 concerning traffic circulation, traffic trips and vehicular miles traveled. This conflict makes
7 either the conclusions of the Urban Decay Report or the conclusions of the traffic study legally
8 deficient, underreporting the intensity of the impact and avoiding necessary mitigation measures.

9 58. The EIR's conclusion that the Project will not cause urban decay is not supported
10 by substantial evidence in the record of proceedings.

11 59. Consequently, the City's decision to approve the Project is not supported by
12 substantial evidence and the City prejudicially abused its discretion and acted in excess of its
13 jurisdiction by approving the Project without first complying with CEQA in adequately
14 addressing the individual and cumulative urban decay impacts from the Project.

15 **FIFTH CAUSE OF ACTION**

16 **(Violation of CEQA: Defective GHG Threshold of Significance)**

17 60. Petitioner realleges and incorporates herein by reference the allegations in
18 Paragraphs 1 through 59, above.

19 61. CEQA Guideline section 15064.7 encourages local agencies to adopt formal
20 Thresholds of Significance. Without an adopted Threshold of Significance each EIR must
21 provide a threshold of significance for purpose of evaluating the potential significance of
22 environmental impacts.

23 62. Greenhouse Gas emissions (GHG) are a potential environmental impact that must
24 be evaluated and addressed in order for a public agency to comply with CEQA.

25 63. The threshold of significance presented by the draft EIR was incoherent and
26 legally deficient. The draft EIR, at page 4.7-13 essentially states that the GHG impact is regarded
27 as significant when it is significant. This tautological threshold of significance does not meet the
28 minimum standards for a legally adequate threshold of significance under CEQA.

1 64. The City prejudicially abused its discretion and acted in excess of its jurisdiction
2 by certifying the Amended EIR without first adequately analyzing and/or mitigating individual
3 and cumulative traffic impacts from the Project.

4 **SIXTH CAUSE OF ACTION**

5 **(The Evaluation of Direct and Indirect Impacts to Global Warming was Legally Deficient)**

6 65. Petitioner realleges and incorporates herein by reference the allegations contained
7 in Paragraphs 1 through 64, above.

8 66. The EIR failed to discuss multiple mitigation measures identified by Petitioner
9 that could individually and cumulatively lessen the significance of global warming caused by the
10 Project.

11 67. Failing to perform this tasks amounts to an omission of relevant information in an
12 EIR is prejudicial if the failure to include relevant information precludes informed decision-
13 making and informed public participation.

14 68. The EIR's failure to consider these mitigation measures precluded informed
15 decision-making and informed public participation.

16 69. The City prejudicially abused its discretion and acted in excess of its jurisdiction
17 by certifying the EIR without first adequately analyzing and mitigating the impact of global
18 warming from of the Project.

19 **SEVENTH CAUSE OF ACTION**

20 **(A Conflict with an Existing Plan is a Significant Impact without Imposing Mitigation)**

21 70. Petitioner realleges and incorporates herein by reference the allegations contained
22 in Paragraphs 1 through 69, above.

23 71. Future development is required to be consistent with and further the objectives of
24 the CSUMB Mater Plan, The Fort Ord Reuse Authority Act and the Seaside General Plan (Other
25 Plans). These plans require future development to provide mix uses as a key element of
26 complying with plan objectives and environmental protection.

27 72. The Project is designed in two phases. Phase One is emphasis non-residential
28 uses and phase two emphasizes residential uses. But the Land Use approvals do not require that
the Project builds out in a mix of residential and non-residential as presented in the Other Plans.
Instead according to the draft EIR at E-3, the project will not build out according to mixed use

1 objectives but based on “market conditions, birthrates, death rates, immigration rates, availability
2 of resources and regulatory processes”.

3 73. Yet, according to the draft EIR at ES-3, developing mixed land uses reduces
4 environmental impacts caused by excessive “mobility, urban sprawl, excessive commuting and
5 air quality deterioration”.

6 74. The Land Use Approvals do not require the development of the Project with a
7 mixture of residential and non-residential land uses. Instead no legal impediment prevents the
8 Project from building out as exclusively a residential or exclusively as a non-residential project,
9 leaving the other type of land use undeveloped. Without a condition of approval or mitigation
10 measure to assure a mixture of uses will be developed contemporaneously there is no assurance
11 that the Other Plans will not be violated.

12 75. Furthermore, General Plan and Master Infrastructure Plans have been partially
13 implemented and future implementation actions could be impeded or barred by the irrevocable
14 decision to develop this real property and force other real property within the general plan to
15 remain vacant for a longer period of time than assumed in the General Plan or infrastructure
16 assumptions. This would force the City to significantly change growth and infrastructure patterns
17 of development and these changes would produce reasonably foreseeable new or more intense
18 environmental impacts.

19 76. The City abused its discretion and acted in excess of its jurisdiction by certifying
20 the EIR without first adequately analyzing the failure to condition the Project to be consistent
21 with the planning and environmental goals of the Other Plans.

22 **EIGHTH CAUSE OF ACTION**

23 **(Violation of CEQA: Failure to Consider Adequacy of Fire Protection)**

24 77. Petitioner realleges and incorporates herein by reference the allegations contained
25 in Paragraphs 1 through 75, above.

26 78. The Seaside Fire Department has set an EMS and fire response time of five
27 minutes or less for all incidents. Draft EIR at page 4.13.3. The EIR cannot determine whether
28 this standard has been complied with. However, the Project intends to demolish an existing fire
station and construct a new fire station of an unidentified size at an undisclosed location at an
unknown time. Accordingly the EIR cannot determine whether the response time standard has
been achieved.

1 79. CEQA requires a lead agency to evaluate comments on the draft EIR and prepare
2 a written response to any significant environmental issues. Written responses must be detailed
3 and provide a good faith, reasoned analysis.

4 80. The City failed to provide adequate written responses to several of the comments
5 submitted in response to the Project's Initial EIR.

6 81. For purposes of providing one example of the final EIR not providing a good faith
7 reasoned response to comments, Petitioner commented that the draft EIR failed to correlate the
8 relationship between increased air pollution and increased incidents of cardiovascular and
9 respiratory ailments. The response to comments was not responsive. It merely stated that the
10 draft EIR concluded that air pollution was not a significant effect. Yet the threshold for air
11 pollution could conclude that air pollution was not significant while still determining that the
12 amount of air pollution emitted could be responsible for a significant number of health ailments.
13 This is both a failure to comment in good faith and a material omission of relevant data and
14 information.

15 82. As the example provided in the previous paragraph illustrates, the City did not
16 make good faith response to comments submitted by Petitioner, other members of the public and
17 public agencies.

18 83. The City abused its discretion and acted in excess of its jurisdiction by certifying
19 the Amended EIR without first providing detailed and reasoned responses to comments on the
20 Initial EIR.

21 **NINTH CAUSE OF ACTION**

22 **(The EIR Did Not Comply with the Requirements of CEQA When Evaluating the Project's
23 Impact to Water)**

24 84. Petitioner realleges and incorporates herein by reference the allegations contained
25 in Paragraphs 1 through 83, above.

26 85. The Marina Coast Water District (MCWD) serves the proposed area. The
27 MCWD's exclusive source of water is groundwater from the Salinas Valley Groundwater Basin,
28 a basin that has experienced overdraft for many years.

86. MCWD is considered a junior to correlative right holders because it does not own
land within the basin. Indeed, MCWD acknowledges that it can only make a general

1 determination of its priority to groundwater. Thus, MCWD has no documented groundwater
2 right to serve the proposed project. Furthermore, any prescriptive rights held by MCWD or
3 assigned to MCWD by Fort Ord have not been adjudicated and secured.

4 87. Moreover, the MCWD claim of reclaimed water and desalinated water is illusory.
5 While a desalination plant may have been permitted, MCWD cannot point to any source of water
6 to operate this plant.

7 88. Salt water intrusion is requiring the MCWD to increase the amount of water
8 pumped from the lower aquifer. The EIR does not address the impact to the upper aquifer from
9 MCWD's additional pumping of the upper aquifer and the contribution of this activity to salt
10 water intrusion. At the same time the Monterey County Resource Agency scientists recommend
11 a moratorium on new wells constructed for pumping the lower aquifer. The EIR does not
12 adequately analyze the environmental impacts to aquifer conditions from additional pumping to
13 satisfy water supply demands of the Project. Nor did the EIR consider and evaluate whether the
14 Project's water demand would prevent MCWD from complying with the FORA
15 water/wastewater facilities agreement whereby the right to pump is limited and MCWD must
16 find replacement water for water supplies obtained by pumping. The EIR must summarize and
17 discuss whether the continued pumping of water to supply water to this Project impedes the
18 ability of MCWD to substitute other sources of water for water obtained by pumping.

19 89. In 2018 the MCWD adopted a water supply assessment concluding that the
20 district had insufficient water supplies to the projected annual demand for existing, previously
21 approved projects and the proposed Project. The Project adds 487.4 acre feet per year of
22 demand to the District's service area. The Seaside existing allocation of water has only 186.3
23 acre feet per year of allocated but uncommitted water.

24 90. In 2019 the City prepared an updated water assessment. This assessment
25 determined that several potential plans could take the form of several in-lieu potable water
26 supplies to reduce the water supply deficit. Yet the potable water supplies were allocated to
27 other entitled projects and provides no legal or engineering basis to support this reallocation of a
28 water right.

91. Mitigation measure UTIL-1 identifies three previously approved projects that
would be subject to an offset program. However, this proposal is not implemented nor does the
mitigation monitoring program require the offset program be imposed on these other previously

1 approved projects. Mitigation Measure UTIL-1 is not an effective mitigation measure. It merely
2 seeks to redistribute a limited amount of previously allocated potable water from existing
3 projects to this Project.

4 92. The City intends to offset the taking of potable water from other previously
5 approved projects by offering recycled water. Yet recycled water has narrow and limited uses
6 and there is no analysis in the EIR that this exchange is enforceable or that the other previously
7 approved projects would not then experience a shortage of potable water. This does not
8 constitute a reasoned analysis of the circumstances affecting the likelihood of the water's
9 availability.

10 93. Without legal authority the City rewrote the MCWD's water assessment report to
11 change its conclusion and revise the water assessment report to conclude that there was a
12 sufficient amount of water for the Project. But the conclusion is not correct.

13 94. The City's analysis about the sufficiency of potable water for the Project depends
14 upon the availability of recycled water as a substitute. While the EIR projects that sufficient
15 recycled water would be available by the end of 2019 in fact at the end of 2019 virtually no
16 recycled water was available to the City.

TENTH CAUSE OF ACTION

(The EIR Failed to Analyze the Altered Patterns of Urban Development Resulting from the 17 Project)

18 95. Petitioner realleges and incorporates herein by reference the allegations contained
19 in Paragraphs 1 through 94 above.

20 96. The City's 2004 General Plan, as well as the General Plans of the cities of
21 Monterey, Del Rey Oaks, Marina and Sand City, among others, depict assorted parcels of vacant
22 land within each city's Sphere of Influence and within the former Fort Ord that are anticipated to
23 be developed.

24 97. The Project is located on lands within the former Fort Ord. As a member of the
25 Fort Ord Reuse Authority ("FORA"), the City and other members of FORA are required to
26 follow FORA's Development Resource Management Plan. Such Plan includes a Residential
27 Development Program and New Residential Unit Limit that limit total new residential
28 development at the former Fort Ord. The New Residential Unit Limit restricts total new
residential units within the former Fort Ord to 6,160 units.

1 98. Pursuant to FORA's Capital Improvement Program (CIP) for Fiscal Year 2019-20
2 through 2028-29, there are 4,665 new residential units entitled, leaving a remaining capacity of
3 1,495 new residential units.

4 99. The Project proposes up to 1485 new residential units, leaving only ten available
5 units under FORA's New Residential Unit Limit. Consequently, the number of available
6 development permits for housing within the former Fort Ord area would be virtually wiped out if
7 these units are entitled and found consistent with the FORA's Base Reuse Plan.

8 100. Because the Project would exhaust practically all of the available residential
9 development permits in the former Fort Ord, the amount of growth within the City and the region
10 within the former Fort Ord is thereby limited. As a result, certain other development projects in
11 the City and elsewhere will be unable to proceed.

12 101. As for the general region, by preventing other projects from proceeding, the
13 Project herein has the effect of substantially altering the pattern of urban development in the City
14 and surrounding region. This effect is inconsistent with and conflicts with the land use and
15 infrastructure plans of these other communities. In Seaside and other cities surrounding the
16 former Fort Ord, General and Master Infrastructure Plans have been partially implemented and
17 future implementation actions could be impeded or barred by the irrevocable decision to develop
18 this real property and force other real property within their respective General Plan areas to
19 remain vacant for a longer period of time than assumed in these General Plans or General Plan
20 EIR's. Seaside and other communities have adopted General Land Use Plans and Master
21 Infrastructure Plans that are partially built out but now will be delayed or never completed
22 because the Project has obtained a right to secure building permit rights that otherwise would be
23 allocated amongst the various cities in conformity with each city's General Plan and Master
24 Infrastructure Plan.

25 102. As for Seaside, this result effectively amends the City's General Plan to re-
26 designate the areas that have been designated for development to essentially open space or some
27 other equivalent designation with no development potential, without complying with the legal
28 requirements for amending a General Plan. Stated slightly differently, it prevents Seaside from
implementing its General Plan and Master Infrastructure Plan because no uncommitted building
permit allocations remain for other undeveloped or vacant real property designated for
development during the applicable general plan period.

103. General Plan land use assumptions and the Master Infrastructure Plan
assumptions are also affected, forcing Seaside and other affected cities to significantly change
growth and infrastructure patterns and plans. Such changes would produce reasonably
foreseeable new or more intensive environmental effects from less efficient development

1 patterns, more GHG emissions, more vehicular miles traveled, more air pollution, and more
2 energy consumption.

3 104. The different environmental effects produced by altering patterns of urban
4 development assumed by the General Plan and General Plan's environmental impact report was
5 not addressed in the EIR. Further, the effect of altering the pattern of urban development in the
6 cities in and around the former Fort Ord also was not analyzed in the EIR. Its failure to do so
7 constitutes a failure to proceed in a manner required by law.

8 WHEREFORE, Petitioner prays as follows:

9 1. That this Court issue a peremptory writ of mandate:

10 a. Commanding the City to immediately set aside its approval of the Land Use
11 Approvals;

12 b. Commanding the City to immediately suspend all activities in furtherance of
13 the Land Use Approvals, including but not limited to issuing grading permits, building permits,
14 certificates of occupancy and engaging in any construction in furtherance of the development of
15 the Project;

16 c. Commanding the City to set aside the certification of the EIR and to prepare a
17 revised EIR for the Project and otherwise comply with CEQA and State Planning and Zoning
18 Law in any subsequent action taken to approve the Project;

19 2. For a preliminary restraining order and preliminary and permanent injunctive or
20 stay relief restraining the City and Real Parties in Interest from taking any action to carry out the
21 Project pending the outcome of this litigation;

22 3. For a declaration that the Project was unlawfully approved in violation of CEQA,
23 State Planning and Zoning Law, the Tracy General Plan, the Tracy Zoning Code, and/or any
24 other applicable laws and regulations;

25 4. That Petitioner be awarded the cost incurred in bringing this action, and
26 reasonable attorney fees pursuant to Code of Civil Procedure 1021.5, the "common benefit"
27 theory, Government Code section 800, or as otherwise provided by law or equity;

28 5. That the Court grant such other and further relief as may be equitable and just.

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DATED: April 3, 2020

HERUM/CRABTREE/SUNTAG
A California Professional Corporation



By: _____
Steven A. Herum

Attorneys for Petitioner COMMITTEE FOR
SOUND WATER AND LAND
DEVELOPMENT OF FORT ORD

VERIFICATION

I, Jasmine Chan, verify:

I have read the foregoing Petition for Writ of Mandamus.

I am a member of Committee for Sound Water and land Development of Fort Ord, a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed at Seaside, California on April 3, 2020.



JASMINE CHAN

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