Attachment A

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BACKGROUND:

SOPC and Ed Leeper originally sued the County in 2000 alleging that the County was not properly implementing mitigation, monitoring and reporting programs in violation of CEQA, and that the public could not ascertain whether required mitigation measures were in fact implemented. The case settled with the County agreeing to adopt procedures for properly monitoring and confirming compliance with mitigation measures.

In 2011, SOPC filed suit again alleging that the County was failing to follow its own procedures and once again not properly implementing mitigation, monitoring and reporting programs required by CEQA. The case settled, and the settlement agreement required, in part, a review of ten projects for mitigation measure compliance. For purposes of the agreement "mitigation measure" included other conditions of approval that were imposed but were not mitigation measures identified in an environmental impact report ("EIR"). The Monterra Ranch subdivision was identified as one of the ten for review.

The agreement further provided that following the review, if non-compliance was found, the County was to "remedy such non-compliance or . . . modify the applicable mitigation measure(s) as may be allowed pursuant to CEQA or other applicable law after conducting a noticed hearing before the Board of Supervisors."

The review of the 10 projects revealed substantial compliance with conditions of approval and mitigation measures. A few were identified and either addressed or clarified during the process. One condition of approval for the Monterra Ranch subdivision was identified as not in compliance, a condition to build a 20 car Park and Ride lot ("Lot") at the entrance to the subdivision where Highways 68 and 218 intersect. An aerial view of the intersection is enclosed as Exhibit B. This condition of approval was not a mitigation measure identified in the EIR for the project.

The tentative map for Monterra Ranch was approved in 1987. At the time it was owned by a company called Hanover – Monterra Investors II. An EIR was prepared for the tentative map that identified a number of mitigation measures. A copy of the pages of the Final EIR setting forth the mitigation measures is enclosed as Exhibit C. The resolution approving the tentative map included 81 separate conditions of approval, many of which were the identified mitigation measures but also including non-mitigation conditions. Condition No. 74 provided:

> That a park and ride lot with a capacity for 20 cars and transit access be designed and constructed near the highway 68/highway 218 intersection as part of the relocation of the Monterra Ranch Road to align with the highway 218 intersection.

This condition was not related to an EIR mitigation measure, but, according to the minutes for the Board meeting, was added at the request of then Supervisor Karen Strasser-Kaufman. The resolution of approval, which included the conditions, was not recorded against the property.

The Lot first appears on a tentative subdivision map drawing dated 1989, and is located on what is identified as a "Remainder Parcel". A copy of an enlarged view of that map showing the

proposed location of the lot is enclosed as Exhibit D. The Remainder Parcel, however, is located within the City of Monterey, not the unincorporated area. It does not appear that this map was ever recorded or filed with the County.

The Mills brothers bought Monterra in 1996 under the name Monterra Ranch Properties LLC ("MRP"). The Millses began to experience financial difficulty with the development in the mid to late 2000s. The Remainder Parcel remained in the ownership of MRP as security for some of the development's financing until 2009 when it was sold at auction pursuant to a default on its deed of trust. Its current owner is the Paul W. Hiss Trust. The unsold residential lots within the development were owned by MRP until defaults occurred in the applicable deeds of trust, and they were acquired by a variety of banks and other lenders.

Monterra was to be built in phases, with final maps for each phase approved and recorded at different times. The map for phase 1 was approved in 1992; the last final maps, for phases 8, 9, and 10, were approved in 2005. The exact configuration of the phases changed over time but it appears the Lot should have been constructed as part of phase 1. None of the pages for that final map, however, show the Lot.

RMA – Planning staff utilized a matrix to track from time-to-time condition compliance for the development. Generally, Condition 74 was attributed to Public Works. An unattributed checklist for phase 6 (copy enclosed as Exhibit E) and dated 2004 indicates that Condition 74 (the Lot) was "previously satisfied." In 1991, the Planning Department provided a letter to the developer's attorney indicating that all conditions for phase 1 were satisfied (copy enclosed as Exhibit F), and Public Works provided similar memoranda for other phases relating to its conditions (which included the Lot). In addition, in 2007, the County received copies of letters signed by a registered Civil Engineer that all improvements for phase 1 had been completed (copy enclosed as Exhibit G). That letter, however, probably relates only to improvements required by subdivision improvement agreement between the developer and the County for that phase, and to improvement plans submitted to and approved by the County. Similar letters were received for other phases. None of the subdivision improvement agreements mention the Lot, and none of the improvement plans approved by the County include the Remainder Parcel or show the Lot. This is probably because the entry road and Lot were to be located in the City of Monterey, and any improvement plans would have been submitted to and approved by the City and not processed by the County.

In 2011, phases 6, 8 and 10 of Monterra were re-subdivided as the York Highlands subdivision. That resolution of approval states: "All applicable mitigations have been carried forward from the Mitigation Monitoring Program adopted when the Monterra Ranch Subdivision was approved (Resolution No. 87-527)." The condition to build the Lot was deemed not to apply to York Highlands. A note in the matrix included in the York Highlands approval (copy enclosed as Exhibit H) states: "Included with Highway 218 improvements."

Another condition of approval for the Monterra development was that a homeowners association ("HOA") be formed "for road, drainage and open space maintenance." The Covenants, Conditions and Restrictions ("CC&Rs") for the HOA were to be approved by the County. The

HOA was formed and CC&Rs adopted. The CC&Rs were subsequently revised. As revised, they provide that the HOA will only be responsible for property it owns or is conveyed to it, and this includes any "common area." As mentioned above, the Remainder Parcel was never owned by the HOA, so it never became responsible for compliance with Condition 74.

ANALYSIS:

It is unclear exactly why the Lot was never constructed. It appears that because the Lot was within the City of Monterey, and any plans to construct the entryway and Lot were to be submitted to and approved by the City, County staff failed to appreciate the necessity to follow-up on its construction. Also, included in the Condition Compliance materials prepared by staff are pictures of the dirt lot at the north east corner of the intersection of Highways 218 and 68 that is used as an informal park and ride lot or just a parking lot (see Exhibit B). It appears that staff may have erroneously believed the Lot was constructed when the Highway intersection was improved by Caltrans (hence the notation cited above – "included with Highway 218 improvements"), and that the dirt lot complied with Condition 74. The land is Caltrans right-of-way, however, and is not an approved park and ride lot. It therefore cannot serve as compliance with Condition 74.

Nevertheless, the County is obligated under the settlement agreement to either: 1) remedy non-compliance with Condition 74 or 2) hold a noticed public hearing before the Board of Supervisors and modify the condition as may be allowed by law.

It is unclear whether the County has any recourse against any individual or entity to remedy the non-compliance. The resolution of approval and conditions were not recorded, and therefore any subsequent owner would not be on notice of the obligation to build the Lot, including the subsequent owner of the Remainder Parcel where the Lot probably would have been built. Also, there was no contractual agreement between these individual lot owners and the County regarding the Lot, or any other improvements, and the County accepted and filed the final maps, indicating compliance with all conditions. Thus it is unlikely that the County could pursue individual lot owners.

The HOA does not appear to have responsibility for the Lot, as it is responsible only for property it owns or that is conveyed to it. Finally, it is unclear as to the status of MRP; its status as an LLC was suspended by the state Franchise Tax Board, but it still appears as an owner of various properties around the subdivision, and entry of "Monterra Ranch Properties LLC" in a web browser will return the Monterra Ranch web site as one location. More research on that issue is necessary.

One last consideration regarding the pursuit of a remedy: the approval of Monterra Ranch was almost 30 years ago, and the last final map for Monterra was approved over 11 years ago. Because the County has failed to pursue compliance with Condition 74 for all that time it is uncertain whether a court would issue an order at this time for someone or some entity to pursue construction of the Lot. Also, no member of the public has file suit regarding the failure to construct the lot and the time has passed to challenge acceptance of the final maps.

Pursuant to the Government Code, the County has the ability to delete or modify the condition if certain findings are made including that changes in circumstances make the condition no longer appropriate or necessary, and the deletion or modification does not impose an additional burden on the property owner. Based on what is known today, these findings could likely be made (any such decision, however, must wait until the noticed public hearing and all evidence presented at the hearing. Because the Lot was not a CEQA mitigation measure, the requirements of deleting such a measure do not apply.

One last option would be to explore other means to have the Lot constructed, perhaps with available grants and a cooperative agreement with Caltrans regarding its right-of-way near the highway intersection.