

Attachment 1

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MEMORANDUM OF UNDERSTANDING

among

THE COUNTY OF MONTEREY

and

THE MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT

regarding

THE PREPARATION OF A RESOURCE MANAGEMENT PLAN FOR HABITAT
MANAGEMENT WITHIN THE FORMER FORT ORD

RECITALS

WHEREAS, certain properties located on the former Fort Ord are subject to the conditions and requirements laid out in the Installation-Wide Habitat Management Plan for the former Fort Ord (“HMP”), which requires the preparation and completion of a site-specific Habitat Resource Management Plan (“RMP”);

WHEREAS, County of Monterey (“County”) owns approximately 2,077 acres of real property within the Ford Ord area designated in the HMP as either “Habitat Management Areas” or “Borderlands” and are subject to HMP habitat management requirements (collectively, the “County Habitat Management Areas”);

WHEREAS, the Monterey Peninsula Community College District (“MPC”) owns approximately 485 acres of real property within the Ford Ord area designated in the HMP as either “Habitat Management Areas” or “Borderlands” parcels and are subject to HMP habitat management requirements (collectively, the “MPC Habitat Management Areas”);

WHEREAS, the County Habitat Management Areas and the MPC Habitat Management Areas are graphically depicted on the map attached hereto as Exhibit “A”;

WHEREAS, the County and MPC were previously parties to various land use modifications memorialized in that certain “Memorandum of Understanding Concerning the Proposed East-Garrison/Parker Flats Land-Use Modification between the Fort Ord Reuse Authority (“FORA”), MPC, County, the Bureau of Land Management (“BLM”) and the Army” (the “Land Swap Agreement”), whereby the County’s developable acres at the current East Garrison site were increased, resulting in a corresponding increase in habitat management responsibilities in Parker Flats, and MPC received the Military Operations on Urban Terrain (“MOUT”) site and certain developable acres in Parker Flats, resulting in a corresponding increase in habitat management responsibilities;

WHEREAS, the County, FORA and MPC entered into that certain “Agreement Regarding Public Safety Officer Training Facilities” dated October 22, 2002 (the “2002 Agreement”);

WHEREAS, pursuant to Item 15 of the 2002 Agreement, FORA was to assume responsibility of habitat management on the MPC Habitat Management Areas and MPC was to have no additional responsibilities for habitat management beyond the payment of a fair share assessment;

WHEREAS, on June 23, 2020, FORA adopted a Resolution known as the FORA Transition Plan;

WHEREAS, Section 1.2 of the FORA Transition Plan provides that the County’s habitat management responsibilities on the former Fort Ord shall include habitat management responsibilities on sites held by MPC, subject to MPC’s obligation to pay reasonable fair share assessments for the cost of such habitat management as provided in the 2002 Agreement;

WHEREAS, effective July 1, 2020, FORA dissolved and ceased to exist as a legal entity, rendering it impossible for FORA to perform any remaining contractual obligations pursuant to the 2002 Agreement between the County, MPC and FORA. Notwithstanding FORA’s dissolution, the County and MPC desire to mutually cooperate as set forth herein in connection with the preparation and completion of the RMP for the County’s and MPC’s respective Habitat Management Areas, subject to a fair share contribution by MPC, all of which is in the best interests of the Parties;

WHEREAS, the County has approved a professional services agreement with environmental consultant Denise Duffy & Associates, Inc. (“DDA”) for the preparation of an RMP for the County’s Habitat Management Areas, to include MPC’s Habitat Management Areas (approved by County Resolution A-15192) (the “Consultant Contract”). A copy of the Consultant Contract outlining DDA’s scope of work and budget is attached hereto as Exhibit “B”;

WHEREAS, the Parties, based upon the amounts established in the Consultant Contract, have agreed upon the appropriate amount of MPC’s fair share contribution toward the preparation and completion of the RMP, and any necessary environmental review related thereto in connection with the California Environmental Quality Act (“CEQA”);

WHEREAS, Section 15061(b)(3) of the CEQA Guidelines states that when it can be seen with certainty that there is no possibility that the activity in question, in this case the adoption of this Memorandum of Understanding (MOU), may have a significant effect on the environment, the activity is not subject to CEQA;

WHEREAS, this MOU only outlines MPC's and the County's intention to work collaboratively and in good faith with respect to habitat planning and funding activities within their Habitat Management Areas, all of which can be seen with certainty to have no possible significant effect on the environment; and

WHEREAS, if recommended policies or actions progress to a "project" level, further CEQA analysis will be required to address potential environmental impacts of a proposed project.

NOW THEREFORE, the Parties agree as follows:

I. PURPOSE AND INTENT

It is the purpose and intent of this MOU to memorialize the Parties' intention to work collaboratively and in good faith with respect to habitat planning and funding activities within their Habitat Management Areas, and to set forth the mutual obligations of the Parties in connection with the preparation and completion of the RMP described in the Consultant Contract.

The Parties also intend that this MOU and any subordinate documents do not constitute an entitlement for development, such development being the subject of other actions by public entities or of permits to be sought at later times. It is also the intent of the Parties that this MOU does not constitute a "project" for purposes of the California Environmental Quality Act ("CEQA"), and that any future development as may be described herein be subject to all requirements of law, including CEQA. Execution of the MOU constitutes a good faith agreement to work toward mutual planning objects outlined herein, reserving for the future any specific project approvals or plans. Any specific project approvals shall become effective if and only after such applications have been considered by MPC and the County in their sole discretion following the conduct of all legally required procedures, including without limitation, all environmental review processes and all other applicable governmental approvals.

II. FAIR SHARE CONTRIBUTION.

The Parties agree that MPC's fair share contribution toward the total cost of DDA's Consultant Contract for the completion of the RMP shall be seventy thousand dollars (\$70,000.00) ("MPC's RMP Contribution Amount"). For purposes of this Section II, MPC also agrees to the imposition of an additional ten percent (10%) contingency fee to MPC's Total Contribution Amount. By entering into this MOU, MPC agrees that MPC's RMP Contribution Amount represents a binding obligation, in accordance with the payment terms set forth in Section III, below.

Additionally, the Parties anticipate that some degree of environmental review associated with the RMP will be necessary for purposes of CEQA ("Environmental Review"). The Parties agree that the amount of MPC's fair share contribution toward the cost of any such Environmental Review is estimated to be thirty thousand dollars (\$30,000.00). By entering into this MOU, MPC is committing to a fair share funding amount of thirty thousand dollars (\$30,000.00) toward the Environmental Review of the

RMP. Notwithstanding the foregoing, the Parties agree that any Environmental Review for those portions of the RMP involving MPC's Habitat Management Areas shall not commence unless and/or until specifically authorized by MPC. As such, the Parties acknowledge that MPC's actual fair share contribution amount toward any Environmental Review may be subject to future adjustment. Specifically, in the event that: (i) environmental review of the RMP is not deemed necessary by the appropriate lead agency; (ii) MPC does not authorize the Environmental Review for MPC's Habitat Management Areas; or (iii) the Parties subsequently determine, pursuant to an approved professional services contract, that MPC's actual fair share of the cost of the Environmental Review is a lesser amount, then MPC's actual fair share contribution for the Environmental Review will be reduced accordingly. If due to unforeseen circumstances actual costs exceed the specific amounts identified in the Consultant Contract, MPC's fair share shall not be increased accordingly unless MPC expressly agrees in writing after consultation between the Parties.

In connection with the Environmental Review, it is anticipated by the Parties that the County shall serve as the lead agency for purposes of the CEQA.

III. CONTRIBUTION PAYMENT.

In spring 2022, MPC directly paid DDA \$6,463.25 for field surveys on MPC property. These spring surveys are identified under the Consultant Contract Task 3.1. This prior payment of \$6,463.25 made directly by MPC to DDA for the purposes of and in anticipation of this MOU shall be credited to MPC as part of their financial contribution required under this MOU.

IV. RESOURCE MANAGEMENT PLAN PREPARATION.

The Consultant Contract's scope of services provides that the County will actively participate in the preparation and review of the RMP, including, but not limited to: attending a "kick-off" meeting with DDA; participating in public outreach; coordinating with relevant agencies and stakeholders; reviewing and commenting on a draft set of baseline narratives and inventory maps; identifying and defining potential future projects that may occur within the MPC Habitat Management Areas; reviewing and commenting on Administrative Drafts of the RMP; participating in bi-monthly meetings with DDA; and reviewing permit applications and supporting documentation for California Department of Fish and Wildlife (CDFW) and the United States Fisheries and Wildlife Service (USFWS). To the extent that the aforementioned activities involve or otherwise implicate MPC's Habitat Management Areas, the Parties agree that MPC shall have the right to fully participate in the preparation and review of the RMP.

V. RESOURCE MANAGEMENT PLAN IMPLEMENTATION.

The Parties acknowledge and agree that the RMP is a planning tool providing a physical assessment of the biological environment and is anticipated to result in a range of management practices to be implemented within the Habitat Management Areas at a future date. Acknowledging the goals of the 2002 Agreement, the Parties hereby agree to

work collaboratively and to negotiate in good faith regarding any future fair share funding contributions by MPC toward the cost of implementing the RMP on MPC Habitat Management Areas and any necessary habitat management activities identified therein.

VI. MISCELLANEOUS

A. Amendments

This MOU may be amended only by written agreement signed by each of the Parties.

B. Waivers

No waiver of any provision of this MOU will be valid unless it is in writing and signed by all Parties. Waiver by any Party at any time of any breach of this MOU cannot be deemed a waiver of or consent to a breach of the same or any other provision of this MOU. If a Party's action requires the consent or approval of any other Party, that consent or approval on any one occasion cannot be deemed a consent to or approval of that action on any later occasion or a consent or approval of any other action.

C. Binding Effect and Assignment

This MOU shall be binding upon and inure to the benefit of the Parties and their successors or assigns. This MOU is for the benefit only of the Parties, and no third parties are intended to be benefited by this MOU.

D. Governing Law

This MOU, and the Parties' performance under this MOU, will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.

E. Construction

The headings used in this MOU are for convenience only and will not affect the meaning or interpretation of this MOU. This MOU will not be construed against any Party as the principal draftsperson. The words "include" and "including" when used are not exclusive and mean "include, but are not limited to" and "including but not limited to," respectively.

F. Capitalized Terms

Capitalized terms have the meanings given to them in this MOU.

G. Severability

If any term of this MOU is inconsistent with applicable law, then upon the request of any Party, the Parties will promptly meet and confer to determine how to amend the inconsistent term in a manner consistent with law, but all parts of this MOU not affected by the inconsistency will remain in full force and effect.

H. Further Assurances

County and MPC agree to cooperate reasonably and in good faith with one another to implement the terms of this MOU, and to negotiate and execute any further agreements and perform any additional acts that are reasonably necessary to carry out the terms of this MOU.

I. Notices

Any notices or other communications to be sent by one Party to the other under this MOU shall be in writing and shall be given by personal or electronic delivery to the persons designated below, with copies delivered as indicated, or by U.S. Mail, return receipt requested, with copies mailed as indicated.

For County: County Administrative Officer
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901

Copy: Michael Whilden, Deputy County Counsel
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901
whildenm@co.monterey.ca.us

For MPC: Administrative Services
Steve Haigler, Vice President
980 Fremont Street
Monterey, CA 93940
shaigler@mpc.edu

Copy: Michael Harrington
Horan Lloyd, a Professional Corporation
26385 Carmel Rancho Blvd, Suite 200
Carmel, CA 93923
mharrington@horanlegal.com

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed effective as of the last date written below ("Effective Date").

COUNTY OF MONTEREY

By: _____
Craig W. Spencer, Acting Director
Housing & Community Development

Date: _____

Approved as to Form
County Counsel
Leslie J. Girard, County Counsel

By: _____
DocuSigned by:
Michael Whilden
0F98C5BE9B67414
Michael Whilden
Deputy County Counsel

Date: 12/21/2023

Approved as to Fiscal Provisions

By: _____
DocuSigned by:
Jennifer Forsyth
4E7E65787545A4E
Jennifer Forsyth
Auditor/Controller

Date: 12/21/2023

MONTEREY PENINSULA COLLEGE

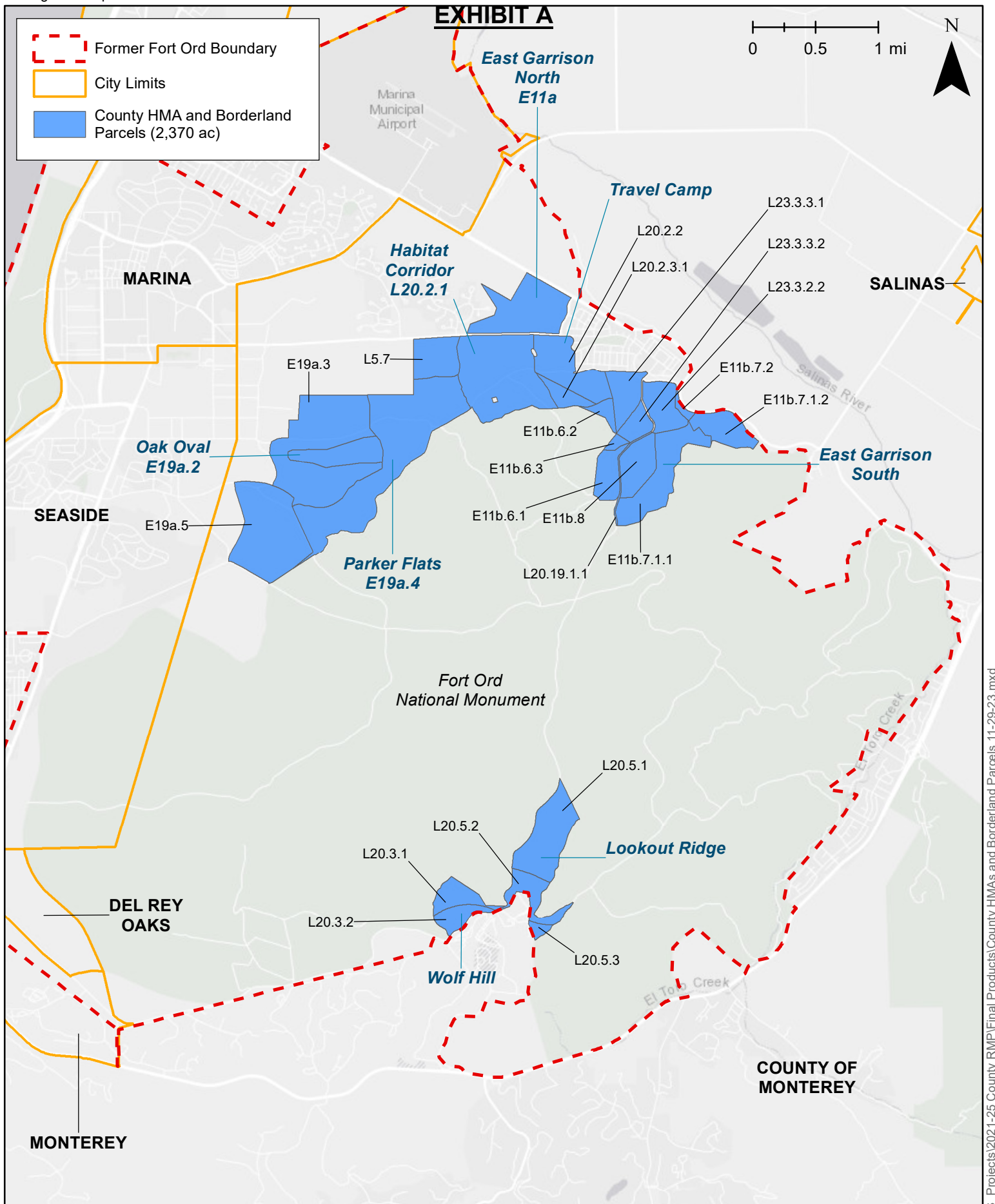
By: _____
DocuSigned by:
Steve Haigler
590A0000000000000000000000000000
(Signature of Chair, President, or Vice President)

Steve Haigler, Vice President
Administrative Services

Date: 12/21/2023

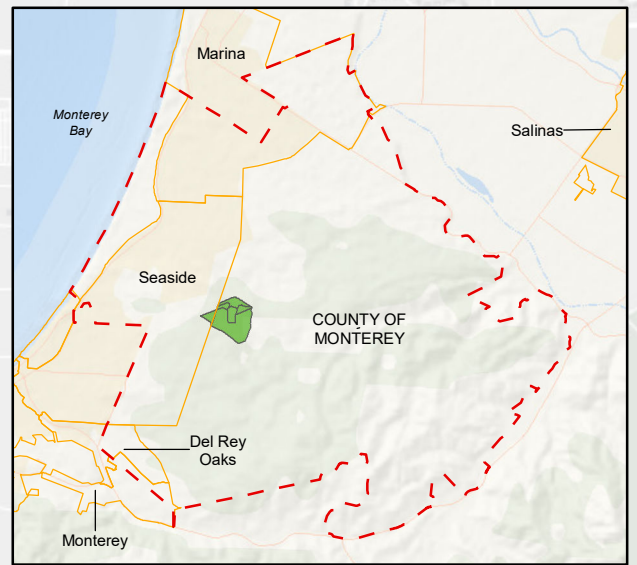
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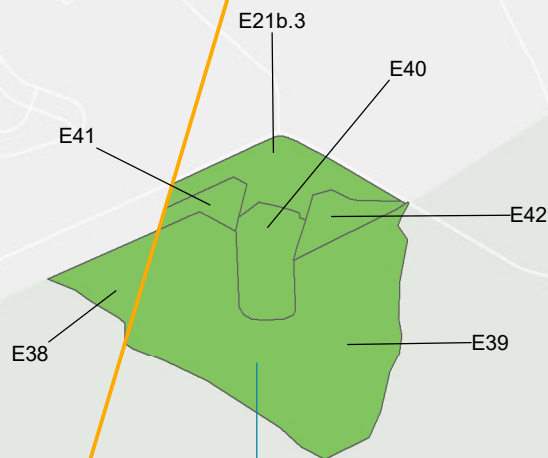
MARINA EXHIBIT B



- Former Fort Ord Boundary
- City Limits
- MPC HMA and Borderland Parcels (258 ac)



SEASIDE



MPC Range 45

*Fort Ord
National Monument*

**COUNTY OF
MONTEREY**

**DEL REY
OAKS**

**Monterey Peninsula College
Habitat Management Areas and Borderlands**

Date
11/30/2023

Scale
1 in = 3,000 ft



Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Figure
2

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