

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527


(831)755-4800

www.co.monterey.ca.us/rma

MEMORANDUM

Date: July 13, 2017

To: District 1 Supervisor Luis A. Alejo
District 2 Supervisor John M. Phillips
District 3 Supervisor Simon Salinas
District 4 Supervisor Jane Parker
District 5 Supervisor Mary Adams

From: Carl P. Holm, AICP, RMA Director 

Subject: Access Agreement between Resource Conservation District of Monterey County
Salinas Watershed Invasive Non-Native Plant Control and Restoration Program
(APN 245111006000)

cc: Lew C. Bauman, County Administrative Officer
Eric Lauritzen, Agricultural Commissioner
Shawne Ellerbee, Deputy Director of Administrative Services

The Resource Management Agency (RMA) was contacted by the Resource Conservation District (RCD) regarding Monterey County's Salinas River Invasive Plant Control Program. Since 2014, RCD has been controlling arundo and tamarisk on the Salinas River with grant funding from the Wildlife Conservation Board and works closely with the County's Agricultural Commissioner (AC). RCD is expanding their program into King City area which includes a parcel on the river that is owned by the County of Monterey (San Lorenzo Park, APN 245111006000).

The RCD requires the landowner permission to perform work on County property. The treatment on our parcel would consist of foliar application of glyphosate-based aquatic-formulated herbicide and would follow up with retreatment as needed for five years. RCD is requesting to enter into an Access Agreement with the County of Monterey for the above referenced APN 245111006000 for a term of ten (10) years. For the first five (5) years of this Agreement, all Project costs would be the sole responsibility of the RCD. For the remaining five (5) year of this Agreement, the County would be responsible for treating remaining arundo. The County would not be responsible for treating new arundo invasions from upstream sources, or for treating any arundo that has received less than three (3) total years of treatment by the RCD within the first five (5) years of this agreement. The cost for treating arundo during the final five years of this Agreement is estimated to no more than 1 hour of labor per acre, plus herbicide and equipment which would be funded under the RMA or AC. Attached you will find RCD's Restoration Program Overview and the proposed Access Agreement.

RCD's project schedule reflects needing access to perform Arundo eradication before the end of July, as required by permit conditions. Due to timing constraints with bringing this item to the Board of Supervisors I am informing you of my intent to sign the Access Agreement, and will bring this agreement to the Board in August 2017.



744 La Guardia Street, Building A, Salinas, CA 93905

(831) 424-1036, ext. 124

Salinas River Watershed Invasive Non-native Plant Management and Restoration Program

Project Overview

The Salinas River and its tributaries are threatened by invasive non-native plants, including the second-largest infestation of *Arundo donax* (arundo) in a California watershed. Arundo has overtaken nearly 1,500 acres of the Salinas River, forming enormous monocultures that increase flood and fire risk, consume large amounts of water, and provide virtually no food or habitat value for native wildlife.

In collaboration with the Monterey County Agricultural Commissioner's Office, the Resource Conservation District of Monterey County has developed a program and **acquired all necessary permits** to undertake a large-scale, multi-year program to eliminate arundo from the Salinas River watershed. Grants from the Wildlife Conservation Board (WCB) currently provide funding for the RCD to control arundo from Bradley to the confluence of the Salinas River and Arroyo Seco.

The RCD's program complements, but is separate from, the arundo control conducted as mitigation for the Salinas River Stream Maintenance Program.

Landowner Agreements

We are asking landowners to sign a 10-year agreement allowing the RCD access to river property to treat arundo and tamarisk for the first 5 years, **at no cost to landowners**. This typically involves one year of biomass reduction (mowing) and at least two years of herbicide treatment. For the remaining 5 years of the agreement, landowners are asked to assume responsibility for treating any remaining arundo if necessary. This is expected to involve no more than 1 hour of labor per acre, plus herbicide and equipment. Landowners are not held responsible for new invasions of arundo.

Scope of Work

The RCD is employing an upstream-to-downstream approach to arundo control. We are spot-treating scattered arundo patches and tamarisk plants with herbicide from Bradley to King City. Since 2014, the RCD has mowed 260 acres of large arundo stands along 10 river miles near Greenfield, and treated >100 acres with herbicide. In 2017, we will re-spray previously-treated areas and continue our mowing work downstream towards Soledad.

RCD staff provide oversight and monitoring of each project to verify compliance with permits. The primary techniques employed are biomass reduction using tractors with a mowing attachment and foliar application with aquatic-formulated glyphosate herbicide using power sprayers and backpack sprayers. All work is performed by experienced contractors. For sites with steep banks that are subject to erosion, we will use bioengineering solutions to stabilize and protect banks.

We need your participation!

The long-term success of the Salinas River Watershed Invasive Non-native Plant Management and Restoration Program is dependent on **full participation of all landowners in the watershed** who have arundo on their property. Any arundo left untreated will spread downstream and re-invade previously-treated areas. By signing our landowner agreement and allowing us to remove invasive plants, you are helping reduce the risk of flooding to your property, and the property of your neighbors!

The RCD looks forward to working with you. For more information, contact Emily Zefferman at emily.zefferman@rcdmonterey.org or (831) 424-1036 x 129.



Left: Mowing arundo to reduce standing biomass



Right: Results of stand reduction through mowing



Spraying arundo stands with a power sprayer



Left: Treated arundo patch before reduction



Right: Same site after (note remaining and new native veg)

ACCESS AGREEMENT
RESOURCE CONSERVATION DISTRICT OF MONTEREY COUNTY
SALINAS WATERSHED INVASIVE NON-NATIVE PLANT CONTROL AND
RESTORATION PROGRAM

This Access Agreement (“Agreement”) is entered into by and between the Resource Conservation District of Monterey County (“RCD”) and

Resource Management Agency, County of Monterey

(“**Responsible Party**”). The RCD and Responsible Party are sometimes referred to herein individually as a “**Party**” and collectively, the “**Parties**”).

RECITALS

A. Responsible Party represents and warrants that it owns, operates or is a tenant of the real property described on **Exhibit A** attached hereto (“**Property**”) and is authorized to enter into this Agreement.

B. The RCD is a Resource Conservation District organized under California Public Resources Code Section 9001 et seq.

C. The Salinas River and its tributaries are threatened by invasive non-native plants, including the second-largest infestation of *Arundo donax* (arundo) in a California watershed. *Arundo* has overtaken nearly 1,500 acres of the Salinas River, forming enormous monocultures that increase flood and fire risk, consume large amounts of water, and provide virtually no food or habitat value for native wildlife.

D. The RCD has received all necessary permits to implement a watershed-based invasive non-native plant control and riparian restoration program within the Salinas River Watershed, including approval from the California Department of Fish and Wildlife as described in the Streambed Alteration Agreement to which the RCD is a party dated April 11, 2014, incorporated herein by this reference. (“**Project**”). A Notice of Determination for the Project was filed on December 15, 2011.

E. The RCD, in partnership with the Monterey County Weed Management Area, has received funding from the California Wildlife Conservation Board to work with Responsible Party and others to implement the Project in the Salinas River Watershed.

F. The long-term success of the Salinas River Watershed Invasive Non-native Plant Management and Restoration Program is dependent on full participation of responsible parties in the watershed who have arundo on their properties. Any arundo left untreated will spread downstream and re-invade previously-treated areas.

G. Responsible Party acknowledges the benefits of the Project and therefore has agreed to allow the RCD to enter the Property to implement the Project on the terms and conditions set forth herein.

NOW THEREFORE, the RCD and Responsible Party agree as follows:

1. Grant of Right of Access.

(a) **Right of Access.** Responsible Party hereby grants to the RCD, its employees, agents or designees, the right of access to the Property to implement the Project at all times as may be reasonably necessary or appropriate during the term of this Agreement. The RCD's right of access includes the right to allow personnel and equipment on the Property as reasonably appropriate. The right of access to the Property granted herein is subject to all the terms and conditions set forth in this Agreement.

(b) **Work Area.** Except for ingress and egress, the RCD's work relating to the Project shall be confined to the areas shown on **Exhibit A ("Work Area")**. The Parties acknowledge and agree that the Work Area will be used, altered and maintained in accordance with the Project.

(c) **Nonexclusive Right.** The RCD's right of access to the Property is not exclusive. Responsible Party, its employees and invitees shall each have the right to use the Property for all purposes as are permitted by federal, state, and local statutes, laws, ordinances, codes, regulations and rules, or as determined by Responsible Party, so long as such use does not interfere with the RCD's rights hereunder.

(d) **Advance Notice.** The RCD shall give no less than seven (7) days advance notice prior to entry. The notice shall be sufficient if made either by telephone or by mail, directed to the address and telephone number shown below or to an alternate address provided by Responsible Party.

(e) **No Property Interest Conveyed.** This Agreement does not convey a property interest to the RCD in the Property or any portion thereof. This Agreement shall not be recorded in the official records of Monterey County.

2. Term of Agreement. The term of this Agreement shall commence on the date all the Parties have signed this Agreement ("**Commencement Date**"), and terminate ten (10) years after the Commencement Date, unless the term of this Agreement is extended by mutual agreement of the Parties or unless sooner terminated as provided in this Agreement.

3. Default. In the event of a material default by the RCD, this Agreement may be terminated by Responsible Party a) provided the Responsible Party gives the RCD written notice of the default, which notice shall describe the nature of the default, and b) provided the RCD is given sixty (60) days to cure the default. In the event the RCD fails to cure the default within such sixty (60) day period, the Responsible Party may terminate this Agreement.

4. Responsibility for Project Costs. For the first five (5) years of this Agreement, all Project costs shall be the sole responsibility of the RCD. For the remaining five (5) years of this Agreement, Responsible Party shall assume responsibility for treating remaining arundo. Responsible Party will not be held responsible for treating new arundo invasions from upstream sources, or for treating any arundo that has received less than three (3) total years of treatment by the RCD within the first five (5) years of this agreement. The cost to Responsible Party for treating arundo during the final five years of this Agreement is estimated to be no more than 1 hour of labor per acre, plus herbicide and equipment.

5. Cooperation and Coordination. During the Term of this Agreement, Responsible Party and the RCD agree that: (a) each Party will cooperate and coordinate its activities with one another in order not to disturb ongoing use of the Work Area; (b) Responsible Party will not intentionally take action to disrupt the progress of the Project; (c) The RCD will continue monitoring and maintenance of the Project with assistance from the Responsible Party when needed for 10 years, commencing from the date of execution; and (d) each Party will take, use, provide and make proper, reasonable, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damage to any person or the Property.

6. Insurance and Indemnification.

(a) Insurance. RCD agrees to obtain and/or maintain at its own cost and expense general liability insurance in the sum of not less than \$2,500,000 for each occurrence and not less than \$2,500,000 combined limit; RCD shall further name Responsible Party as an additional insured on such policy by separate endorsement, and at the time of the execution of this Agreement, shall furnish Responsible Party with a copy of said policy or a certificate that such insurance has been issued and is in place.

(b) Indemnification. RCD shall indemnify, defend, and hold Responsible Party harmless from any and all claims, liability, losses, costs, charges, or expenses ("Claim" or "Claims") which Responsible Party may incur as a result of any negligent or wrongful act or omission of RCD in its use of the right of access granted under this Agreement. This indemnification obligation shall not apply to the extent a Claim is the result of the negligent or wrongful act or omission of Responsible Party.

(c) Repair of Damage. The RCD shall promptly repair any damage to the Property caused by the acts or omissions of the RCD or its employees or contractors.

7. Compliance with Applicable Laws. The RCD agrees to comply in all respects with any and all applicable federal, state, and local statutes, laws, ordinances, codes, regulations, and permit conditions in connection with Project.

8. Notice.

(a) Method of Notice. The Parties shall give all notices and communications between the Parties by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, (iv) fax or (v) electronic mail to the

Party's address specified in this agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section. Receipt of Notice. A notice given under this Agreement will be effective on the other Party's receipt of it.

Responsible Party: Carl P. Holm, AICP
Attn: Resource Management Agency Director
1441 Schilling Place - South, 2nd Fl
Salinas, CA 93901
831-755-4879
holmcp@co.monterey.ca.us

RCD: Resource Conservation District of Monterey County
Attn: Paul Robins
744 LaGuardia Street, Building A
Salinas, CA 93905
(831)424-1036, ext. 124
paul.robins@rcdmonterey.org

9. General Provisions.

(a) **Recitals.** The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

(b) **Integration.** This Agreement contains the complete and entire agreement between the Parties and cannot be altered, modified or amended except by the written agreement of the Parties. The Parties agree that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

(c) **Binding Effect.** This Agreement shall inure to the benefit of and bind the Parties hereto and their successors and assigns.

(d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) **Captions.** All sections and paragraph headings and captions appearing in this Agreement are included for convenience only, and shall not be considered in interpreting this Agreement.

(f) **Severability.** If any term, provisions, condition or covenant of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and this Agreement shall otherwise be valid and enforceable to the fullest extent permitted by law.

(g) **Exhibits.** All exhibits attached hereto are hereby incorporated by reference and made a part of this Agreement.

(h) **Waiver.** A waiver by one Party of the performance of any covenant, agreement, obligation or condition, shall not be construed as a waiver of any other covenant, agreement or

condition. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

(i) Interpretation. Each Party and its counsel has reviewed and revised this Agreement and any rule of contract interpretation to the effect that ambiguities or uncertainties are to be interpreted against the drafting Party or the Party who caused it to exist shall not be employed in the interpretation of this Agreement or any document executed in connection herewith.

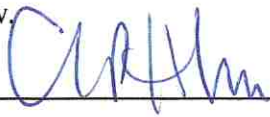
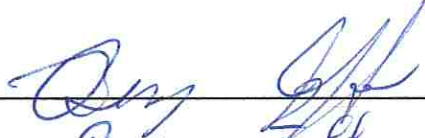
(j) Mediation of Disputes. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties agree to first try in good faith to settle the dispute by non-binding mediation before resorting to binding arbitration or litigation.

(k) Jurisdiction and Venue. The Parties acknowledge and understand that the making of this Agreement is in Monterey County, California. The exclusive venue for any suit, action or proceeding shall be in Monterey County, California.

(l) Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicate original hereof. This Agreement may also be executed in multiple counterparts and shall be effective when counterparts hereof, when taken together, bear the signatures of all the Parties set forth below.

(m) Authority. The undersigned Parties affirm that the individuals signing this Agreement have been granted the authority to do so.

IN WITNESS WHEREOF, this Agreement has been entered into as of the date and year set forth below.

 _____	 _____
Name: <u>CARL P. HOLM</u>	Name: <u>Benny Jefferson</u>
Title: <u>RMA DIRECTOR</u>	Title: <u>RCD President</u>
Date: <u>JULY 17, 2017</u>	Date: <u>7/25/17</u>

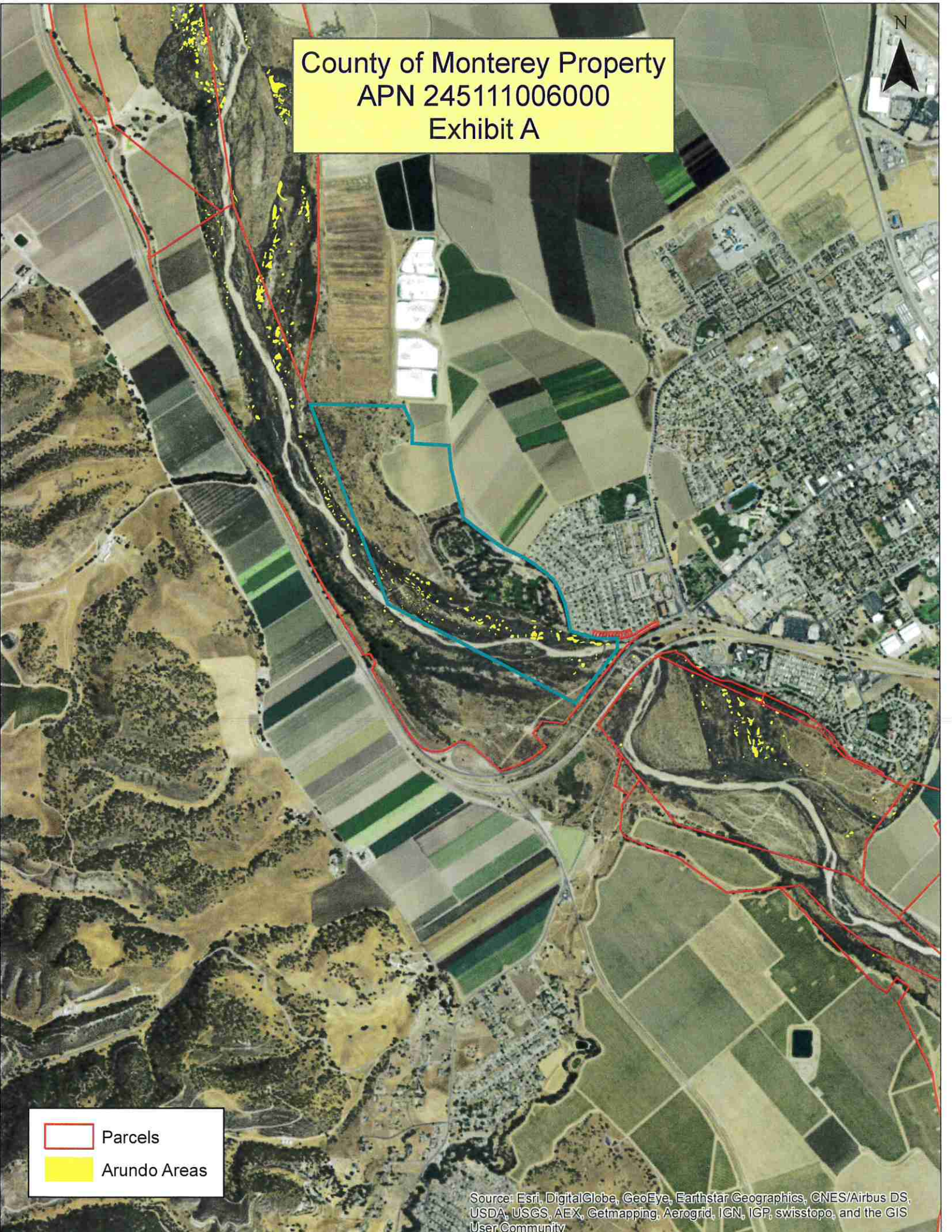
Approved as to form by:

 _____	_____
Name: <u>Kelly L. Donlon</u>	Name: _____
Title: <u>Deputy County Counsel</u>	Title: _____
Date: <u>7/24/17</u>	Date: _____

EXHIBIT A

[Map of the Property and the Work Area]

County of Monterey Property
APN 245111006000
Exhibit A



-  Parcels
-  Arundo Areas

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community