

RECORDING REQUESTED BY:

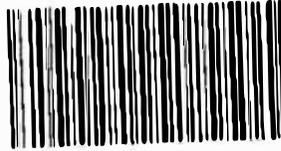
FORT ORD REUSE AUTHORITY
100 12th Street, Building 2880
Marina, CA 93933
ATTN: MICHAEL A. HOULEMARD, JR.

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

CRMARIA
9/27/2005
8:00:00

DOCUMENT: **2005100944**

Titles: 1/ Pages: 26



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

(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*

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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*

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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

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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.

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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.

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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

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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

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VIII. LIST OF EXHIBITS

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

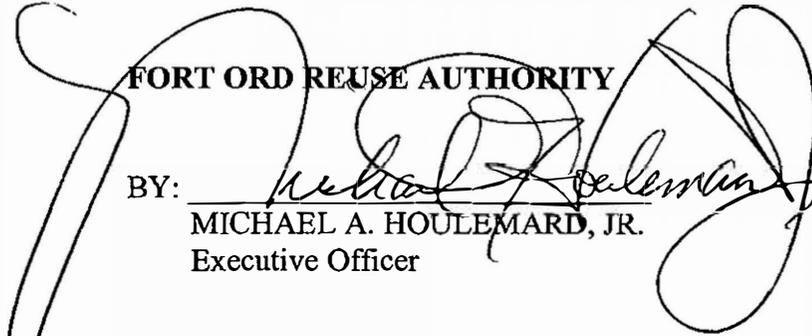
- Exhibit A: Description of Developer Property
- Exhibit B: Restrictions on Developer Property

[Signatures pages follow]

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: _____

FEDERAL DEVELOPMENT LLC

BY: John J. de la Fuente

District of Columbia

Subscribed and sworn to before me this

25 September day of 2005
P. Marvette Moore
Notary Public, D.C.
My Commission Expires 09/30/2008

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

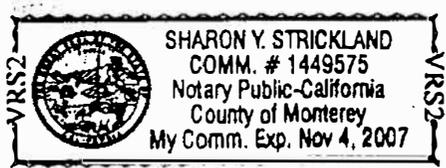
State of California

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: _____

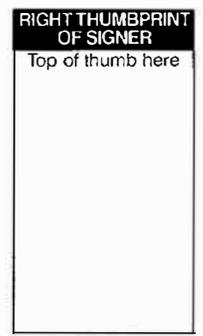
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



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:

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 Howland
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:

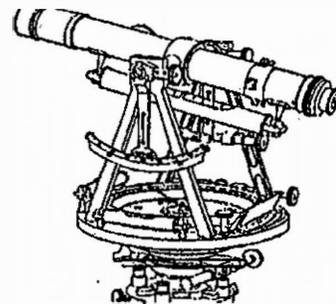
EXHIBIT A

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 82E 26' 08" East, 3310.00 feet distant, through a central angle of 39E 08' 26", for an arc distance of 2261.17 feet; thence

(2) South 46E 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 24E 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

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 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 15", for an arc distance of 356.43 feet; thence 24'

(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

LEGAL DESCRIPTION

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

(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

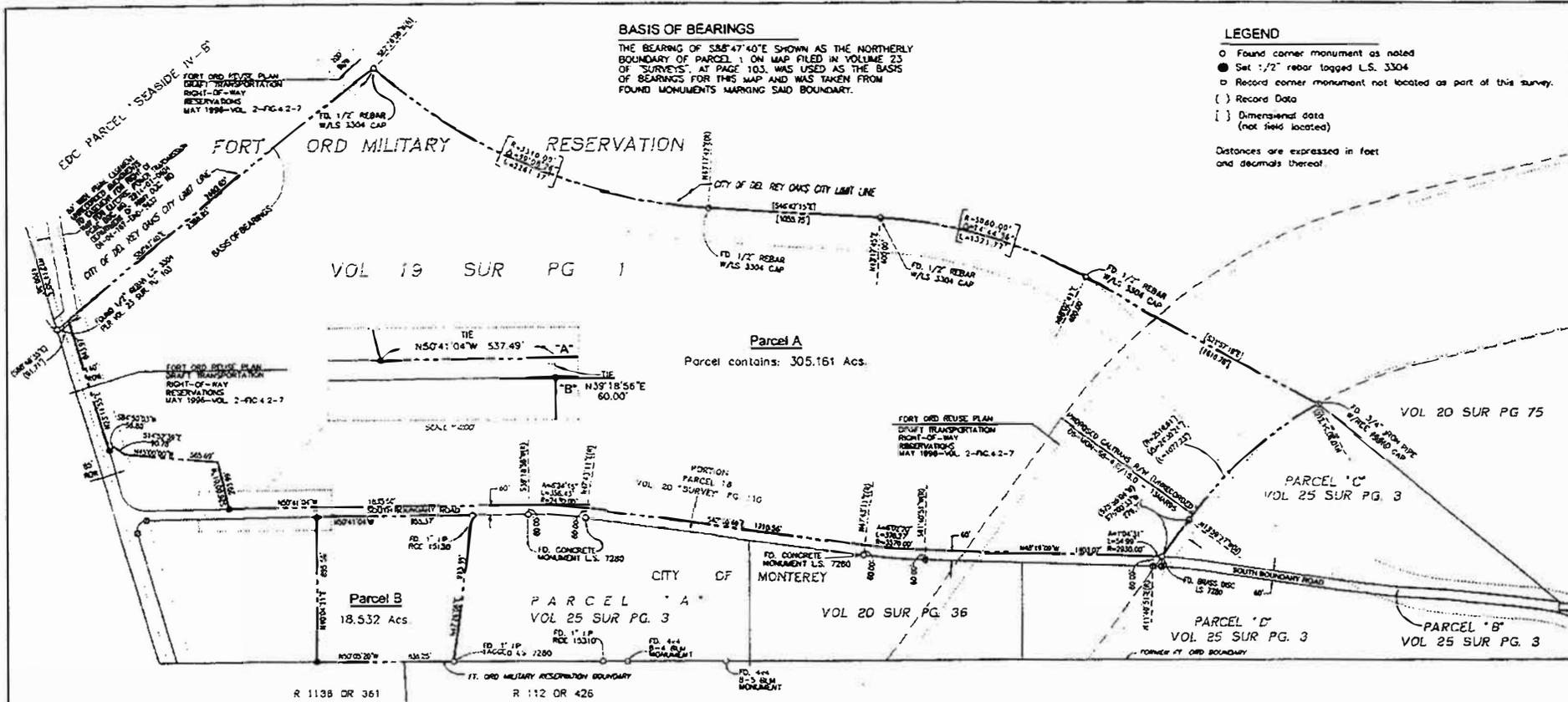
(5) North 50E 05' 20" West, 838.25 feet; thence

(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



SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYOR'S ACT AT THE REQUEST OF FORT ORD REUSE AUTHORITY IN JANUARY 2000.

Virginia L. Williams
 VIRGINIA L. WILLIAMS, L.S. 3304
 EXPIRES: JUNE 30, 2006



COUNTY SURVEYOR'S STATEMENT

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYOR'S ACT THIS 13 DAY OF August, 2005.

James L. Williams
 COUNTY SURVEYOR DEPUTY COUNTY SURVEYOR

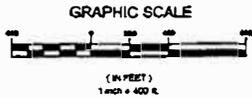
RECORDER'S STATEMENT

FILED FOR RECORD AT THE REQUEST OF FORT ORD REUSE AUTHORITY THIS 14 DAY OF AUG 2005 AT 10:18 A.M. IN VOLUME 23 OF SURVEYS MAPS AT PAGE 40, RECORDS OF MONTEREY COUNTY, CALIFORNIA.

STEPHEN WAGNINI
 COUNTY RECORDER
 SERIAL NO. 2075088106
 DEPUTY
 FEE: \$ 7.00

RECORD OF SURVEY

SHOWING
 BOUNDARY OF A 323.72 ACRE PARCEL OF LAND FOR ECONOMIC DEVELOPMENT CONVEYANCE "DEL REY OAKS" BEING A PORTION OF THE FORT ORD MILITARY RESERVATION (AS SHOWN ON VOL. 19 OF SURVEYS, PAGE 1) MONTEREY CITY LANDS TRACT No. 1 CITY OF DEL REY OAKS MONTEREY COUNTY, CALIFORNIA by



JULY 2005

SCALE: 1" = 400'

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**

END OF DOCUMENT