

# City of Del Rey Oaks

## HOUSING ELEMENT UPDATE

Final Environmental Impact  
Report State Clearinghouse  
No. 2023040680

Prepared for the City of Del Rey Oaks



By:

Denise Duffy &  
Associates, Inc.



October 2023

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# CHAPTER 1 Introduction to the Final EIR

## 1.1 BACKGROUND

The City of Del Rey Oaks (City), as Lead Agency, prepared a Draft Environmental Impact Report (Draft EIR or DEIR) under the California Environmental Quality Act (CEQA), Public Resources Code §21000 et seq. The Draft EIR was prepared to provide the public and responsible and trustee agencies with information on the potential environmental effects of implementation of the City of Del Rey Oaks 2023 Draft Housing Element Update (Proposed Project). The Draft EIR was circulated for a 45-day public review period, between August 14<sup>th</sup> and September 27<sup>th</sup>, 2023.

As Lead Agency, the City has prepared this document pursuant to CEQA Guidelines Section 15132 which specifies the following requirements for a Final Environmental Impact Report (Final EIR or FEIR):

“The Final EIR shall consist of:

- a) The Draft EIR or a revision of the draft.
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary.
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR.
- d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
- e) Any other information added by the Lead Agency.”

This Final EIR contains a list of the comments submitted on the Draft EIR, copies of the comment letters received on the Draft EIR during the public review period, responses to the environmental points raised in those comments, and revisions to the Draft EIR made as a result of the public review process. This document, together with the Draft EIR, constitute the Final EIR for the City of Del Rey Oaks 2023 Draft Housing Element Update.

## 1.2 PROJECT OVERVIEW

The project under consideration is the City of Del Rey Oaks 2023 Draft Housing Element Update. The City must prepare a Housing Element as part of its General Plan under the requirements of California State law. All local governments must implement solutions to address local and regional housing needs. The Draft Housing Element represents the 5<sup>th</sup> Cycle Planning Period update and covers the 2015-2023 planning period. The City’s Housing Element was last officially updated in December 2019. This 2023 Draft Housing Element Update revises specific adopted programs in the 2019 document related to general plan amendment and rezoning for specified areas of the City. The Proposed Project evaluated in this EIR includes the adoption of the 2023 Housing Element Update, as well as the general plan amendment and rezoning proposed. The City is also considering adoption of a draft 6<sup>th</sup> Cycle Housing Element Update; the Proposed Project in the Draft EIR considers the cumulative impacts of adoption and implementation of the 6<sup>th</sup> Cycle Housing Element Update. The City has prepared the Draft and Final EIR for the Proposed Project in compliance with the requirements of CEQA and the CEQA Guidelines (14 California Code of Regulations [CCR] Section 15000 et seq.).

### 1.3 PUBLIC REVIEW OF DRAFT EIR

CEQA Guidelines Section 15087(a) requires that a Notice of Availability (NOA) of a Draft EIR be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing. Section 15087(a) also requires that in addition to the above notifications, at least one of the following procedures be implemented:

- Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed Project;
- Posting of notice by the public agency on and off the site in the area where the Project is to be located; or
- Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the Project is located.

Section 15087(d) requires the NOA be posted for at least 30 days in the office of the county clerk of each county in which the project will be located. Section 15087(f) requires that an NOA be sent to state agencies through the State Clearinghouse. Section 15087(g) states that lead agencies should place copies of the Draft EIR in public libraries. The method by which these requirements were satisfied is provided below:

- On August 14, 2023, the NOA and Notice of Completion were sent to the State Clearinghouse/Governor’s Office of Planning and Research, along with electronic copies of the Draft EIR. In addition, the City distributed the NOA for the Draft EIR to responsible and trustee agencies, interested groups, organizations, and individuals. The distribution list included all parties that commented on the Notice of Preparation (NOP) and all parties that contacted the City requesting to be notified about the project.
- A hard copy of the Draft EIR was made available for review during normal business hours at the City office, 650 Canyon Del Rey Boulevard, Del Rey Oaks, CA 93940. The Draft EIR was available online at the City website at: [https://www.delreyoaks.org/sites/default/files/fileattachments/community\\_development\\_and\\_planning/page/2692/draft\\_eir\\_city\\_of\\_dro\\_housing\\_element\\_updateaug14\\_2023.pdf](https://www.delreyoaks.org/sites/default/files/fileattachments/community_development_and_planning/page/2692/draft_eir_city_of_dro_housing_element_updateaug14_2023.pdf)
- On August 14, 2023 the City posted the NOA at the Monterey County Clerk.
- On August 14, 2023, the City also posted the NOA at the City Hall and City kiosks.

### 1.4 FINAL EIR CERTIFICATION

The City Council of the City of Del Rey Oaks will review and consider the Final EIR prior to taking an action on the Proposed Project. The Final EIR will be made available to agencies who provided comments on the Draft EIR a minimum of ten days prior to the Council’s consideration of the Final EIR. If the Council finds that the Final EIR reflects the City’s independent judgment and has been prepared in accordance with CEQA and the CEQA Guidelines, the City will certify the adequacy and completeness of the Final EIR. A decision to approve the Proposed Project would be accompanied by written findings prepared in accordance with CEQA Guidelines Section 15091, and if applicable, Section 15093. The Draft EIR, Summary and this Final EIR address significant effects identified in the Final EIR, and whether the effect can be reduced to a less-than-significant level through feasible mitigation measures.

If in approving the Proposed Project, the City adopts mitigation measures to reduce significant effects, it also will adopt a Mitigation Monitoring and Reporting Program (MMRP), as required by Section 15097 of the CEQA Guidelines. The MMRP describes how each of the mitigation measures will be implemented

and provides a mechanism for monitoring and/or reporting on their implementation. If the City approves the Proposed Project or an alternative with associated significant effects on the environment that cannot be feasibly avoided or reduced to less-than-significant levels, the City must also adopt a Statement of Overriding Consideration that explains how the benefits of the Proposed Project outweigh the significant unavoidable environmental effects, in accordance with Section 15093 of the CEQA Guidelines.

## 1.5 ORGANIZATION OF THE FINAL EIR

This Final EIR is organized into the following sections:

- **Chapter 1, Introduction to the Final EIR**, contains this introduction to the Final EIR, including a discussion of the background of the environmental review, a description of the contents of the Final EIR, a summary of the project decision-making process, and an introduction to the master responses.
- **Chapter 2, List of Comments**, contains a list of all written comments received on the Draft EIR.
- **Chapter 3, Master Responses to Comments**, contains master responses to common topics raised by the commenters.
- **Chapter 4, Comments and Responses on the Draft EIR** contains copies of all comment documents received on the Draft EIR, and responses to each identified comment within the comment documents.
- **Chapter 5, Changes to the Draft EIR**, contains revisions to the text of the Draft EIR made in response to the public review process.
- **Appendices**, consisting of following appendices included in this Final EIR:
  - Final EIR Appendix A; Mitigation Monitoring and Reporting Program (MMRP)
  - Final EIR Appendix B: Chart of Letters/Emails Received

## 1.6 MASTER RESPONSE TO COMMENTS

**Chapter 3** of this document contains master responses that address some common topics raised by the commenters. The intent of a master response is to provide a comprehensive response to an issue so that multiple aspects of the issue can be addressed in a coordinated, organized manner in one location. This ensures that each topic is thoroughly addressed and reduces repetition of responses. Responses to individual comments cross-reference the appropriate master response when the comment is pertinent to the master response.

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## CHAPTER 2 List of Comments

### 2.1 INTRODUCTION

This section provides the list of comments on the Draft EIR in accordance with CEQA Guidelines Section 15088. A total of six (6) comment letters on the Draft EIR were received during the 45-day public review period. One (1) additional letter was received after the close of the 45-day review period from a state agency and is also below and responded to in this Final EIR.

### 2.2 LIST OF COMMENTS

**Table 2-A**, below, identifies the comment letters received on the Draft EIR for the Proposed Project. Each of the comment letters has been assigned a letter designation or identifier (ID); this letter designation corresponds to the organization of **Chapter 4** of the Final EIR, which includes copies of the comments and responses to identified comments.

**Table 2-A List of Comments**

Comment Letter ID	Agency/Organization (if applicable)	Date
State, Federal and Regional Agencies		
A	California Department of Transportation (Caltrans)	September 19, 2023
B	State Department of Toxic Substance and Control (DTSC)	September 18, 2023
C	United States Army Base Realignment and Closure (BRAC)	September 26, 2023
D	Monterey Salinas Transit (MST)	September 25, 2023
Local Organizations and Individuals		
E	California Native Plant Society (CNPS)	September 26, 2023
	LandWatch Cover Email	September 27, 2023
F	Email Attachments related to Del Rey Oaks EIR Comments /Housing Element	July 15, 2023, various

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## CHAPTER 3 Master Responses to Comments

The master responses in this chapter address comments related to topics that are common to several comment letters. The intent of a master response is to provide a comprehensive response to a topic in a coordinated, organized manner in one location that clarifies and elaborates on the analysis in the Draft EIR. The following master responses are included in this chapter (listed by section number):

**Master Response 1: CEQA. This master response addresses common CEQA responses, including Adequacy of the Draft EIR, Substantial Evidence, Programmatic EIR, CEQA Baseline, and Recirculation.**

### *Adequacy of the Draft EIR.*

The Draft EIR has been prepared with sufficient analysis to provide decision makers with information to enable them to make a decision on project approval that takes into account environmental consequences. CEQA Guidelines Section 15151 says that “[a]n evaluation of the environmental effects of a proposed project need not be exhaustive, but [rather] the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.”

### *Substantial Evidence.*

CEQA Guidelines Section 15384 states: “(a) ‘Substantial evidence’ as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. .... (b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence.”

While the CEQA lead agency’s decisions regarding the significance of environmental effects addressed in an EIR must be based on substantial evidence, the CEQA Guidelines recognize that other evidence suggesting a different conclusion may exist. The Draft EIR and this Final EIR present substantial evidence to support the conclusions drawn within these documents regarding the significance of the project’s environmental effects. When a point of evidence is provided by a commenter to support a disagreement with the EIR’s conclusion, the evidence is summarized and considered in reaching the EIR’s conclusion. This Final EIR including these master responses and individual responses, are also provided to substantiate the conclusions reached in the Draft EIR regarding significance of impacts. The City, as lead agency, will ultimately determine which conclusion is appropriate, based on the substantial evidence presented in the EIR and other documents in the whole of the record. The lead agency will review and consider all the substantial evidence in the whole of the record in making its decisions about the project and its environmental effects.

### *Programmatic EIR.*

Impacts in the Draft EIR are evaluated at a program level and where appropriate, indirect impacts that can be anticipated are assessed at a deeper level, when information is available for proposed project location and development plan, as discussed in Chapter 3, Environmental Setting and Environmental Impacts (pages 3.1 – 3.6). In this case, the future impacts cannot be fully assessed at this time as there is not sufficient project-level detail available to enable an analysis of project-specific development due to the programmatic nature of the proposed project.

*Approach to Analysis.*

As described in the Draft EIR, the biological analysis is a program-level analysis for the Housing Element update and the General Plan amendment. Specific subsequent projects, their associated locations, and physical effects on the environment from the implementation of the proposed Housing Element update, General Plan amendment, and rezoning are not known at this time. Thus, this analysis uses a programmatic approach to evaluating potential impacts to sensitive biological resources that may result from implementation of the proposed Housing Element and General Plan, commensurate with the conceptual level of project information available and the approval being considered. The Draft EIR appropriately identifies and describes the potential significant impacts of future development on resources, and mitigation measures are required for any future development within the project area.

*CEQA Baseline.*

Per pages 3.2 – 3.3 of the Draft EIR, State CEQA Guidelines contain specific requirements related to the identification of the appropriate baseline. CEQA Guidelines Section 15125(a) require that an EIR include a description of “the physical environmental conditions in the vicinity of a project, as they exist at the time...environmental analysis is commenced...” These environmental conditions normally constitute the baseline physical conditions by which the CEQA lead agency determines whether an impact is significant. Generally, the appropriate CEQA baseline is the existing environmental conditions at the time the NOP was published or the time the environmental analysis commenced.

The project baseline considers the current land use designations and uses in the project area. The proposed project would involve implementing the 2023 Housing Element Update, including amending the General Plan and Zoning to allow residential uses for affordable housing units to meet the RHNA and State Law. The 2023 5th Cycle Housing Element Update amends the 2019 adopted Del Rey Oaks Housing Element (Del Rey Oaks, 2019). Since some of the programs have been implemented since the adoption, this EIR focuses on implementation from the proposed changes since the previous Housing Element was adopted and focuses on the General Plan Amendment and rezoning in the former Fort Ord which would result in residential uses. Lands in the former Fort Ord area have current General Plan and zoning designations allowing development identified in Draft EIR *Table 3.11-3, Summary of City General Plan Land Uses and Development per General Plan EIR*. This table illustrates the current density and development allowed under baseline conditions. As noted, development would be at a much greater intensity and development of uses, as shown in Draft EIR, Table 3.11-3, under current land use designations than the proposal envisioned to allow affordable housing residential uses in the project area to meet RHNA.

*Recirculation.*

CEQA and the CEQA Guidelines provide that a Draft EIR needs to be recirculated only if significant new information is added to an EIR after notice of public review has been given, but before certification of the Final EIR. (Pub. Res. Code, Section 21092.1; CEQA Guidelines Section 15088.5; *Vineyard Area Citizens for Resp. Growth Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412,447.) The critical issue in this inquiry is whether any new information added is "significant"; if so, recirculation is required. (Pub. Res. Code, Section 21092.1). CEQA Guidelines, Section 15088.5(a) states "new information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement."

Responses to comments provided in this document address significant environmental issues raised by commenting public agencies, organizations and individuals. Information provided in response to

comments on the Draft EIR contained in this document clarifies or amplifies information in the Draft EIR. The information does not reveal that the project would cause new significant impacts not previously identified in the Draft EIR, or a substantial increase in the severity of impacts identified in the Draft EIR. Also, no significant new information has been added that changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. Modifications to the Draft EIR as presented in **Chapter 5, Changes to the Draft EIR** and responses in this Final EIR do not constitute "significant new information" as defined in Section 15088.5 of the CEQA Guidelines.

Therefore, in accordance with CEQA Guidelines Section 15088.5 (b), no recirculation of the Draft EIR is required.

***Master Response 2: Hazardous Materials. This master response addresses Hazardous Materials and Residential Development within Former Fort Ord.***

*Hazardous Materials and Residential Development within Former Fort Ord.*

The redevelopment area within the City limits at Fort Ord was designated for commercial/hotel development consistent with the Fort Ord Reuse Plan. For a portion of the former Fort Ord parcels, a residential designation in this particular area is constrained by the former use as a military range and related unexploded ordnance issues. A deed restriction or "Covenant to Restrict Use of the Property (CRUP)" was placed onto the former Fort Ord site that provides in pertinent part that residential use of the property is not currently authorized and would require additional approvals prior to authorization of this area for residential use. Per the Protocol, the Former Fort Ord site regulators, DTSC and US EPA, must confirm that the risk of exposure to hazardous materials can be reduced through active MEC removal actions in concert with public education, continuing land use controls (such as the grading and excavation ordinance under DRO Municipal Code Chapter 15.48) and continued active agency oversight and involvement in any MEC actions at the Former Fort Ord site.

As summarized in **Chapter 3.9, Hazardous Materials**, and as referenced in letters from the DTSC and BRAC, a large portion in the middle of the former Fort Ord parcels is not currently restricted by deed restriction for residential uses. While there is a current restriction against residential use in other portions of the project areas, a large middle-portion of former Parcel E29a (within Site 1, as shown in Figures 3.9-3 and 3.9-4 of the Draft EIR), provide adequate area for residential use without current covenant restrictions against residential. For properties under the covenant/deed, prior to approval of residential development plans on the project site, environmental agencies, including the state lead regulatory agency, DTSC, shall confirm that the clearances conducted to date together with the approved remedial actions required will be sufficient to allow the former Fort Ord site to be developed for residential uses.

Additionally, as noted in the BRAC EIR comment letter, the Army is currently working with the City of Del Rey Oaks to modify federal deed restriction to remove the residential use restriction from the middle-portion of Site 1 (E29a) as described in the Record of Decision (ROD). Mitigation measures in Section 3.9 Hazards and Hazardous Materials require that before any residential use is allowed, DTSC and US Army and EPA must confirm that the risk of exposure to hazardous materials can be appropriately reduced through active MEC removal actions in concert with public education, continuing land use controls (such as the grading and excavation ordinance under DRO Municipal Code Chapter 15.48) and continued active agency oversight and involvement in any MEC actions at the Former Fort Ord site.

The removal of MEC has been undertaken by the Army for over two decades, and neighboring jurisdictions had similar restrictions until activities were completed to clear land uses, including residential restrictions. The above mitigation along with the City of Del Rey Oaks grading and excavation ordinance are applied to

all areas and ground disturbance activities located within the former Fort Ord. This ordinance, in addition to other agreements with DTSC and the Army, provides measures, including munitions identification training for construction workers, and other protocols in the event that munitions are uncovered during the course of construction. DTSC has indicated that these measures are adequate in order to ensure that the public health and the environment are safeguarded from munitions related hazards in the area unrestricted by covenants against residential use.

**Master Response 3: *Water. This master response addresses comments related to project impacts related to water.***

Comments raised identity impacts related to increased groundwater pumping causing a significant impact to the Salinas Valley Groundwater Basin (SVGB). This comment does not consider the programmatic nature of the project and the baseline conditions, including allowable uses under the current General Plan and Zoning. The project would not directly or indirectly increase groundwater pumping from the SVGB. The Housing Element updates programs and does not in itself require or propose that development would occur (first tier) and as a result will not cause an increase in pumping to the SVGB. Rezoning, if approved, would allow a new type of use on the affected parcels (residential, specifically affordable residential uses to meet RHNA). The rezoning action and redesignation itself would not create a physical impact; there is no water drawn from any aquifer or water supplied from a water agency directly resulting from the action of the land use amendment or from the rezoning. Rezoning or amending a land use designation provides a designation under which future development may occur, subject to many requirements and actions prior to any physical development (second tier impact). A rezoning or amendment to a land use designation may allow for an application to be made to allow potential future development (third tier) that could, in the future if developed, result in future development on the subject properties. Any increase in groundwater pumping occurs only once a project is located, permitted, constructed and implemented, and in the case of the proposed project, once residences are occupied on the sites. However, the effects of those projects would be evaluated on a project-by-project basis.

Further, under the City General Plan, City Redevelopment Plan and FORA Reuse Plan, development is already planned for these areas. Additionally, as documented in the Draft EIR and 2019 Housing Element Update ISND, under baseline conditions with or without a Housing Element Update, development and future water use would occur under the existing approved and adopted plans and EIRs at a much higher density, intensity and water demand than for the rezoning project to meet RHNA. Under RHNA, for 5<sup>th</sup> Cycle, 86 affordable residential units are allocated to the City of Del Rey Oaks. The current land use planning and zoning allow for a much larger and greater development area and density of development than that which could be considered under the proposed project and rezoning.

Implementation of the proposed project would allow housing sites and result in an increase in water demand for *residential uses*; however, the increase is minor compared with existing and projected demand, supply, and surplus. Since the project area is planned for development under the City General Plan at a higher level of water use and development intensity than under the proposed project, allowing residential uses to meet RHNA would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the proposed project may impede sustainable groundwater management of the basin.

Further, the previous EIRs adopted for the General Plan, FORA Reuse Plan and Redevelopment Plan considered the environmental impacts of development. A future project level document would tier off this program level environmental document to address development of affordable housing units within the City. The incremental effects of those projects would be evaluated in accordance with the requirements of CEQA once the and other specifics of these projects are known.

**Master Response 4: *Previous Environmental Documentation. This master response previous environmental documentation and Incorporation by Reference.***

Section 2.5 of the Draft EIR provides a listing of the previous environmental documentation completed for this project area and incorporated by reference. Introduction, Section 1.6 cites Section 15150 of the CEQA Guidelines permits documents pertinent to the analysis and technical documentation to be incorporated by reference in an EIR. Specifically, Section 15150 states that an EIR may “incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public...”. Consequently, previous environmental documentation and pertinent technical background documents as identified in this EIR are incorporated by reference.

**Master Response 5: *Other Items. This master responses addresses comments pertaining to project preference and other items not specific to the EIR.***

Some of the comments received during the Draft EIR comment period pertain to the commenter’s opinion on “project” or other aspects of the Housing Element Update rather than to the sufficiency of the Draft EIR--i.e., expressed opinions regarding, the content of the Housing Element or contents, such as the sites inventory within the Housing Element Update. The focus of the responses to comments in this document is on the sufficiency of the Draft EIR and related environmental points, and in particular on the adequacy of the Draft EIR regarding identification of environmental impacts and methods to avoid impacts (CEQA Guidelines secs. 15088 and 15204).

Comments received during the Draft EIR comment period pertaining to the commenter’s preference for alternatives or programs for the proposed project rather than the adequacy of the Draft EIR will be considered by the City decision-makers in their future deliberations and actions on the proposed project, and unless they raise a specific environmental point, do not require and have not received a written response in this Final EIR.

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## **CHAPTER 4        Comments and Responses on the Draft EIR**

### **4.1        INTRODUCTION**

This section provides responses to the comments received on the Draft EIR. A list of the comment letters is presented in **Section 2.2**, and copies of each of the comment letters are included in this section, with responses to each comment provided following the letter.

### **4.2        COMMENT LETTERS AND RESPONSES TO COMMENTS**

Each letter and comment card received as a comment on the Draft EIR is included herein and assigned a letter of the alphabet. Within that letter, all individual comments are assigned numbers located in the right-hand margin of the letter. Responses to each comment are provided immediately following each comment letter. In those instances, in which a comment states an agency position or opinion and does not comment on issues relevant to the environmental analysis presented in the Draft EIR, the response reads: "No response is required." If the comment is directed at the City regarding the decision on the project, the response reads: "The comment is referred to decision makers as a consideration on the Proposed Project." Typically, these comments do not raise issues relevant to the environmental analysis. Where the response notes an addition or deletion to the text, tables, or figures in the Draft EIR, the reader is directed to **Chapter 5, Changes to the Draft EIR**.

California Department of Transportation



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September 19, 2023

MON/Var
SCH# 2023040680

Karen Minami
Deputy City Clerk
City of Del Rey Oaks
650 Canyon Del Rey Boulevard
Del Rey Oaks, CA 93940

COMMENTS FOR THE CITY OF DEL REY OAKS HOUSING ELEMENT UPDATE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) – DEL REY OAKS, CA

Dear Ms. Minami:

The California Department of Transportation (Caltrans), District 5, Local Development Review, has reviewed the DEIR for the City of Del Rey Oaks Housing Element Update which evaluates the Housing Element for the 5th Cycle Planning Period, including updates to existing policies and programs contained within the adopted 2019 Draft Housing Element. Caltrans offers the following comments in response to the DEIR:

- 1. Caltrans supports Mitigation Measure 3.16-1 requiring future development projects maintain bicycle, pedestrian, and public transit access during construction and providing bicycle storage facilities at all residential developments. The measure further states all future development would be subject to implement City guidelines and General Plan policies applicable to transit, bicycle, and pedestrian facilities. This measure will help meet statewide goals of reducing vehicle miles traveled and greenhouse gas emissions while enhancing and connecting the multimodal transportation network for all users.
2. Caltrans looks forward to working with the City of Del Rey Oaks on future transit and complete streets concepts located within State right of way. The State views all transportation improvements as opportunities to improve safety, access, and mobility for all users and recognizes bicycle, pedestrian, and transit modes as integral elements of the transportation network. Early coordination with Caltrans, in locations that may affect both Caltrans and the City of Del Rey Oaks, is encouraged.

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Karen Minami, Deputy City Clerk  
September 19, 2023  
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Thank you for the opportunity to review and comment on the proposed project. If you have any questions, or need further clarification on items discussed above, please contact me at (805) 835-6543 or email [christopher.bjornstad@dot.ca.gov](mailto:christopher.bjornstad@dot.ca.gov).

Sincerely,

*Christopher Bjornstad*

Chris Bjornstad  
Associate Transportation Planner  
District 5 Local Development Review

**Letter A: California Department of Transportation (Caltrans), District 5**

- A-1** California Department of Transportation (Caltrans), District 5, Local Development Review, notes they have reviewed the Draft EIR for the City of Del Rey Oaks Housing Element Update addressing the Housing Element for the 5th Cycle Planning Period, including updates to existing policies and programs contained within the adopted 2019 Draft Housing Element.
- A-2** The comment notes Caltrans supports Mitigation Measure 3.16-1 requiring future development projects maintain bicycle, pedestrian, and public transit access during construction and providing bicycle storage facilities at all residential developments. The measure further states all future development would be subject to implement City guidelines and General Plan policies applicable to transit, bicycle, and pedestrian facilities. This measure will help meet statewide goals of reducing vehicle miles traveled and greenhouse gas emissions while enhancing and connecting the multimodal transportation network for all users. The comment is noted.
- A-3** The comment notes that Caltrans looks forward to working with the City of Del Rey Oaks on future transit and complete streets concepts located within State right of way. The State views all transportation improvements as opportunities to improve safety, access, and mobility for all users and recognizes bicycle, pedestrian, and transit modes as integral elements of the transportation network. Early coordination with Caltrans, in locations that may affect both Caltrans and the City of Del Rey Oaks, is encouraged. The comment is directed to the City to address future coordination as the comment suggests.



*Yana Garcia*  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Meredith Williams, Ph.D., Director  
8800 Cal Center Drive  
Sacramento, California 95826-3200



*Gavin Newsom*  
Governor

### SENT VIA ELECTRONIC MAIL

September 18, 2023

Karen Minami  
Deputy City Clerk City of Del Rey Oaks  
650 Canyon Del Rey Boulevard  
Newark, CA 94560  
[kminami@delreyoaks.org](mailto:kminami@delreyoaks.org)

RE: DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE CITY OF  
DEL REY OAKS HOUSING ELEMENT UPDATE, DATED AUGUST 14, 2023 STATE  
CLEARINGHOUSE# 2023040680

Dear Karen Minami:

The Department of Toxic Substances Control (DTSC) received a Draft Environmental Impact Report (DEIR) for the City of Del Rey Oaks Housing Element Update. Fort Ord served as a U.S. Army base from 1917-1994, training as many as 1.5 million American troops. The Army has been conducting investigation and cleanup activities at the former Fort Ord location under the Comprehensive Environmental Response, Compensation, and Liability Act (also known as CERCLA or Superfund) since 1990, with the oversight of the U.S. Environmental Protection Agency (USEPA) and the State of California. Based on our project review, DTSC requests consideration of the following comments:

The proposed project is located within Track 2 Del Rey Oaks Munitions Response Area (MRA), where many rockets, as well as smoke pots, grenades, and other munitions and explosives of concern were found during remedial

investigation. The Del Rey Oaks/Monterey MRA Record of Decision describes the cleanup. Due to the risk of remaining munitions and explosives of concern, land use controls were implemented. In addition to the Amendment No.1 and Partial Termination of Covenant to Restrict Use of Property Environmental Restriction, the following Covenants to Restrict the Use of Property apply:

1. Fort Ord, CA,
2. City of Seaside Environmental Services Cooperative Agreement (Fort Ord).

These restrictions do not include residential re-use, no sensitive uses (facilities that house or attract children, elderly, those with illness or sensitive to air pollutants), no soil disturbance or violation of an ordinance without an approved soil management plan, notification of munitions and explosives of concern if located, and access rights for the Army and regulatory agencies. Additionally, the City of Del Rey Oaks adopted its own Excavation Ordinance to ensure success of the remedy. As noted in the Amendment, there is a small portion of the property where the residential and sensitive use restrictions have been lifted, but the other requirements listed above still apply.

Furthermore, Mitigation Measure 3.9-1 states that *prior to approval of residential development plans on the project area, environmental agencies, including the Army, and the state lead regulatory agency, DTSC, shall confirm that the clearances to be conducted and those conducted to date together with approved remedial actions, as required, will be sufficient to allow the Former Fort Ord site to be developed for residential reuse.*

*Residential use for the specified areas identified herein will be prohibited until the landowner provides advance notification to the Army, USEPA, and DTSC of its intent to change a designated area's use to residential, and until DTSC concurs that residential use is appropriate. DTSC's evaluation may consider the Residential Protocol or further site evaluation incorporating new information (e.g., geophysical mapping, site development).*

DTSC has not received or approved any Construction Support Plans from Del

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Rey Oaks, nor has the Army or USEPA. The areas with residential restrictions on them require additional remedial action to allow the restrictions to be removed. DTSC has not received or approved any Remedial Action Plans from Del Rey Oaks, nor have the Army or USEPA. These measures and actions must be met prior to the project's commencement.

4

DTSC appreciates the opportunity to comment on the City of Del Rey Oaks Housing Element Update DEIR. If you have any questions, please respond to this letter or via [email](#) for additional guidance.

Sincerely,



Dave Kereazis  
Associate Environmental Planner  
HWMP - Permitting Division – CEQA Unit  
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and  
Research State Clearinghouse  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

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## Letter B: Department of Toxic Substances Control (DTSC)

- B-1** The comment notes that the Army has been conducting investigation and cleanup activities at the former Fort Ord location under the Comprehensive Environmental Response, Compensation, and Liability Act (also known as CERCLA or Superfund) since 1990, with the oversight of the U.S. Environmental Protection Agency (USEPA) and the State of California. Comment is informational and no response is required.
- B-2** The comment provides information that is referenced in the Draft EIR regarding restrictive covenants, transfer documents and uses not allowed within a specified area within Site 1 and 1a.
- B-3** As noted in the Draft EIR, residential use for the specified areas identified herein will be prohibited until the landowner provides advance notification to the Army, EPA, and DTSC of its intent to change a designated area's use to residential, and until DTSC concurs that residential use is appropriate. DTSC's evaluation may consider the Residential Protocol or further site evaluation incorporating new information (e.g., geophysical mapping, site development).
- B-4** The comment provides text from Draft EIR Mitigation Measure 3.9-1; the letter restates the mitigation that requires:
- Prior to approval of residential development plans on the project area, environmental agencies, including the Army, and the state lead regulatory agency, DTSC, shall confirm that the clearances to be conducted and those conducted to date together with approved remedial actions, as required, will be sufficient to allow the Former Fort Ord site to be developed for residential reuse.
- The letter includes the additional mitigation requirement (excerpted from the Draft EIR), under Draft EIR Mitigation Measure 3.9-1:
- Residential use for the specified areas identified herein will be prohibited until the landowner provides advance notification to the Army, USEPA, and DTSC of its intent to change a designated area's use to residential, and until DTSC concurs that residential use is appropriate. DTSC's evaluation may consider the Residential Protocol or further site evaluation incorporating new information (e.g., geophysical mapping, site development).
- B-5** The comment notes the areas with residential restrictions on them require additional remedial action to allow the restrictions to be removed. DTSC notes they have not received or approved any Remedial Action Plans from Del Rey Oaks, nor have the Army or USEPA and that these measures and actions must be met prior to the project's commencement. This comment is consistent with the required mitigation measure. As noted in the BRAC letter and response, the Army is currently working with the City of Del Rey Oaks to modify federal deed restriction to remove the residential use restriction from the middle-portion of Site 1 (E29a) as described in the Record of Decision (ROD). The Final EIR is amended to add the work currently underway with BRAC and the City. See **Chapter 5, Changes to the Draft EIR**, EIR Section 3.9 Hazards and Hazardous Materials.

**From:** Nozaki, Chieko CTR (USA) <[chieko.nozaki.ctr@army.mil](mailto:chieko.nozaki.ctr@army.mil)>

**Sent:** Tuesday, September 26, 2023 2:11 PM

**To:** Karen Minami <[KMinami@delreyoaks.org](mailto:KMinami@delreyoaks.org)>

**Cc:** Payton, R Curtis CIV USARMY HQDA DCS G-9 (USA) <[r.c.payton.civ@army.mil](mailto:r.c.payton.civ@army.mil)>; Kowalski, Bartholomew L CTR USARMY CESP (USA) <[Bartholomew.L.Kowalski@usace.army.mil](mailto:Bartholomew.L.Kowalski@usace.army.mil)>; Jason No (<[outreach@fortordcleanup.com](mailto:outreach@fortordcleanup.com)>) <[outreach@fortordcleanup.com](mailto:outreach@fortordcleanup.com)>

**Subject:** RE: Notice of Intent to Adopt an EIR City of Del Rey Oaks Housing Element Update

**Forwarding on behalf of Curtis Payton, Base Realignment and Closure (BRAC) Environmental Coordinator for Fort Ord.**

This is in response to “Notice of Availability/Notice of Intent to Adopt an Environmental Impact Report, City of Del Rey Oaks Housing Element Update” (undated, postmarked August 15, 2023) in which the City of Del Rey Oaks describes an availability of “Draft EIR [that] addresses the revisions to the 5<sup>th</sup> Cycle 2023 Draft Housing Element Update and also considers the cumulative impacts of adoption and implementation of the 6<sup>th</sup> Cycle Housing Element Update” for public comment. The U.S. Army BRAC Fort Ord Field Office reviewed the Draft EIR dated August 2023.

BRAC Fort Ord Field Office reviewed the document and would like to provide the following comments.

-Section 3.4 Biological Resources. The section acknowledges earlier BRAC comment that noted the requirements under the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord (HMP) that apply to “Borderland Development Areas Along Natural Resource Management Area (NMRA) Interface” be taken into account. Besides habitat conservation measures, the HMP requires: “parking lots, greenbelts, or other nonflammable or fire-resistant land uses will be located as a buffer between the NRMA and development” and “Structures will be sited entirely behind the land use that is developed as a firebreak.” Please incorporate into the EIR the HMP requirement for a firebreak along NRMA.

1

-Section 3.9 Hazards and Hazardous Materials. The section acknowledges the residential use restriction that has been placed on the former Fort Ord properties (including Sites 1a, K1 and K2, and portions of Site 1), and that the State covenant restrictions will need to be amended or lifted before housing units could be constructed. Since the time the Army transferred these parcels in 2005, the Army has completed its munitions response actions and recorded the final selected remedy, which includes the continuation of the restriction against residential use in the areas, except for a middle-portion of Parcel E29a (a portion of Site 1), as shown in Figures 3.9-3 and 3.9-4 of the Draft EIR. The Army is currently working with the City of Del Rey Oaks to modify federal deed restriction to remove the residential use restriction from the middle-portion of E29a as described in the Record of Decision (ROD). (There are other ROD requirements which appear to be acknowledged in the Draft EIR.)

2

-The discussion of Impact HAZ-2 (page 3.9-17) should identify Sites K1 and K2 as having the same residential use restriction and land use controls as Site 1a and portions of Site 1.

3

-Please check the footprints of the four former Fort Ord sites, 1, 1a, K1 and K2. For example, according to the Geographic Information System data provided by Monterey County, the APN parcels 031-191-026-000 (associated with Site 1) and 031-191-025-000 (associated with Site K2) appear to encroach onto the Army’s BRAC property. (We understand this issue is currently being addressed by Monterey County.)

4

Thank you for the opportunity to provide comments on the Draft EIR. If you have any questions please feel free to contact Curtis Payton, BRAC Environmental Coordinator, at [r.c.payton.civ@army.mil](mailto:r.c.payton.civ@army.mil).

Chieko Nozaki, P.E., PMP  
(Chenega Tri-Services)  
Fort Ord BRAC Office  
P.O. Box 5008, Monterey, CA 93944-5008  
831-899-7372 desk  
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## Letter C: Base Realignment and Closure (BRAC) for Fort Ord

- C-1** Comment notes that Section 3.4, Biological Resources of the Draft EIR addresses requirements under the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord (HMP) applicable to “Borderland Development Areas Along Natural Resource Management Area (NMRA) Interface”. Comment notes, in addition to the habitat conservation measures, the HMP states: “parking lots, greenbelts, or other nonflammable or fire-resistant land uses will be located as a buffer between the NRMA and development” and “Structures will be sited entirely behind the land use that is developed as a firebreak.” Per this comment, the Final EIR adds this HMP requirement for a firebreak along NRMA. See **Chapter 5, Changes to the Draft EIR**, Section 3.4, Biological Resources.
- C-2** Comment notes the EIR Section 3.9 Hazards and Hazardous Materials address the residential use restriction that has been placed on the former Fort Ord properties (including Sites 1a, K1 and K2, and portions of Site 1), and that the State covenant restrictions will need to be amended or lifted before housing units could be constructed. Additional information is provided from BRAC on Army actions: Since the time the Army transferred these parcels in 2005, the Army has completed its munitions response actions and recorded the final selected remedy, which includes the continuation of the restriction against residential use in the areas, except for a middle-portion of Parcel E29a (a portion of Site 1), as shown in Figures 3.9-3 and 3.9-4 of the Draft EIR.
- The Army is currently working with the City of Del Rey Oaks to modify federal deed restriction to remove the residential use restriction from the middle-portion of Site 1 (E29a) as described in the Record of Decision (ROD). The Final EIR is amended to add the work currently underway with BRAC and the City. See **Chapter 5, Changes to the Draft EIR**, EIR Section 3.9 Hazards and Hazardous Materials.
- C-3** The comment further notes that there are other ROD requirements which are acknowledged in the Draft EIR. No response is necessary; the comment reiterates information presented in the Draft EIR.
- C-4** The comment notes the Geographic Information System (GIS) data provided by Monterey County for APN parcels 031-191-026-000 (associated with Site 1) and 031-191-025-000 (associated with Site K2) appear to encroach onto the Army’s BRAC property. The commenter further notes that this GIS issue is being addressed by Monterey County. The base data and GIS information from Monterey County is noted; the corrections being made will be incorporated into future maps provided for any future projects on these sites. See **Chapter 5, Changes to the Draft EIR**, where this is noted for the record.

# Letter D Monterey Salinas Transit



September 25, 2023

Karen Minami  
City of Del Rey Oaks  
650 Canyon Del Rey  
Del Rey Oaks CA, 93940

**RE: Notice of Availability/Notice of Intent to Adopt an Environmental Impact Report City of Del Rey Oaks Housing Element Update**

Dear Ms. Minami:

Monterey-Salinas Transit District (MST) provides public transportation throughout Monterey County and provides services to the City of Del Rey Oaks via Line 7, Line 94, Jazz A, Jazz B, and the Del Rey Oaks Shuttle. MST has reviewed the Notice of Availability/Notice of Availability/Notice of Intent to Adopt and Environmental Impact Report for the City of Del Rey Oaks Housing Element update and would like to provide the following comments.

1

**Transportation**

***3.16.2 Environmental Setting – Transit Service***

In addition to Line 7, Jazz A, Jazz B, and Line 94 provide indirect service to the City of Del Rey Oaks and offer connections to neighboring cities. Residents can board these routes using the following stop: Stop ID 6798 - Fremont / Portola Drive. Both Jazz A and Jazz B have a combined frequency of 15 minutes and provide services to the Monterey Bay Aquarium and the Monterey Transit Plaza via Hilby Avenue (Jazz A) or Broadway Avenue (Jazz B). Line 94, also known as a senior shuttle, provides service from Sand City to Carmel and has a frequency of two (2) hours from 9:26AM to 4:46 PM.


2

***Mitigation Measure 3.16-1***

MST is in support of Mitigation Measure 3.16-1 and recommends collaboration with MST if the City of Del Rey Oaks or housing developers incorporate bus stop infrastructure into designs. Bus stop layouts and designs are evaluated using MST's Designing for Transit Guidelines (2020) and all bus stops should closely adhere to these guidelines to ensure adequate access pertinent to the standards of the Americans with Disabilities Act (ADA). Upon the completion of the housing developments, developers can enroll in MST's Group Discount Program to offer residents substantially reduced cost bus passes to incentivize transit use and further mitigate transportation impacts.

3

MST appreciates the opportunity to comment and would like to thank City staff for including MST's written comments in the EIR. If you have any questions about the above comments, please do not hesitate to contact me at [epatel@mst.org](mailto:epatel@mst.org) or 831-264-9288.

Sincerely,  
  
Emma Patel  
Planning Manager

Advocating and delivering quality public transportation as a leader within our community and industry.

Transit District Members Monterey County • Carmel-by-the-Sea • Del Rey Oaks • Gonzales • Greenfield • King City • Marina • Monterey  
Pacific Grove • Salinas • Sand City • Seaside • Soledad Administrative Offices 19 Upper Ragsdale Drive, Suite 200 Monterey, CA 93940

PH 1-888-MST-BUS1 (1-888-678-2871) • FAX (831) 899-3954 • WEB [mst.org](http://mst.org)

## Letter D: Monterey Salinas Transit (MST)

- D-1** The comment notes MST public transportation service routes to the City of Del Rey Oaks. No response is necessary; the information will be included per **Response to Comment D-2**.
- D-2** Comment notes the EIR Section 3.16.2, Environmental Setting – Transit Service information providing existing services to Del Rey Oaks. Comment provides additional information of routes and frequencies. The route information from MST is noted. The Final EIR is amended to add the additional route information. See **Chapter 5, Changes to the Draft EIR**, EIR Section 3.16 Transportation.
- D-3** Comment notes MST support of Mitigation Measure 3.16-1. Comment provides information of MST’s Group Discount program for developers “to offer residents substantially reduced cost bus passes to incentivize transit use and further mitigate transportation impacts.” The Final EIR is amended to add the additional MST program information. See **Chapter 5, Changes to the Draft EIR**, EIR Section 3.16 Transportation.



CALIFORNIA  
NATIVE PLANT SOCIETY

2707 K Street, Suite 1, Sacramento, CA 95816-5130 (916) 447.2677 [www.cnps.org](http://www.cnps.org)

Letter E - California Native Plant Society

Protecting  
California's native  
flora since 1965

September 26, 2023

City of Del Rey Oaks

Attn: Karen Minami, City Clerk

Re: City of Del Rey Oaks Housing Element EIR

650 Canyon Del Rey

Del Rey Oaks, CA 93940

*Submitted via email to: [KMinami@delreyoaks.org](mailto:KMinami@delreyoaks.org)*

*Submitted by: Monterey Bay CNPS, P.O. Box 221303, Carmel, CA 93922*

**Re: Monterey Bay Chapter of the California Native Plant Society Comments on the City of Del Rey Oaks 2023 Housing Element Update Draft Environmental Impact Report**

Dear City of Del Rey Oaks:

Thank you for the opportunity to comment on the City of Del Rey Oaks 2023 Housing Element Update Draft Environmental Impact Report. The following comments are submitted on behalf of the California Native Plant Society (CNPS), a non-profit environmental organization with over 12,500 members in 36 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. We work closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices.

The Monterey Bay Chapter of the California Native Plant Society supports the City of Del Rey Oaks' goal to adopt plans, without excessive constraints, that provide opportunities for affordable housing development within the city as part of its 2023 Housing Element Update. Above all, the Chapter would like to see the City adopt an achievable plan with a clear timeline to streamline the development of housing for those with extremely low and very low incomes, as well as for the special housing needs of people who are elderly or disabled, farmworkers, and people experiencing homelessness, to meet its State-mandated Regional Housing Needs Allocation (RHNA) and facilitate the construction of 270 residential units in the city from now through 2031.<sup>1</sup> It is for this reason and, of

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<sup>1</sup> State funding programs for transportation, infrastructure, and housing often require a local jurisdiction's compliance with Housing Element Law. Effective programs must include definite time frames for implementation, identify the agencies and officials responsible for implementation, and include specific action steps to implement the program. Failure to adopt a housing

course, for the protection of over 200 acres of rare and threatened Central Coast Maritime Chaparral found on the former Fort Ord properties, and identified by the City for conversion to housing sites, which the Chapter wishes to comment on.

In a review of the City’s 2023 Housing Element Update, the Chapter quickly saw what it believed to be major flaws in the Update and the Draft Environmental Impact Report (DEIR) tasked to address the environmental impacts of the proposed project. Housing Element Law requires local governments to prepare a “Site Inventory and Analysis” of land suitable for residential development, including vacant sites and sites having the potential for redevelopment. The site suitability analysis must demonstrate that a site identified by the City for residential development must be free from most or all environmental constraints to its development within the Housing Element’s eight year planning period.<sup>2</sup>

1a

Unfortunately, unlike most cities in California, the City of Del Rey Oaks did not choose vacant lots in the existing developed area of the city to meet its housing needs – vacant lots with few to no constraints to housing development. In fact, the City would have been hard-pressed to find housing sites more burdened with environmental constraints in the entire state, than the City’s former Fort Ord properties, Sites 1 and 1a, chosen as the focus of their Housing Element Update.<sup>3</sup> Rather than being vacant lots with utilities and ready to develop, the Fort Ord properties possess a multitude of constraints to their development for affordable housing. The Sites 1 and 1a environmental constraints include: (1) being principally composed of Central Coast Maritime Chaparral – a “Sensitive Natural Community” protected by the California Environmental Quality Act and the State’s Natural Community Conservation Planning Act, (2) being the essential habitat for an enormous number of 38 protected special status species with the potential to occur on the project site, (3) the fact that many of these species are protected directly by the federal Endangered Species Act and the California Endangered Species Act, (4) the need to obtain mandatory Incidental Take Permits from the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife for “take” (harm or kill) of listed species, (5) the first step need for a fully developed and approved Habitat Conservation Plan that ensures that the effects of the authorized incidental take are adequately minimized and mitigated

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element on schedule and in compliance with Housing Element law can have serious consequences affecting a jurisdiction’s ability to regulate land use and access State funding. A non-compliant Housing Element can put a jurisdiction’s General Plan at risk of being deemed inadequate. A jurisdiction that fails to comply with Housing Element law must prepare updates to its housing element more frequently until they are consistently compliant. The California Department of Housing and Community Development (HCD) may impose fines for violations, and HCD may also refer violations to the Attorney General (HCD Housing Element Compliance Incentives and Consequences 2021).

<sup>2</sup> California Department of Housing and Community Development Housing Element Site Inventory Guidebook (2020) California Government Code of Regulations Section 65583.2.

<sup>3</sup> California Government Code of Regulations Section 65583.2(b)(4) requires a general description of any environmental constraints to the development of housing within the jurisdiction.

for the listed species, (6) the required need for extensive baseline biological surveys of listed species on the project site to support the conservation strategy, including multi-year floral surveys of listed plant species,<sup>4,5</sup> (7) expensive compensatory mitigation for impacts to these species and their habitat as permits require the preparation and implementation of a long-term mitigation and monitoring plan including a take assessment, compensatory mitigation lands, success criteria, and funding assurances along with mitigating impacted sensitive natural community habitat offsite at a minimum 3:1 ratio through preservation, restoration,<sup>6</sup> and/or a conservation bank,<sup>7,8</sup> (8) threats to any new housing development from wildfire in the wildfire urban interface (WUI) not sufficiently analyzed in the DEIR,<sup>9,10</sup> (9) a binding State Covenant with the Army prohibiting housing due to insufficient removal of unexploded ordnance (UXO) and hazardous materials at the project site, (10) necessary studies and additional UXO and hazardous materials cleanup by the California Department of Toxic Substances Control (DTSC) to a level sufficient for future housed

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4 Botanical field surveys provide information used to determine the potential environmental effects of a proposed project on special status plants and sensitive natural communities as required by law (Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. 2018. State of California Natural Resources Agency, Department of Fish and Wildlife).

5 The USFWS and CDFW must be able to describe and analyze the effects of the proposed covered activities on the covered species to issue incidental take coverage for each species. Estimates of the number of individuals of each covered species that the housing program will “take” must be provided. This cannot be done without sufficient baseline biological studies (U.S. Fish and Wildlife Service Form 3-200-56).

6 “CDFW generally does not support the use of translocation, transplantation, or salvaging plants as the primary mitigation strategy for unavoidable impacts to plants composing a sensitive plant community. Studies have shown that these efforts are experimental and the outcome unreliable. Transplantation to mitigate for impacts to sensitive plant communities may be unsuccessful when mitigation does not account for abiotic and biotic components of a plant community. Abiotic variables such as hydrologic regime, soil type, microclimate, slope, aspect, and elevation determine where a plant community occurs. Plant communities are not merely plants but also consist of pollinators and microscopic biota such as detritivores, cyanobacteria, lichens, algae, and microfungi. Abiotic and biotic variables are rarely considered during mitigation site selection or when developing a conservation plan. This may result in a project never being able to replace the plant community that was impacted. Lastly, transplanting or establishing plants could be unsuccessful without sufficient investment to the restoration site.” CDFW Site Plan Review 20-009 Project, Mitigated Negative Declaration, SCH #2021010230, City of Palmdale, Los Angeles County.

7 The California Native Plant Society believes that the acquisition and permanent protection of an alternative parcel does not alter the fact that the loss of the initial site brings the rare habitat and species one step closer to ultimate extinction (CNPS Policy on Mitigation Guidelines Regarding Impacts to Rare, Threatened, and Endangered Plants (CNPS Rare Plant Scientific Advisory Committee, revised 1998).

8 California Department of Housing and Community Development (HCD) best practices for choosing RHNA sites requires that sites do not require environmental mitigation (HCD Housing Element Site Inventory Guidebook).

9 Maritime Chaparral is a fire dependent vegetation type. Many Maritime Chaparral species are obligate seeders and require fire in order to reproduce. Rare manzanita and ceanothus are examples of species that reproduce only from seed. Although occasional germination from seed may occur in disturbed areas along trails, these species require fire to scarify seeds and expose mineral soil to allow for reproduction at an ecologically meaningful scale (National Park Service).

10 The vegetation surrounding the proposed housing sites (Maritime Chaparral) is a fire-adapted plant community that has evolved to depend on periodic fire to reproduce for its continued existence. The project site is located at the Wildland-Urban Interface (WUI) and is at the highest level of risk for wildfire. “The capacity of a site (for housing) should be adjusted for areas that cannot be developed due to environmental factors such as hazards, wetlands, or topography that cannot be mitigated” (HCD Housing Element Site Inventory Guidebook).

*Monterey Bay Chapter California Native Plant Society  
Comments on the City of Del Rey Oaks 2023 Housing Element Update  
Draft Environmental Impact Report*

families to live in health and safety, (11) the need to rezone Sites 1 and 1a to allow housing, (12) the possibility that DTSC and the binding covenant will ultimately not allow rezoning to allow housing, (13) the resolution of environmental justice issues from a plan that places housing for the poorest members of the community on dangerous and toxic land,<sup>11</sup> (14) the possibility of third-party litigation on environmental grounds,<sup>12</sup> and (15) the undetermined and unspecified time needed to resolve these constraints within the Housing Element’s planning period, if they are resolvable.

In addition to the flawed site suitability analysis just described, another major flaw of this programmatic DEIR is the fact that in terms of the program’s impact on special status plants and sensitive natural communities, this DEIR is not programmatic at all. The California Code of Regulations Section 15168 states that a program EIR should “provide a description of planned activities that would implement the program and deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed project description and analysis of the program, many later activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.” Instead of describing the potential or likely effects of the Housing Element program on special status plants and sensitive natural communities as specifically and comprehensively as possible and requiring the City to develop a Habitat Conservation Plan for Sites 1 and 1a in order to obtain required Incidental Take Permits from the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, this programmatic DEIR dodges its responsibility of streamlining affordable housing and directs subsequent project developers to obtain their own Incidental Take Permits for the individual projects instead of tiering from this Housing Element Update (with little to no mention of extensive biological studies, habitat conservation plans, compensatory mitigation, funding assurances, monitoring, and the need for No Surprises assurances). To be serious about streamlining affordable housing, this 2023 Housing Element Update program must direct the City to work with the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife to develop a conservation plan and obtain take permits for the Sites 1 and 1a in a holistic manner. It is very unlikely that the wildlife agencies will allow piecemeal biological studies and permitting on this very sensitive Central Coast Maritime Chaparral habitat.

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The Monterey Bay Chapter of the California Native Plant Society is duty-bound to protect one of the most unique plant communities in California – the Central Coast Maritime

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11 Senate Bill 1000 – “The Planning for Healthy Communities Act” California Government Code Section 65302(h)

12 The housing element should also describe whether any of the sites identified pursuant to Government Code Section 65583.2 are subject to litigation on environmental grounds that could impact their availability for development during the planning period (the circumstances should be described in the element) (California Department of Housing and Community Development).

Chaparral. Much like Coast Redwood Forest, this plant community thrives within the zone of coastal summer fog – a local meteorological phenomenon with which it evolved and depends on, along with wildfire, for its continuance.<sup>13</sup> Mixed within the Maritime Chaparral are patches of Coast Live Oak woodland, another sensitive natural community. The Maritime Chaparral ecosystem is characterized by a suite of uncommon plants and a combination of locally endemic species of *Arctostaphylos* (manzanita) and *Ceanothus*, which mostly reproduce by seed rather than resprouting and require fire to regenerate. Although scrubby and unremarkable looking, and dismissed by most who pass by, the Maritime Chaparral is a sensitive, rare, and endemic plant community, which means it is only found here along the central and northern California coast and its continued existence is threatened by housing development and fire suppression. Vegetation classifications that make up the Fort Ord properties’ Maritime Chaparral include Sandmat Manzanita Chaparral and Monterey Manzanita Chaparral, both plant communities are listed by CDFW as “Sensitive Natural Communities” with the highest threat categories of “critically imperiled” and “very rare and threatened.”<sup>14,15,16</sup>

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The housing sites identified in the City’s Housing Element to meet its required RHNA, Sites 1 and 1a, are not only home to Maritime Chaparral, they are also essential habitat for up to 38 protected special status plant and wildlife species that are known to have the potential to occur on site, many endemic to the Central Coast and found no place else on Earth. These species and their habitat are protected by various environmental laws including the federal Endangered Species Act, the California Endangered Species Act, the California Environmental Quality Act, the California Native Plant Protection Act, the Clean Water Act, the Migratory Bird Treaty Act, the Natural Community Conservation Planning Act, and the California Coastal Act.

6

The special status plant and wildlife species potentially on the project site include: Monterey shrew, Monterey dusky-footed woodrat, California tiger salamander, Northern California legless lizard, coast horned lizard, California red-legged frog, coast range newt, Smith’s blue butterfly, California fairy shrimp, Monterey spineflower, Fort Ord spineflower (first described in 2014),<sup>17</sup> Monterey gilia, seaside bird’s beak, Yadon’s rein orchid, Contra

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13 In 2010 researchers revealed that summertime fog hours had declined by 33% over the last century. Natural resource managers working to protect California’s coastal plant and animal communities in the face of a warming climate are alarmed (USGS, The Pacific Coastal Fog Project 2017).

14 Sawyer, John O., et al. A Manual of California Vegetation. California Native Plant Society Press, 2009.

15 California Code of Regulations Section 15125(c) states that “Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.”

16 Sandmat Manzanita Chaparral and Monterey Manzanita Chaparral have the most imperiled plant community State ranking of S1, meaning that there are fewer than six viable occurrences of these plant communities in existence in California (CDFW).

17 Fort Ord spineflower (*Chorizanthe minutiflora*) was only first described by science in 2014 and is not mentioned in any of the USFWS biological opinions for Fort Ord. Reinitiation of formal consultation is required if: 1) the amount or extent of incidental take is reached; 2) new information reveals effects of the agency action that may adversely affect listed species or critical

Costa goldfields, coast wallflower, Monterey ceanothus, and four species of rare and endemic manzanitas – Hooker’s, Toro, Pajaro, and sandmat.<sup>18</sup> Just the names alone tell you how rare and localized these species are. The Central Coast Maritime Chaparral habitat found at the proposed project site, having the potential to support an extraordinary, almost unbelievable number of 38 special status plant and wildlife species, is a hometown biodiversity hotspot, undoubtedly worthy of our best conservation efforts.

Identified by the California Department of Fish and Wildlife (CDFW) and the California Environmental Quality Act as a “Sensitive Natural Community,” the Central Coast Maritime Chaparral<sup>19</sup> is protected by the State’s Natural Community Conservation Planning Act.<sup>20</sup> The Central Coast Maritime Chaparral is highly threatened by coastal residential development, urbanization, and agricultural development, along with fire suppression which prevents reproduction and eliminates stands. Common stressors and threats include fragmentation of the habitat by housing and roads, and nearby housing and agriculture may make utilization of prescribed fire nearly impossible. Exotic, invasive weeds, including pampas grass, iceplant, French broom, and blue gum eucalyptus also threaten many occurrences of Maritime Chaparral. Maritime Chaparral is likely more densely invaded by exotics than other chaparral types because it is more densely fragmented by roads and thus closer to human disturbance and sources of exotic seeds (NatureServe Website 2023).<sup>21</sup>

7 con't

Perhaps, the most distressing aspect of the Housing Element DEIR is the analysis of the potential effects of the proposed project on plants, wildlife, and habitat. The consulting biologists have not adequately addressed potential impacts to special status plants, animals and natural communities. They have concluded that the biological impacts of this project on protected plant and wildlife species and their habitat are “less-than-significant”

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habitat in a manner or to an extent not considered in the project biological opinion; 3) the agency action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in the project’s biological opinion; or 4) a new species is listed or critical habitat designated that may be affected by this action (Code of Federal Regulations 50 CFR 402.16).

18 Often patches of maritime chaparral just a few miles apart have their own distinct manzanita species.

19 Maritime chaparral is considered a threatened habitat type, and so is protected by many agencies along the central coast of California. For instance, the California Coastal Commission considers areas of this habitat type 'environmentally sensitive habitat areas' (ESHA), affording it the highest level of protection of any habitat in California. California Coastal Act, Environmentally Sensitive Habitat Areas (ESHA)--Section 30240.

20 California Code of Regulations Section 15065 - Mandatory Findings of Significance - includes if a project would threaten to eliminate a plant community.

21 A cumulative impact not addressed in the DEIR. Other cumulative impacts of this project on biological resources on adjacent habitat not sufficiently analyzed in the DEIR include: predation on listed species by domestic and feral cats; unauthorized vehicle access; trash dumping; spread of non-native invasive plant species; increase in anthropogenic cause of wildfire; expanded roads increase vehicular traffic and traffic speed increasing risk to protected species and decreasing habitat connectivity; increase mortality by vehicle traffic to endangered species such as California tiger salamander and California red-legged frog as they disperse across roads; housing/humans cause increase in predators such as coyotes, ravens, and crows (“subsidized” predators); increased artificial lighting detrimental to wildlife behavior (California Code of Regulations Section 15355).

based on the assumption that tiered projects will include avoidance and mitigation measures that will make the projects impacts less than significant. This is an extremely flawed and misleading conclusion. The biological impacts of this project on protected plant and wildlife species and their habitat are enormous! The project will destroy the Maritime Chaparral and its protected plant and wildlife species using enormous bulldozers, loaders, excavators, scrapers, graders, and backhoes, as if we were back in the 1950s.<sup>22</sup>

8 con't

The means by which the biologists are able to claim that the project's impacts on wildlife and habitat will be less-than-significant are simply by placing mitigation measures in the DEIR that require future developers to identify the impacts and get their own individual Incidental Take Permits. Instead of dealing with the "effects of the program as specifically and comprehensively as possible," as State law requires of a programmatic EIR, the DEIR just kicks the can down the road. Without requiring the City to develop a conservation plan and obtain permitting in this program DEIR (with a timeline and all required steps outlined), this programmatic Housing Element Update will not allow the housing projects to follow to tier off of this program, thereby creating the need for repetitive analyses of biological impacts, mitigation, and permitting which should have been adequately addressed here. The inability to tier off of this DEIR likely guarantees the failure of the City to meet its affordable housing requirements within the planning period of eight years.

9

While the 1997 Habitat Management Plan provides a framework for species and habitat conservation on former Fort Ord, it does not meet U.S. Fish and Wildlife Service or California Department of Fish and Wildlife standards or requirements for an application soliciting the issuance of Incidental Take Permits. The more recent Fort Ord Multi-Species Habitat Conservation Plan, drafted but never adopted, was intended to fulfill those requirements by combining key components of the Habitat Management Plan with additional elements to ensure compliance with the Endangered Species Act and the California Endangered Species Act, thereby serving as a basis for issuance of base-wide Incidental Take Permits by U.S. Fish and Wildlife Service and California Department of Fish and Wildlife.

10

Additional constraints to using the Fort Ord properties to meet the City's housing goals are numerous and generally beyond the scope of CNPS expertise and analysis, however we feel compelled to address the issues of Unexploded Ordnance (UXO), toxic soils, and environmental justice. Unexploded Ordnances, including bombs, artillery, mortar, rocket and small arm ammunitions, mines, demolition charges, pyrotechnics, grenades, high explosives, and propellants, are still potentially on the project site. The site is also

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<sup>22</sup> Dasmann, R. F. (1965). *The Destruction of California*. Macmillan.

seriously constrained by a “State Covenant to Restrict Use of Property with the Army” that the City is currently bound by. It is likely that Sites 1 and 1a were never sufficiently cleared of UXO and hazardous materials to allow housing development. A major constraint to any housing development, the existing covenant prevents the following types of use for the entire Del Rey Oaks Munitions Response Area (Sites 1 and 1a): residential use, day care facilities that do not have measures to prevent contact with soil, schools for persons under 21 years of age, and hospitals (other than veterinary hospitals). To allow housing development, the covenant needs to be lifted by the California Department of Toxic Substances Control. The DEIR fails to mention any correspondence with the Department of Toxic Substances Control and whether they may be willing to lift the covenant, what studies still might be needed to do so, and what kind of timeline any or all of this may take.<sup>23</sup>

11 con't

Former military bases are some of the most polluted and toxic sites in the country. The entire former Fort Ord is still on the Superfund list, a “list of sites of national priority among the known releases of hazardous substances, pollutants, or contaminants throughout the United States (epa.gov).” The Housing Element DEIR tells us that hazardous and toxic waste materials at the former Fort Ord consist of a wide variety of materials including industrial chemicals, petrochemicals, domestic and industrial wastes (landfills), asbestos and lead paint in buildings, above- and underground storage units, and ordnance and explosives. The DEIR states that the remediation is ongoing (not complete). Again, the DEIR does not have a discussion of what all this means for the health and safety of the families, half of them in the very low income category, that will move into the RHNA homes at Sites 1 and 1a.

California State Senate Bill 1000<sup>24</sup> – Environmental Justice in Local Land Use Planning – requires local governments to identify environmental justice communities (called “disadvantaged communities”) in their jurisdictions and address environmental justice in their general plans and housing elements. The State’s Attorney General is working to ensure local governments comply with Senate Bill 1000<sup>25</sup>. The Del Rey Oaks 2023 Housing Element Update DEIR just barely mentions environmental justice and doesn’t even define such a crucial term for a project like this.<sup>26</sup> With the proposed planning of placing affordable housing for very low income households on lands that potentially have UXO and hazardous materials not sufficiently cleaned up on them, the potential environmental

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23 The 2019 Initial Study for the Del Rey Oaks Housing Element mentions that the City spoke to the Department of Toxic Substances Control about lifting the covenant during the development of the 2006 Draft Housing Element (17 years ago). It appears that this was the last time the City had any substantial discussion with DTSC regarding lifting the covenant.

24 Senate Bill 1000 – California Government Code of Regulations Section 65302(h).

25 State of California Department of Justice, Bureau of Environmental Justice (<https://oag.ca.gov/environment/justice>)

26 “Environmental justice” is defined in California law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies (California Government Code of Regulations Section 65040.12).

injustice that this program represents needs to be fully analyzed and resolved.<sup>27</sup>

Planning to build affordable housing for the poorest families in the community on land where housing is still prohibited due to insufficient clearing of UXO and hazardous wastes would be a newsworthy example of environmental injustice in the State’s Housing Element program. It appears unknown to anyone if or when the Department of Toxic Substances Control will ever be able to cleanup Sites 1 and 1a to a level where children can play ball in their yards or neighborhood parks. The rezoning of Sites 1 and 1a to allow housing should be postponed until the sites are sufficiently cleaned up and the State Covenant to Restrict Use of Property is lifted by the Department of Toxic Substances Control. It appears that the City has not had discussions on the potential of lifting the covenant with the California Department of Toxic Substances Control since 2006.

13

A critical failure of this DEIR can be seen in its planning. At the very start of program planning, during the notification of preparation and the scoping phase, the California Department of Fish and Wildlife requested that the biologists and planners meet with them and the U.S. Fish and Wildlife Service to both discuss their concerns and to determine what was feasible and what the specific timeline might be. While not absolutely required, those talks could have been incorporated into the very start and direction of project planning and environmental assessment, especially as the California Department of Fish and Wildlife has a significant level of responsibility for approving a project for which a lead agency is preparing or has prepared an environmental document.<sup>28,29</sup>

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The California Department of Fish and Wildlife’s scoping letter to the planners clearly stated their concerns including the fact the California Endangered Species Act-listed species could be significantly impacted and that habitat assessments and protocol-level surveys should be conducted for these species as part of a biological technical study and to use those conclusions in the DEIR to support project planning, special status species impact analysis, and mitigation measures. The project planners and biologists appear to

<sup>27</sup> American Institute of Certified Planners Code of Ethics and Professional Conduct <https://www.planning.org/ethics/ethicscode/>

<sup>28</sup> When biologists and environmental planners are assessing a project such as this one, and a project site where at least 38 special status plant and wildlife species have the potential to occur, having a series of significant and comprehensive discussions with CDFW and USFWS before the project begins, as well as through the scoping process, and incorporating those discussions into project planning and environmental assessment, is absolutely essential. Not doing so in this case, especially after receiving and disregarding a CDFW scoping letter advising wildlife agency consultation, reinforces the concern that the DEIR’s assessment of impacts to special status species is inadequate.

<sup>29</sup> The California Department of Fish and Wildlife (CDFW) is California’s Trustee Agency for the State’s fish, wildlife, and plant resources. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species. For the purposes of CEQA, CDFW is charged by law to provide biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

have disregarded the California Department of Fish and Wildlife’s concerns and no consultation with the wildlife agencies occurred. Additionally, no habitat or special status species field surveys were conducted to support their conclusions in this DEIR. There isn’t even a mention of a biologist visiting the project site for a biological assessment of any kind during the planning this DEIR.

A close examination of this DEIR points to the conclusion that the City cannot use the former Ford Ord properties to meet its RHNA requirements, principally because of the large number of environmental constraints (many of which may potentially be irresolvable) that prohibit the streamlining of affordable housing development. The many environmental constraints that come with the Fort Ord properties include the Maritime Chaparral “Sensitive Natural Community” protections, the federal Endangered Species Act and the California Endangered Species Act, the 38 protected special status species potentially on the sites, the need to obtain Incidental Take Permits and the biological studies required to do so, the remaining unexploded ordnance and hazardous waste and whether these can be sufficiently cleaned up for the prohibition on housing to be lifted, and environmental justice issues from planning that places housing for the poorest members of the community on dangerous and toxic land.

15

The California Department of Housing and Community Development states the “For each policy, procedure, or requirement identified as a constraint, the housing element must include programs to address and remove or mitigate the constraint.” However, the Housing Element Update and DEIR do not even clearly identify many of these constraints and offer no substantial measures or realistic timelines to remove or mitigate the constraints.

15a

Fortunately, the DEIR offers a reasonable alternative to the proposed project – Alternative 2, No Rezoning in Former Fort Ord Alternative. This alternative provides areas within the City for affordable housing to meet the RHNA requirement. The DEIR states, “Sites within the existing City on either side of Canyon Del Rey Boulevard would accommodate affordable housing.” One potential candidate site is the Monterey Peninsula Unified School District (MPUSD) site east of Highway 218/Canyon Del Rey Boulevard. All utilities exist on this ten acre site and opportunities may be available for expediting permitting for affordable housing for MPUSD employees. The DEIR also identifies other potential areas for residential development in the area of Calle Del Oaks. Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) can also provide many opportunities for affordable housing. The California Department of Housing and Community Development encourages the development of ADUs as they are an affordable type of home as they do not require paying for land, major new infrastructure, structured parking, or elevators and they provide a source of income for homeowners.

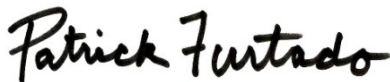
16

The Monterey Bay Chapter of the California Native Plant Society respectfully urges the City to reject the 2023 Del Rey Oaks Housing Element Update and Draft Environmental Impact Report as this program is deeply flawed and poorly planned, as we have attempted to outline. With so many environmental constraints to development, many potentially irresolvable, Sites 1 and 1a should be removed from any City affordable housing plan and the No Rezoning in Former Fort Ord Alternative should be considered.

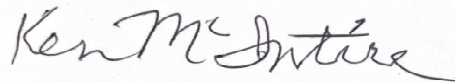
We feel that it is more than likely that if this Housing Element Update and DEIR are approved as they are currently planned, with all the City’s required RHNA affordable housing planned for the former Fort Ord properties, not a single home is likely to be built by the end of the Housing Element planning period in 2031, yet alone the required development of 270 housing units. We urge the City to stop spending hundreds of thousands of taxpayer dollars for the development of the Fort Ord properties and, instead, place a conservation easement on these lands to obtain significant federal tax benefits, and, most importantly, to ensure the continued existence of this rare Maritime Chaparral habitat, and all the unique and endangered plants and wildlife that depend upon it, for the future appreciation and enjoyment of untold generations of Del Rey Oaks citizens.

Thank you for the opportunity to comment on this proposed project and please contact us if you have any questions.

Sincerely,



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Monterey Bay Chapter  
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Monterey Bay Chapter  
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CC:

California Department of Housing and Community Development, Land Use and Planning Unit  
California Department of Fish and Wildlife, C/O Evelyn Barajas-Perez, Environmental Scientist  
California Environmental Protection Agency (CalEPA), Department of Toxic Substances Control (DTSC)  
California Department of Justice, Office of the Attorney General, Bureau of Environmental Justice

*Monterey Bay Chapter California Native Plant Society  
Comments on the City of Del Rey Oaks 2023 Housing Element Update  
Draft Environmental Impact Report*

California Environmental Protection Agency (CalEPA), Environmental Justice Program  
California Central Coast Regional Water Quality Control Board  
U.S. Fish and Wildlife Service, C/O Mark Ogonowski, Ventura Office  
Monterey County Housing and Community Development, C/O Fiona Jensen, Senior Planner  
Monterey Herald  
Monterey County Weekly  
Center for Biological Diversity  
LandWatch Monterey County

**Letter E: California Native Plant Society (CNPS)**

**E-1/1a** Comment noted related to CNPS desire to have the City of Del Rey Oaks meet the affordable housing needs of their community. The City has been working to the goal of achieving a compliant Housing Element for a number of years. The City of Del Rey Oaks Housing Element Update and EIR address the Housing Element for the 5th Cycle Planning Period, including updates to existing policies and programs contained within the adopted 2019 Draft Housing Element, specifically related to the requirements footnoted in this comment letter. The City is required by State Housing law to meet the RHNA allocation and is a member of AMBAG which allocates to the county, cities and unincorporated areas their fair share of the total RHNA housing needed for each income category.

Specific revisions identified by the Department of Housing and Community Development (HCD) Division of Housing Policy and Development (HCD Letter March 2020) require rezoning to meet RHNA. The City Council adopted a 5th Cycle Housing Element and certified an Initial Study/Negative Declaration on December 17, 2019. HCD’s review letter indicated the Housing Element was not in compliance and required specific program revisions. These revisions are identified in track changes in Appendix B-1 of the Draft EIR (2023) and focus on amended language in Program A.1 committing the City to rezone Sites 1 and 1a to allow residential uses to meet RHNA. The areas cited for affordable housing to meet RHNA have been planned for development and are acknowledged by HCD as the most appropriate locations for lands available to meet RHNA. See also **Response to Comment E-2**.

The EIR addresses updates to existing policies and programs contained within the adopted 2019 Draft Housing Element, focusing on the revisions to the programs specific to rezoning. The 2023 Housing Element Update identifies potential sites for rezoning to meet affordable housing RHNA but does not propose development or housing on these sites. Additionally, while the sites inventory identifies sites located in land that is currently vacant, the sites are zoned for development for commercial, hotel and urban uses, The Proposed Project would allow for rezoning in an area already considered for major development under the General Plan and Zoning, as documented in the Draft EIR. Table 3.11-3 in the Draft EIR, Section 3.11 Land Use and Planning, excerpted below, summarizes the current allowable densities for commercial zoning under the adopted General Plan and Zoning.

Total Office Park/Conference Center	<b>419,000 sf</b>
Total Residential/Hotel	<b>526 units</b>
Golf Acreage	<b>155 Acres</b>
Total Commercial/Retail	<b>83,500 sf</b>
Source: Del Rey Oaks General Plan Update Final EIR, Section 3.11 Draft EIR Housing Element Update	

These sites also were evaluated as developable areas in the City General Plan EIR, FORA Reuse Plan EIR and the Redevelopment Plan ISMND. The Proposed Project is not a new area of development but does provide for a new use: affordable housing. The EIR reviews the impacts of providing affordable housing in an area planned for over 500,000 square feet of development, and allowing a new use of affordable residential use not currently allowed under the General Plan or zoning. The rezoning facilitated by the Proposed Project would meet affordable housing requirements under State law and be located on land already planned for large-scale development (per Table 3.11-2 summarized above). The Proposed Project also implements actions by HCD to comply with applicable state laws and to allow the City to achieve

compliance with its Housing Element, consistent with HCD requirements. (See HCD Letter March 2020)

**E-2** The City is unlike most jurisdictions in California in that it does not have available land for infill or vacant lots within its jurisdiction, as described in the Housing Sites Inventory for 5<sup>th</sup> and 6<sup>th</sup> Cyle and as affirmed in the HCD letters defining the location for rezoning to meet RHNA. Please refer to the Sites Inventory Chapters in the Draft Housing Elements, and Appendix C, Sites Inventory, Housing Element Update.

**E-3** This comment provides an overview of individual comments addressed in the following responses. See also **Response to Comment E-1**.

The comment again assumes that any development would be related to the Housing Element approval (which would provide for affordable residential development in the former Fort Ord area). However, the comments do not account for existing allowable zoning, apparently not understanding that the area is planned for a large commercial and visitor serving use, including over 500,000 sq. ft. of commercial development under the General Plan and existing zoning. Any future development would require compliance with federal, state, and local regulations including CEQA, federal ESA, CESA, CALFIRE code, and CERCLA/ESCA/land use covenants and deed restrictions, and would be required to mitigate and obtain necessary permits commensurate with project-specific impacts. The Reuse Plan, Army EIS, HMP, Redevelopment Plan IS/MND, City General Plan EIR, and the 2019 Initial Study for the 5<sup>th</sup> Cycle Housing Element Update found that development at the site was not significantly environmentally constrained and future projects would need to go through additional environmental review and obtain necessary permitting at a project-level.

**E-4** Impacts are evaluated at a program level and where appropriate, indirect impacts that can be anticipated are assessed at a deeper level, when information is available for the Proposed Project location and development plan, as discussed in Chapter 3, Environmental Setting and Environmental Impacts of the Draft EIR (pages 3-1 – 3-6). In this case, the future impacts cannot be fully assessed at this time as there is not sufficient project-level detail available to enable an analysis of project-specific development due to the programmatic nature of the Proposed Project. Pursuant to CEQA Guidelines sec. 15168 (Program EIR), the Draft EIR document is designed to describe the environmental consequences of the “first tier” of this project--the land use amendments and rezoning action proposed by the project. A program EIR may be used in a tiering situation (see CEQA Guidelines sec. 15152[h][3]). “Tiering” or “tier” means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific CEQA documentation which incorporate by reference the discussion in any prior CEQA documentation and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.” (Pub. Resources Code sec. 21068.5; and CEQA Guidelines secs. 15152 and 15185).

As discussed in the Section 3.4, Biological Resources of the Draft EIR, under Approach to Analysis (page 3.4-22 of the DEIR), the biological analysis is a program-level analysis for the Housing Element update and the General Plan amendment. Specific subsequent projects, their associated locations, and physical effects on the environment from the implementation of the proposed Housing Element update, General Plan amendment, and rezoning are not known at this time. Thus, this analysis uses a programmatic approach to evaluating potential impacts to sensitive biological resources that may result from implementation of the proposed Housing

Element and General Plan, commensurate with the conceptual level of project information available and the approval being considered (i.e., City approval of the proposed Housing Element update).

The biological analysis includes the evaluation of known and potential special-status species and sensitive habitats within the project site at a program-level. Please refer to Section 3.4.2, Environmental Setting (pages 3.4-2 through 3.4-16) of the Draft EIR, for a discussion of these species and habitats. Contrary to the comment, Impacts BIO-1 and BIO-2 identify and describe the potential significant impacts of future development on sensitive species and habitat. In addition, to address potential impacts to sensitive biological resources, mitigation measures are required for any future development within the area. Future development will be required to comply with all applicable federal, state, and local regulations, including the federal ESA and CESA, and obtain all required permits. Once future project-specific impacts are identified, all necessary regulatory agency coordination and permitting processes will be initiated. However, it is not known at this time, what impacts would occur, the extent of the impacts, nor whether impacts could be avoided through site design or other project design features. The regulatory agencies require that this project-specific information, including a detailed project description and other required information, be included in a permit application in order for them to deem the application complete and issue a permit in accordance with their permit issuance criteria. Once a future project is identified, it will be subject to the mitigation measures identified in the DEIR, which include project-specific evaluation of impacts and obtaining necessary permits.

While certain regulations for streamlining CEQA and other approvals exist for affordable housing, affordable housing projects remain subject to all other applicable environmental regulations and permitting requirements.

As discussed in Impacts BIO-1 through BIO-4 of the Draft EIR, (pages 3.4-25 through 3.4-30), implementation of the Proposed Project would involve ground disturbance that would affect sensitive biological resources similar in extent to the assumed land disturbance evaluated in the General Plan. More specifically, future implementation of the Proposed Project would be located on land currently vacant but zoned for development for commercial, visitor-serving urban uses, and therefore developable pursuant to the City of Del Rey Oaks General Plan EIR, FORA Reuse Plan EIR and the Redevelopment Plan ISMND. There is no new significant effect, and the impact is not more severe than the impact identified in the General Plan EIR. Therefore, the Proposed Project would not result in a new or greater contribution to cumulative effects on biological resources beyond what was identified in the General Plan EIR.

Also, specific to the comment on early consultation, while there is no specific development proposed, the City is currently consulting with the U.S. Fish and Wildlife Service (USFWS) pursuant to the Endangered Species Act related to incidental take permits for future development. See also **Responses to Comments E-1 and E-2**.

- E-5** Comment acknowledged. Please refer to **Response to Comment E-7** below.
- E-6** Comment acknowledged. Maritime chaparral and associated plant and wildlife species, including special-status species, are evaluated in the DEIR. In addition, the regulations cited in the comment, as well as other potentially applicable environmental regulations, are discussed in Section 3.4.3, Regulatory Setting of the Draft EIR.
- E-7** Comment acknowledged. Central maritime chaparral and associated plant and wildlife species are evaluated in Section 3.4, Biological Resources of the DEIR on pages 3.4-3, 3.4-20, 3.4-23, 3.4-28, 3.4-29, 3.4-31, identified in Table 3.4-1. Special-Status Species with the Potential to

Occur Within the Project Area on pages 3.4-7 to 3.4-16, included in Appendix C Special-Status Species List, Appendix F-2 Mitigation Monitoring and Reporting Program page M-8 and M-9.

- E-8** The significance finding for impacts to special-status species and sensitive habitat (Impacts BIO-1 and BIO-2) are based on substantial evidence collected and evaluated for the EIR analysis. Please refer to Sections 3.4.1, Introduction, and 3.4.2, Environmental Setting, for a detailed description of the literature and data resources reviewed and existing site conditions. At a programmatic-level, given the lack of future project-specific details, it is supported by substantial evidence that potentially significant impacts to sensitive biological resources can be reduced to a less-than-significant level with the implementation of the project-specific mitigation measures identified. A project-specific biological assessment would identify any project-level impacts and recommend project-level mitigation to reduce impacts. In addition, if incidental take permits are required by the USFWS and/or CDFW, the project would be subject to permit requirements, which include fully mitigating impacts to listed species. Please also refer to **Response to Comment E-4**.
- E-9** Please refer to **Responses to Comments E-4** and **E-8**.
- E-10** Comment acknowledged. Background on the Fort Ord HMP is included in Section 3.4.3, Regulatory Setting.
- E-11** A brief history of hazardous materials and former Fort Ord is provided in Section 3.9 Hazards and Hazardous Materials of the DEIR, on pages 3.9-2 to 3.9-4. Figures, regulations, and a description of existing munitions/UXO hazards on former Fort Ord can be found on pages 3.9-7 through 3.9-16. Requirements and potential impacts of future development related to hazardous materials on former Fort Ord are identified on pages 3.9-17 through 3.9-20. Please refer to Section 3.9, Hazards and Hazardous Materials for a detailed description of hazards, remediation efforts, and impact analysis. Also, see **Responses to Comments Letters B** and **C**, and **Chapter 3, Master Responses**.
- E-12** Please refer to Section 3.9, Hazards and Hazardous Materials for a detailed description of hazards, remediation efforts, and impact analysis. While there is a current restriction against residential use in the portions of the project areas, a large middle-portion of former Parcel E29a (within Site 1, as shown in Figures 3.9-3 and 3.9-4 of the Draft EIR), provide adequate area for residential use without current covenant restrictions against residential. As noted in the BRAC EIR comment letter, the Army is currently working with the City of Del Rey Oaks to modify federal deed restriction to remove the residential use restriction from the middle-portion of Site 1 (E29a) as described in the Record of Decision (ROD). The Final EIR is amended to add the work currently underway with BRAC and the City. See **Chapter 5, Changes to the Draft EIR**, EIR Section 3.9 Hazards and Hazardous Materials. Before any residential use DTSC and US Army and EPA, must confirm that the risk of exposure to hazardous materials can be appropriately reduced through active MEC removal actions in concert with public education, continuing land use controls (such as the grading and excavation ordinance under DRO Municipal Code Chapter 15.48) and continued active agency oversight and involvement in any MEC actions at the Former Fort Ord site. The removal of MEC has been undertaken by the Army for over two decades, and neighboring jurisdictions had similar restrictions until activities were completed to clear land uses, including residential. The Del Rey Oaks Housing Element Update EIR addresses both 5<sup>th</sup> and 6<sup>th</sup> Cycle Housing Elements. Please refer to 6<sup>th</sup> Cycle Housing Element Appendix A for discussion of Affirmatively Furthering Fair Housing (AFFH) analysis related to environmental justice. <https://www.delreyoaks.org/commdev/page/housing-element>

- E-13** Please refer to **Responses to Comments E-11 and E-12**. No residential development can be approved until all cleanup has occurred, per Draft EIR Mitigation Measure 3.9-1. Comment requesting deferral of rezoning is referred to decisionmakers.
- E-14** Please refer to **Responses to Comments E-1 through E 13** above.
- E-15** The Proposed Project is not proposing development. As noted in **Response to Comment E-2**, above, the Draft EIR analysis addresses revising zoning to allow residential development per Program A.1. Mitigation Measure 3.4-5: Project-Specific Sensitive Natural Community Assessments, requires that any development that could potentially impact a sensitive natural community shall be required to conduct a survey of the site by a qualified biologist with requirements for avoidance and minimization measures. In addition to a report describing the results of the survey required to be provided to the City prior to any ground disturbing activities, the report must include recommended avoidance and minimization measures, if applicable. Additional mitigation is required if special-status species are observed or determined to have the potential to occur, the project biologist shall recommend measures necessary to avoid, minimize, and/or compensate for identified impacts. Measures may include, but are not limited to, revisions to the project design and project modifications, pre-construction surveys, construction buffers, construction best management practices, monitoring, non-native species control, restoration and preservation, and salvage and relocation. Additionally, prior to future development, project proponents must comply with consultation requirements with the United States Fish and Wildlife Service (USFWS) for federal requirements to determine whether the project will have any direct or indirect effects on federally listed threatened, endangered, or candidate species at project sites and surrounding areas and identify measures to reduce such effects. The future project proponents will also comply with the California Department of Fish and Wildlife (CDFW) consultation requirements. The key component of the proposed mitigation measures is coordination with appropriate resource agencies and acquiring necessary permits to assure that the most protective measures are implemented during the construction phase to reduce impacts to listed species and to comply with the Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA). If species that require take authorization from the USFWS and/or CDFW are identified within the development site, the City will comply with ESA and CESA and obtain necessary permits prior to construction.
- The Draft EIR considered CDFW NOP scoping letter comments and addressed them in Section 3.4; the City will consult with CDFW as part of the required CDFW ITP process.
- E-15/15a** The comment concludes that the City may not use the former Fort Ord for meeting RHNA requirements due to constraints related to development of the site. The site is planned for development and the Proposed Project would allow for a housing use on the sites in addition to or in place of allowed commercial development. The restrictions cited in the comment are then related only to residential use as affordable housing. As evidenced in the EIR and cited in the BRAC letter, there are areas within the site available for housing without restrictions or covenants.
- E-16** The comment addresses an alternative identified in the Draft EIR and suggests the City adopt an alternative that would avoid Sites 1 and 1a in former Fort Ord. The commenter states that the City could avoid Sites 1 and 1a within former Fort Ord through use of development of the MPUSD site and ADUs which could potentially fulfill the need for the affordable units required by RHNA. While this alternative was evaluated, there are issues with development for meeting 5<sup>th</sup> Cycle RHNA, as there is no additional water under the MPWMD allocation program until an additional water source is approved.

The City also does not currently have any remaining water allocated for ADUs within the City limits to provide water to these units. These sites are all within the MPWMD where there is a current Cease and Desist Order (CDO) prohibiting new hookups for water from the State Board; this CDO will not be lifted unless a new water source becomes available. Further, during the HCD 60-day review period of the Draft Housing Element 5<sup>th</sup> Cycle, HCD directed the City to the former Fort Ord area as the most suitable site for future development required to meet the City's RHNA goals. HCD staff noted the area within the MPWMD has water availability issues for each of the cities within the Peninsula. The cities and areas of the County within the MPWMD have prepared Housing Elements. Each of the elements submitted over the last two decades for 5<sup>th</sup> Cycle, identify water as a major constraint to development of affordable housing in this area. Water is the main constraint to meeting 86 RHNA units on previous Sites 2, 3, and 4 which were rejected by the City Council for meeting RHNA for 5<sup>th</sup> Cycle in March 2023 and March 2022 public meetings (during consideration of all of the sites in the Land Use Inventory to meet the City's RHNA in 5<sup>th</sup> Cycle).

HCD comment letters and City Council direction committing to rezoning Sites 1 and 1a are focused on the 5<sup>th</sup> Cycle Housing Element Update, as addressed throughout the Draft EIR and 5<sup>th</sup> Cycle Housing Element; The commenter is also directed to their own letter, footnote 1, which highlights the penalties for non-compliance with State Law related to development and adoption of housing element updates, specifically inability to receive certain grant funding. It is worth highlighting that the penalties for non-compliance with State Housing Element law have increased significantly to include court-imposed fines of up to \$600,000 per month as well as potential court-mandated compliance, court approval of housing development, and suspension of a community's ability to issue building permits.

The comment is referred to decision makers as a consideration on the Proposed Project.

**E-17** The comment is referred to decision makers as a consideration on the Proposed Project.

**From:** Michael DeLapa <[execdir@landwatch.org](mailto:execdir@landwatch.org)>  
**Sent:** Wednesday, September 27, 2023 2:15 PM  
**To:** Patrick Furtado <[pfurtado@berkeley.edu](mailto:pfurtado@berkeley.edu)>  
**Cc:** Karen Minami <[KMinami@delreyoaks.org](mailto:KMinami@delreyoaks.org)>; [NAOstaff@hcd.ca.gov](mailto:NAOstaff@hcd.ca.gov); [Evelyn.Barajas-Perez@wildlife.ca.gov](mailto:Evelyn.Barajas-Perez@wildlife.ca.gov); [cepacomm@calepa.ca.gov](mailto:cepacomm@calepa.ca.gov); [gkapahi@waterboards.ca.gov](mailto:gkapahi@waterboards.ca.gov); [ej@doj.ca.gov](mailto:ej@doj.ca.gov); [chris\\_kofron@fws.gov](mailto:chris_kofron@fws.gov); [jensenf1@co.monterey.ca.us](mailto:jensenf1@co.monterey.ca.us); Sara Rubin <[sara@mcweekly.com](mailto:sara@mcweekly.com)>; [mhcity@montereyherald.com](mailto:mhcity@montereyherald.com); [center@biologicaldiversity.org](mailto:center@biologicaldiversity.org); Ken Mcintire <[callippe2@comcast.net](mailto:callippe2@comcast.net)>; Nicholas Jensen <[njensen@cnps.org](mailto:njensen@cnps.org)>; Brendan Wilce <[bwilce@cnps.org](mailto:bwilce@cnps.org)>  
**Subject:** Re: Monterey Bay Chapter CNPS Comments on the 2023 Housing Element and DEIR

**CAUTION:** This email is from outside the City of Del Rey Oaks. Do NOT click LINKS or open ATTACHMENTS unless you are sure it is safe.

Patrick,

Thank you. LandWatch letters on Monterey and DRO housing elements, attached. Our comments on Monterey's draft housing element raises concerns with native plant and animal species. If you haven't already commented on Monterey's plan to provide housing on former Fort Ord, you might want to weigh in.

Best regards,

Michael

*Please subscribe to the LandWatch newsletter, "like" us on Facebook and follow us on Twitter.*

---

**Michael D. DeLapa**  
Executive Director  
[LandWatch Monterey County](http://LandWatch Monterey County)  
[execdir@landwatch.org](mailto:execdir@landwatch.org)  
650.291.4991 m

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[Remember](#) LandWatch in your will

On Sep 26, 2023, at 3:08 PM, Patrick Furtado <[pfurtado@berkeley.edu](mailto:pfurtado@berkeley.edu)> wrote:

Dear Ms. Minami,  
Please find attached the Monterey Bay Chapter CNPS Comments Letter on the 2023 Housing Element and DEIR.  
Can you also please respond to this email to verify receipt of the document?

Thank you very much,  
Patrick Furtado  
415.559.6935  
Monterey Bay Chapter  
California Native Plant Society

---

**RE: Del Rey Oaks Public Review Draft Housing Element**

Denise Duffy & Associates Team:

LandWatch has reviewed [Del Rey Oaks Public Review Draft Housing Element](#). We applaud the attention and policy focus to support the City's most vulnerable community members. We support the goals to eliminate constraints and make it easier to build housing consistent with Regional Housing Needs Assessment (RHNA). However, we are concerned that the draft relies exclusively on sites on the former Fort Ord to comply with RHNA. These sites are very problematic and may not be feasible for residential development. We attach specific comments on the draft site inventory and proposed policies and programs, as well as supporting materials from the Campus Town EIR and MCWD/LandWatch/Keep Fort Ord Wild legal settlement. **Please confirm receipt of LandWatch's comments.**

Thank you.

Regards,  
Michael

*Please subscribe to the LandWatch newsletter, "like" us on Facebook and follow us on Twitter.*

---

**Michael D. DeLapa**

Executive Director

[LandWatch Monterey County](#)

[execdir@landwatch.org](mailto:execdir@landwatch.org)

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[Remember](#) LandWatch in your will

**Other: LandWatch Correspondence:**

**Email Overview of Correspondence Received:**

Email from Mike DeLapa on September 27, 2023 contained a number of attachments. The email was directed to Patrick Furtado, CNPS and copied to the City Clerk for the City of Del Rey Oaks. The email message line read: Monterey Bay Chapter CNPS Comments on the 2023 Housing Element and DEIR. The email, therefore, forwarded the CNPS which is already in the Final EIR (See **Responses to Comments, Letter E.**) No further response is necessary.

Email from Mike DeLapa on September 27, 2023 to Patrick Furtado, CNPS and copied to the City Clerk for the City contained a number of attachments. The primary letter attached is a July 15, 2023 letter provided in this Final EIR.

This July 15<sup>th</sup> letter was originally received on June 15, 2023 and the same letter was re-sent on June 23, 2023 to the City with the header and comment that the letter provided comments for the local review Draft of the Housing Element 6<sup>th</sup> Cycle. The letter also contained two attachments, as discussed below additional correspondence, specifically pages from the Campus Town EIR page and a Settlement Agreement between FORA and MCWD.

The letter appears to be a comment letter on the Draft 6th Cycle Housing Element provided to the City. This letter has been posted on the City's website under 6th Cycle Housing Element, titled: "Comment Letters 6<sup>th</sup> Cycle". The July 15<sup>th</sup> letter is located on pages 4-10 of the pdf on the following link:

[https://www.delreyoaks.org/sites/default/files/fileattachments/city\\_clerk/page/2692/comment\\_letters\\_on\\_6th\\_cycle\\_draft\\_housing\\_element\\_update\\_june\\_july2023.pdf](https://www.delreyoaks.org/sites/default/files/fileattachments/city_clerk/page/2692/comment_letters_on_6th_cycle_draft_housing_element_update_june_july2023.pdf)

The September 27<sup>th</sup> email re-sending the July 15, 2023 letter also contained a number of attachments. The following attachments were also attachments sent with the July 15, 2023 letter in June, and also are located on the weblink above. Specifically, a Settlement Agreement between FORA, Keep Fort Ord Wild and MCWD and Exhibits can be found on pages 15-53 of the pdf in the link above; pages from the Campus Town EIR are located on pages 53-55 on the link above. Pages 56-201 of the attachments on the link above contain former Fort Ord reuse plans and documentation.

Additional email attachments were provided on September 27, 2023 email from LandWatch to Patrick Furtado, CNPS. These reference City of Seaside and City of Monterey housing element documents and are not considered comments on the Draft EIR sent to the City of Del Rey Oaks. See **Response to Comment F-3**, below.

A number of letter attachments received in the above referenced email above were directed to the City but did not contain any reference to the EIR or specify the comment was addressing the City Housing Element EIR. CEQA Guidelines Section 15088 requires that lead agencies evaluate and respond to comments on the Draft EIR that consider an environmental issue. However, lead agencies need to only respond to significant environmental issues associated with the project and do not need to provide all the information requested by the commentor, as long as a good faith effort at full disclosure is made in the EIR (CEQA Guidelines Section 15204). The level of detail contained in the response may correspond to the level of detail provided in the comment (i.e., responses to general comments may be general). A general response may be appropriate when a comment does not contain or specifically refer to readily

available information or does not explain the relevance of evidence submitted with the comment.

No additional response necessary; the comment letters were not sent to the City in reference to the Proposed Project. Additionally, the comments do not address environmental impacts of the Proposed Project.

July 15, 2023

City of Del Rey Oaks  
650 Canyon Del Rey Blvd.  
Del Rey Oaks, CA 93940

RE: [Del Rey Oaks Public Review Draft Housing Element](#)

Denise Duffy & Associates Team:

LandWatch has reviewed [Del Rey Oaks Public Review Draft Housing Element](#). We applaud the attention and policy focus to support the City's most vulnerable community members. We support the goals to eliminate constraints and make it easier to build housing consistent with Regional Housing Needs Assessment (RHNA). However, we are concerned that the draft relies exclusively on sites on the former Fort Ord to comply with RHNA. These sites are very problematic and may not be feasible for residential development. Set forth below are specific comments on the draft site inventory and proposed policies and programs.

1

**A. Unexploded ordnance constraints require explanation and may render Fort Ord sites infeasible.**

2

The Housing Element provides

... the State of California has approved the transfer of the entirety of the portion of the former Fort Ord within City limits to the City for all uses approved by the City General Plan currently. Additionally, a major portion of the interior of Site 1 is cleared for residential use. Additional lifting of covenants and restrictions in portions of the former Fort Ord is required to be approved by the State of California Department of Toxic Substances Control (DTSC) prior to provision of residential use on all of the former Fort Ord sites.

(Housing Element, p. 4-22.) Figures 3 and 4 and Table 3-4 indicate that the General Plan does not designate the Fort Ord sites (sites K1, K2, 1, and 1A) for residential use but only for General Commercial-Visitor, Service-Commercial, and Office-Professional. Table 3-4 acknowledges that the City would have to amend its general plan to designate these sites for residential use. Accordingly, there is no evidence that the State of California has approved any of these sites for residential use. Typically, DTSC cleanup requirements for residential use are significantly more stringent than its requirements for commercial use.

The Housing Element should

- identify what sites included in the site inventory are not yet approved for residential use
- explain whether those sites will require additional cleanup
- explain what party would be required to pay for the expense of getting DTSC approval of residential land use including, if required, the expense of additional testing, monitoring, insurance, or cleanup
- provide some estimate of the ranges of these expenses
- explain whether development of residential uses would be economically feasible in light of these expenses.

If development of residential uses would not be economically feasible, the Housing Element should not include these sites in its site inventory.

**B. Water constraints require explanation and may render Fort Ord sites infeasible.**

The site inventory states that “water and sewer services, as well as other utilities, are planned for all four [Fort Ord] sites.” (Housing Element, p. 3-12.) Table 3-4 indicates for each Fort Ord site that water service is expected to be provided by MCWD: “Water and sewer service is planned but would need to be extended from General Jim Moore Boulevard, where the existing MCWD infrastructure water and recycled water lines are in place.”

2

Table 3-4 indicates that a 10 acre-feet water supply is “assigned” to sites 1a and K1 and that a 50 acre-feet supply is “assigned” to site K2. Table 3-4 indicates that Site 1 “has an existing water allocation from the MCWD in accordance with MCWD’s 2020 Urban Water Management Plan.”

There are numerous problems with the claim that the Fort Ord sites have a water supply or even a plan for a water supply.

First, the MCWD UWMP does not “allocate” water to local jurisdictions. To the contrary, the MCWP UWMP states that the “Marina Coast Water District Board does **not** allocate water supply to projects, but instead advises customer land use jurisdictions as to the current and historic water use within their boundaries and the estimated remaining supply available for new developments.” (UWMP, p. 13, emphasis added, available [here](#).) These purported “remaining supplies” referenced in the UWMP are based on allocations made by the Fort Ord Reuse Agency of a purported 6,600 AFY water supply allocated to the Army by MCWRA in 1997, purportedly transferred to FORA, reallocated by FORA to seven land use jurisdictions, and then “sub-allocated” by those jurisdictions to specific projects. (UWMP, pp. 13-14.) The MCWD UWMP Appendix E-3 contains a memorandum purporting to report the current state of jurisdictional water allocations in the former Fort Ord. However, nowhere does the UWMP indicate that MCWD has allocated or assigned water to the Del Rey Oaks sites 1, 1a, K1, or K2, much less the specific amounts claimed in the Housing Element.

3

Second, FORA no longer exists. The Housing Element should explain whether and how allocations made by FORA remain relevant as a basis to claim a water supply.

Third, contrary to the Housing Element, site 1 does not have “an existing water allocation from the MCWD in accordance with MCWD’s 2020 Urban Water Management Plan.” Appendix E-3 to the UWMP indicates that there have been no sub-allocations to specific projects by Del Rey Oaks. The Housing Element should explain what it means by claiming that water has been “allocated” or “assigned” to specific parcels, because there is simply no evidence in the UWMP that this has been done.

3

Fourth, the Housing Element fails to acknowledge that there is a 6,160-unit cap on water supply connections for new residential development in the former Fort Ord and that cap has been reached. The Fort Ord Reuse Agency placed a 6,160-unit cap on new residential units to be served by groundwater in the former Fort Ord. Although FORA no longer exists, MCWD entered into a settlement agreement with LandWatch and Keep Fort Ord Wild that requires that MCWD continue to honor and enforce that 6,160 unit cap. A copy of that settlement agreement is attached to these comments.

4

The rationale for the cap was the well-known problem of overdraft and seawater intrusion, which is particularly aggravated by coastal pumping, and for which no public agency has yet implemented or even committed to any effective solutions. For example, the Groundwater Sustainability Agencies have not committed to or implemented projects and management actions found to be sufficient to ensure sustainability in the Monterey or 180/400-Foot Aquifer subbasins. Nor have MCWD and Monterey One Water yet committed to a project to supply recycled or surface water sufficient to support new housing units.

The most recent accounting of units approved under the 6,160-unit cap indicates that the cap was essentially exhausted with the approval of the Campus Town Project in 2019. The Campus Town FEIR states that “there is a remaining capacity of 1,495 new residential units as of May 3, 2019,” which is “adequate to accommodate the Project, which proposes 1,485 new residential units.” (City of Seaside, Campus Town FEIR, p. 3-170, excerpt attached.) **In short, as of 2019, there were only 10 units left in the 6,160-unit residential connection cap, beyond which MCWD is contractually bound by its settlement agreement not to provide any additional residential connections served by groundwater.** MCWD has no apparent source of water supply that is not dependent on groundwater to serve new residential development in Del Rey Oaks. Accordingly, the Housing Element should be revised to acknowledge these substantial constraints on water supply for residential development on the Fort Ord sites. Unless the Housing Element can identify a plan to provide water supply despite these constraints, it should not rely on the Fort Ord sites as part of its housing site inventory.

### **C. Proposed policies and programs require measurable objectives or objective standards.**

5

Many policies identified in the Housing Element are couched in unenforceable wishful language without clear and measurable objectives or objective standards. Accordingly, we comment only on the programs purporting to implement these policies, which programs by default should be the

locus of enforceable language (e.g., the term “shall”), measurable objectives, and objective standards.

Program A1 to provide sites to accommodate the City’s RHNA relies exclusively on development of Fort Ord sites. No portion of the RHNA is assigned to sites outside Fort Ord. As noted above, residential development on Fort Ord may be infeasible in light of water supply constraints and the costs to address contaminated sites that have not been cleared for residential uses. The Housing Element should be revised to assign some portion of the RHNA to sites outside Fort Ord, including

11

- ADU sites
- Vacant and non-vacant residentially zoned sites that could be upzoned to provide higher densities for new development or redevelopment
- Vacant or non-vacant commercially zoned sites that could be rezoned to accommodate both residential and mixed-use projects

Program A2 to develop higher intensity mixed use zoning in existing mixed-use areas and to develop mixed use zoning in visitor serving areas makes sense. However, the program lacks any measurable objective or objective standard.

12

The program should identify specific sites for higher densities, identify the higher densities to be allowed, and specify the visitor serving areas to be zoned for mixed use.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

The claim that this program is not needed to meet the 6th Cycle RHNA should be eliminated because it cannot be accurate in light of the water supply and site contamination constraints that may render Fort Ord sites infeasible, as discussed above.

Program A3 to permit small-lot Planned Unit Developments for multiple cottage or bungalow-type homes should include a provision for ministerial approval without a conditional use permit or PUD permit based on objective development and design review standards. We discuss below the need for objective standards and for ministerial review and approval of residential uses in all zones that permit residential uses.

13

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program B1 to “require development agreements or adopt an inclusionary and affordable housing ordinance that meets the RHNA inclusionary housing requirements” by 4Q25 lacks any definition of what would constitute meeting “the RHNA inclusionary housing requirements.” Jurisdictions may elect to use an inclusionary ordinance as part of a housing element designed to meet its RHNA, but there is no requirement to do so.

In pursuing Program B1, the City should first assess whether an inclusionary housing ordinance will enhance or hinder housing production. If upon further analysis, the City determines that an inclusionary ordinance is appropriate, Program B should be revised to specify the objective parameters and/or the measurable objectives of an inclusionary ordinance. For example, which development projects would be subject to an inclusionary ordinance? What percentage of affordable units would be required, and for what affordability category (e.g., very low, low, or moderate income)?

Furthermore, it is not clear whether the provision for an “affordable housing ordinance” is distinct from the provision for an “inclusionary” ordinance. If so, what would an “affordable housing ordinance” provide? The program should be revised to explain what is meant by an “affordable housing ordinance” and to provide objective standards and measurable objectives for such an ordinance if it is distinct from the proposed inclusionary ordinance.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program B2 to “facilitate affordable housing for all income levels” lacks any measurable objectives or objective standards. Its language is entirely precatory, e.g., “support,” “seek to participate in and promote,” and “work with.” It is entirely unclear what activity this program would actually require the City to undertake. The program cannot be relied on as evidence that the City can meet its RHNA.

Program B3 to provide information and incentives for the use of housing vouchers fails to specify measurable objectives or objective standards.

The program should be revised to specify what “incentives” would be provided, both for landlords of existing units and for developers of new rental units. Incentives for new rental units could include increased density and/or development concessions similar to those provided under the state density bonus law.

If there are no effective incentives available to existing landlords, the program should be revised to mandate acceptance of housing vouchers.

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program B4 to provide preferential housing for City residents and workers should be revised to explain why such a program would have any effect on whether the City meets its RHNA. Even if such a program were legal, it is difficult to understand how preferences for certain tenants would provide any incentives for provision of housing. Indeed, such a program may have the unintended consequence of discouraging development of housing units if developers feared that implementation of preferences might limit effective demand and therefore limit prices or rental rates.

Program B5, to develop a density bonus consistent with the state density bonus law, should be revised to provide for a density bonus and/or development concessions in excess of the minimum requirements under state law. For example, the City could provide for bonuses equal to 150% of the state minimum. Such an approach is being taken by Sand City, which is proposing a 250 percent density bonus as long as 15% of the units are affordable to lower income households.

Program B5 should also be revised to clarify that density bonuses are available not just for residential zones R-1 and R-2, but also for all other zones in which residential uses are permitted, including D, C, C-1, and ST zones.

11

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

Program C2 to encourage ADU construction references measures to encourage ADUs such as fee reductions or waivers and expedited permit processing but fails to specify measurable objectives or objective standards. The program should be revised to specify a time period in which the ADU ministerial permit would be granted or the application deemed approved. Specific fee waivers should be identified.

12

The program should identify a measurable objective in terms of the specific number of new units that these changes would enable compared to existing land use designations and zoning.

#### **D. Additional programs are required.**

Upzoning: The Housing Element should be revised to include a program to upzone existing residential areas to allow development or redevelopment at higher densities. Higher densities make affordable housing possible and are particularly appropriate along transit routes. The program should identify specific areas to be upzoned for higher densities and identify the higher densities to be allowed.

Elimination of R1 zoning: The Housing Element should be revised to eliminate R1 zoning and to allow multifamily residential uses in all residential areas.

Objective standards: We support the call for streamlining regulations. The Housing Element should require the development of objective development and design review standards to streamline review and provide for certainty. The City's commitment to objective standards should be made evident by using language like "shall develop" in the program, not language like "should consider." With or without ministerial by-right approval processes, objective standards accelerate permitting and increase certainty. Development of objective standards should be required for development in residential zones R-1 and R-2 and all other zones in which residential uses are permitted, including D, C, C-1, and ST zones.

13

Ministerial approvals: Using objective development and design review standards, the Housing Element should provide for ministerial permitting of multifamily infill developments that meet these objective standards. The Housing Element should require by-right, ministerial permitting for any 100% residential unit project in the residential zones R-1 and R-2 and all other zones in which residential uses are permitted, including D, C, C-1, and ST zones as follows:

- Development review for residential projects in R-1, R-2, D, C, C-1 and ST zoning districts shall be ministerial, based entirely on objective development standards, e.g., the lot size, density, setback, and height standards set out in Tables 4-1 and 4-3
- Design review for residential projects in R-1, R-2, D, C, C-1 and ST zoning districts shall be ministerial, based entirely on objective standards;
- 100% residential projects shall be permitted in D, C, C-1, and ST zoning districts;
- 100% residential projects in D, C, C-1, and ST zoning districts shall not require a PUD permit or a conditional use permit; and
- 100% residential projects in D, C, C-1, and ST consistent with objective development and design standards shall not require any form of discretionary permit.

By relying on objective standards and ministerial review and by eliminating the need for discretionary permits, residential project permitting can be greatly streamlined. Discretionary review could be provided for projects seeking a variance from objective standards.

Ministerial permitting of residential projects in infill areas like Del Rey Oaks is appropriate because CEQA review should be accomplished at the program rather than the project level. That is, CEQA review should take place when the City amends its General Plan or zoning code, not when a developer comes to the City with a conforming project.

The City should continue to require discretionary review with site-specific CEQA review of projects on specified sites that are environmentally sensitive, e.g., habitat for endangered, rare or threatened species; farmland of statewide and local importance; wetlands; earthquake/seismic hazard zones; federal, state, and local preserved lands, NCCP and HCP plan areas, and conservation easements; riparian areas; Department of Toxic Substances Control (DTSC) facilities and sites; landslide hazard, flood plains and, floodways; and wildfire hazard as determined by the Department of Forestry and Fire Protection. (See, e.g., Gov. Code 65913.4(6)(B) through (K) [sites excluded from ministerial permitting in SB 35].) Concerns for gentrification and historic resources could be addressed by continuing to require discretionary review for projects on existing affordable housing, mobile home sites, or historic resources. (See, e.g., Gov. Code 65913.4(a)(7), (10) [SB 35].)

In sum, only non-infill projects, projects on environmentally sensitive sites, projects on historic sites, or projects on sites already providing affordable housing should be excepted from ministerial permitting, e.g., by using the criteria for such sites specified in SB 35. (Gov. Code, §§ 65913.4(a)(2), (6), (7), (10).)

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Delapa". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Delapa".

Michael Delapa  
Executive Director

Attachments:

Settlement Agreement between MCWD, LandWatch, and Keep Fort Ord Wild  
Excerpt from City of Seaside, FEIR for Campus Town project

## Letter F: LandWatch

**Responses to comments that are related to environmental impacts or reference environmental impacts related to the Draft EIR document, and are contained in the September 27<sup>th</sup> email and the July 15<sup>th</sup> LandWatch letter, are identified below.**

- F-1** Each of LandWatch’s comments on the Draft EIR have been addressed in the individual responses, as referenced below, and in **Chapter 3, Master Responses**. Clarifications to the Draft EIR have been made where necessary. See **Chapter 5, Changes to the Draft EIR**.

The Proposed Project does not propose any development, nor is a development area within the large area of rezoning defined; thus, it is not known where potential future sites for affordable housing would be located. As noted in **Response to Comment E-2**, above, the EIR analysis addresses revising zoning to allow residential development per Program A.1. As noted above, the Proposed Project entails the adoption of a General Plan Amendment and rezoning to allow residential use (affordable housing) to meet RHNA on the identified candidate sites in the former Fort Ord, shown as Sites 1 and 1a in 5th Cycle, and also including additional candidate sites for 6th Cycle (Sites K1 and K2). This area has General Plan and zoning designations allowing maximum development in the land uses and intensities identified in Table 3.11-3 Summary of City General Plan Land Uses and Development within the Fort Ord Reuse Plan Area per General Plan EIR (See **Responses to Comments E-1** and **E-2**). Therefore, under the FORA Reuse Plan and City General Plan, density and development would be allowed under baseline conditions, at a much greater intensity and development of uses, as shown in Table 3.11-3.

- F-2** See EIR Section 3.9 Hazards and Hazardous Materials which address the residential use restriction that has been placed on the former Fort Ord properties (including Sites 1a, K1 and K2, and portions of Site 1), and clearly requiring that the State covenant restrictions will need to be amended or lifted before housing units could be constructed. Additional information is provided from BRAC on Army actions: Since the time the Army transferred these parcels in 2005, the Army has completed its munitions response actions and recorded the final selected remedy, which includes the continuation of the restriction against residential use in the areas, except for a middle-portion of Parcel E29a (a portion of Site 1), as shown in Figures 3.9-3 and 3.9-4 of the Draft EIR.

As noted in this Final EIR and BRAC correspondence, Letter C, the Army is currently working with the City of Del Rey Oaks to modify federal deed restriction to remove the residential use restriction as described in the Record of Decision (ROD). The Final EIR is amended to add the work currently underway with BRAC and the City. See **Chapter 5, Changes to the Draft EIR**, EIR Section 3.9 Hazards and Hazardous Materials.

Prior to future development, project proponents will comply with consultation requirements with the United States Army (BRAC) for federal requirements, the State (DTSC) and the local government (City) to ensure that a future development of housing would not have any direct or indirect effects on future residents of the project area.

The Draft EIR has identified the required mitigation and approvals necessary to release covenants to allow residential use. See EIR Section 3.9 Hazards and Hazardous Materials, and Mitigation Measures below which address the residential use restriction that has been placed on the former Fort Ord properties requiring that the State covenant restrictions will need to be amended or lifted before housing units could be constructed.

Mitigation Measure 3.9-1: Prior to approval of residential development plans on the project area, environmental agencies, including the Army, and the state lead regulatory agency, DTSC, shall confirm that the clearances to be conducted and those conducted to date together with approved remedial actions, as required, will be sufficient to allow the Former Fort Ord site to be developed for residential reuse.

Additionally, residential use for the specified areas identified herein will be prohibited until the landowner provides advance notification to the Army, USEPA, and DTSC of its intent to change a designated area's use to residential, and until DTSC concurs that residential use is appropriate. DTSC's evaluation may consider the Residential Protocol or further site evaluation incorporating new information (e.g., geophysical mapping, site development).

**F-3** The comment is related to water use and availability received as comments on the Housing Element Update.

Implementation of the Proposed Project would allow housing on the proposed candidate sites and result in an increase in water demand for residential uses; however, the increase is minor compared with existing and projected demand, supply, and surplus. Since the project area of former Fort Ord is planned for development under the City General Plan at a higher level of water use and development intensity than under the Proposed Project, allowing residential uses to meet RHNA would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the Proposed Project may impede sustainable groundwater management of the basin.

Discussion and evaluation of environmental impacts of the Proposed Project related to water resources are presented in Section 3.10, Water and Hydrology, pages 3.1 through 3.10-17, Section 3.11, Land Use and Planning, page 3.11-4, Section 3.17, Utilities and Water Systems, pages 3.17-1 through 3.17-2 and 3.17-6 through 3.17-9. The Draft EIR presents information on the area groundwater basins, water supply availability and existing and planned efforts to address seawater intrusion. This information is also provided in the 2019 Final IS/ND on the Housing Element 5<sup>th</sup> Cycle. This information supports MCWD's ability to serve the project area for 5<sup>th</sup> Cycle RHNA (86 units) in order to RHNA for 6<sup>th</sup> Cycle. Also, see **Chapter 3, Master Responses**, as well as **Responses to Comments E-1 and E-2**, above. Assertions that the Proposed Project would increase groundwater pumping and thereby contribute to a cumulatively considerable groundwater impact, and a significant impact related to Salinas Valley Groundwater Basin (SVGB), do not take into account the programmatic nature of the project and the baseline conditions, including allowable uses under the current General Plan and Zoning.

This area has General Plan and zoning designations allowing maximum development in the land uses and intensities identified in Table 3.11-3 Summary of City General Plan Land Uses and Development within the Fort Ord Reuse Plan Area per General Plan EIR (See **Responses to Comments E-1 and E-2**). Therefore, density and development would be allowed under baseline conditions, at a much greater intensity and development of uses, as shown in Table 3.11-3.

These responses reinforce that the application of affordable housing within former Fort Ord does not exacerbate or increase the development allowed and in fact, is a minor component of allowable future development. Such future development already has an allocation of water from MCWD as presented in the Draft EIR and IS/ND for the 5<sup>th</sup> Cycle Housing Element. Such water may be drawn from the Salinas Valley Groundwater Basin or supplied through another source that MCWD provides. However, the use of water for residential units or for commercial uses would not impact the amount of water drawn or increase the water drawn if sources are

from the SVGB. It is simply an allowable use for residential and it would not increase the water or in any way provide a new or significant environmental impact compared to existing conditions.

- F-4** The comment references agreements related to water unit cap; item is referred to decision makers.
- F5-F13** The comment references comments on individual programs and policies in the 6<sup>th</sup> Cycle Housing Element Draft Review. The comment not on the EIR for 5<sup>th</sup> Cycle however, is referred to decision makers as a consideration on the 6<sup>th</sup> Cycle Housing Element project.
- F-14** The comment is referred to decision makers as a consideration on the Proposed Project.

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## CHAPTER 5 Changes to the Draft EIR

The following section provides revisions to the text of the Draft EIR, in amendment form. The revisions are listed by page number. All additions to the text are presented in underline, and all deletions are shown in ~~strikeout~~.

### CHANGES TO THE SUMMARY OF THE ENVIRONMENTAL IMPACT REPORT

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#### CHANGES TO SUMMARY

**Page ES-14** The following mitigation measure has been added to Table ES-1 Summary of Project Impacts under Biological Resources Section Impact BIO-1: Special-Status Species in response to CDFW comment:

#### Mitigation 3.4-6: Potential Impacts to Western Bumble Bee

**3.4-6A** A qualified biologist shall determine if suitable habitat is present within the Project site. If suitable habitat is present, a qualified biologist shall conduct focused surveys for WBB and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance associated with the Project.

**3.4-6B** If surveys cannot be completed, all small mammal burrows and thatched/bunch grasses shall be avoided by a minimum of 50 feet to avoid and minimize take and potentially significant impacts any detection of WBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take, or if take cannot be avoided, what take authorization may be necessary to comply with CESA.

Footnote: *Special Status Wildlife Species – Western Bumble Bee*: WBB was once common throughout most of California. Potential impacts to WBB were analyzed in the Draft EIR. The Draft EIR determined that WBB was unlikely to occur within the survey area and be impacted by the project. However, based on consultation with CDFW, the CDFW suggested a higher level be identified in the EIR regarding the WBB due to the more recent listing of WBB and that potential ground-disturbing activities associated with future development have the potential to impact WBB and the EIR should identify specific avoidance and minimization measures. These are listed above.

**Page 1-5** The following has been added as the last paragraph after paragraph 5 to the CEQA Process in Section 1.5:

Subsequent to certification of the EIR, the City as Lead Agency will act on the Proposed Project. It is anticipated that EIR certification and action on the project will be scheduled for the same public hearing. CEQA requires that a lead agency shall neither approve nor carry out a project as proposed unless the significant environmental effects have been reduced to an acceptable level (CEQA Guidelines Sections 15091 and 15092) or the project objectives outweigh the unavoidable significant impacts (requiring the Lead Agency to make a Statement of Overriding Considerations) (CEQA Guidelines Section 15093). An acceptable level is defined as eliminating, avoiding, or substantially lessening the significant effects. A project's impacts must be reduced to a less than significant level where feasible or the lead agency must adopt a Statement of Overriding Considerations for any impacts that remain significant after all feasible mitigation is adopted. As the cited Section 15092 of the CEQA Guidelines provides:

“ (b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either: (1) The project as approved will not have a significant effect on the environment, or (2) The agency has: (A) Eliminated or substantially lessened all significant effects on the environment where

feasible as shown in findings under Section 15091, and (B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093. (CEQA Guidelines, 15092, subd. (b))”

## CHANGES TO CHAPTER 3, ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES

### CHANGES TO 3.4 BIOLOGICAL RESOURCES

**Page 3.4-1** The following has been added to 3.4-1 Introduction, under the last bullet:

BRAC noted that the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord (HMP), identifies requirements that apply to "Borderland Development Areas Along Natural Resource Management Area (NRMA) Interface." As the eastern boundary of Site 1 appears to abut the NRMA, BRAC requested review of the Fort Ord HMP for the borderland interface requirements. The HMP also requires parking lots, greenbelts, or other nonflammable or fire-resistant land uses will be located as a buffer between the NRMA and development. Future development of structures will be required to be sited entirely behind the land use/land area that is to be developed as a firebreak.

**Page 3.4-10** The following revised language has been added to the Invertebrates section of **Table 3.4-1. Special-Status Species with the Potential to Occur Within the Project Area:**

<p><i>Bombus occidentalis</i> Western bumble bee</p>	<p>— / SC / —</p>	<p>Found in a range of habitats, including mixed woodlands, farmlands, urban parks and gardens, montane meadows, and prairie grasslands. Requires plants that bloom and provide adequate nectar and pollen throughout the colony's life cycle, which is from early February to late November. Generally nests underground, often in abandoned mammal burrows. Populations are currently largely restricted to high elevation sites in the Sierra Nevada; however, the historic range includes the northern California coast.</p>	<p><b>Low/Medium</b> Only marginal, very low-quality habitat is present in small, isolated areas of ruderal/disturbed habitat where the non-native grasses occur. The CNDDDB reports an occurrence of this species approximately 3 miles from the project area; however, all occurrences of this species on the Monterey Peninsula are historic and this species may no longer occur within the vicinity of the project area. <u>In response to CDFW, this rating has been revised to add Medium to potential to occur.</u></p>
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**Page 3.4-18** The following has been added under Section 3.4.3 Regulatory Setting under the heading **State** and before the heading **California Endangered Species Act:**

#### **California Department of Fish and Wildlife Authority**

CDFW is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code).

The Department also has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered. If the Project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), an Incidental Take Permit may need to be obtained for the Proposed Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Public Resources Code Sections 21001(c), 21083, CEQA Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the project proponent's obligation to comply with Fish and Game Code Section 2080.

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**Page 3.4-25** The following text has been added under Section 3.4.4 Impact Analysis after paragraph 5 of Impact BIO-1 and above the heading **Mitigation Measures**:

Recent published findings of a CDFW decision to advance the Western Bumble Bee (WBB) to candidacy as an endangered species under the California Endangered Species Act (CESA) is noted. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Fish and Game Commission's decision on whether listing of WBB, pursuant to CESA, is warranted. During the candidacy period, the status of the WBB as an endangered candidate species qualifies it as an endangered, rare, or threatened species under CEQA. The take of WBB during the status review period may be prohibited unless appropriate authorization pursuant to CESA is obtained.

CDFW identifies potential impacts to WBB can occur without appropriate avoidance and minimization measures. Identified impacts associated with Proposed Project ground- and vegetation-disturbing activities include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code. To address this recent decision, mitigation measures were added to the Final EIR (personal communication, Evelyn Bajas-Perez, CDFW).

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**Page 3.4-29** The following text has been added under Section 3.4.4 Impact Analysis under Mitigation Measures after **Mitigation Measure 3.4-4**:

**Mitigation Measure**

Implementation of the following mitigation measures will reduce potentially significant impacts to Western Bumble Bee to a less-than-significant level.

**3.4-6A** A qualified biologist shall determine if suitable habitat is present within the Project site. If suitable habitat is present, a qualified biologist shall conduct focused surveys for WBB and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance associated with the Project.

**3.4-6B** If surveys cannot be completed, all small mammal burrows and thatched/bunch grasses shall be avoided by a minimum of 50 feet to avoid and minimize take and potentially significant impacts any detection of WBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take, or if take cannot be avoided, what take authorization may be necessary to comply with CESA.

Footnote: *Special Status Wildlife Species – Western Bumble Bee*: WBB was once common throughout most of California. Potential impacts to WBB were analyzed in the Draft EIR. The Draft EIR determined that WBB was unlikely to occur within the survey area and be impacted by the project. However, based on consultation with CDFW, the CDFW suggested a higher level be identified in the EIR regarding the WBB due to the more recent listing of WBB and that potential ground-disturbing activities associated with future development have the potential to impact WBB and the EIR should identify specific avoidance and minimization measures. These are listed above.

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**Page 3.4-31:** The following text has been added under Impact BIO-5, paragraph 1 and has been amended as follows:

As described in Section 3.4.3, the project area is not located within an approved HCP or NCCP area. However, the project area is located within the approved Fort Ord HMP area. The entire project area is located within parcels designated by the HMP as “development.” As described above in the Regulatory section, parcels designated as “development” do not have habitat requirements. Additionally, a portion of the project area, Site 1, is designated in the HMP as having Borderlands requirements. Borderlands are designated development parcels or habitat reserve parcels at the urban/wildland interface where specific design considerations and management activities are required to minimize effects of development on HMP species and natural communities. The border requirements identify that a wildlife border be located within a 150-foot wide corridor along the City of Seaside’s eastern border and along the entire boundary of Site 1 with U.S. Bureau of Land Management. This area is also referred to as the Borderland development area adjacent to the Natural Resources Management Area owned by the U.S. Bureau of Land Management in the Fort Ord Habitat Management Plan (USACOE, Sacramento District, 1997). Implementation of Borderlands requirements are included in Mitigation Measure 3.4-1, which includes measures to avoid and minimize impacts to biological resources in adjacent open space areas.

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## CHANGES TO 3.9 HAZARDS AND HAZARDOUS MATERIALS

**Page 3.9-4** The following text has been added after paragraph 4 under Site History and Characteristics has been amended as follows:

The Army is currently working with the City of Del Rey Oaks to modify federal deed restriction to remove the residential use restriction from the middle-portion of Site 1 (E29a) as described in the Record of Decision (ROD). The Final EIR is amended to add the work currently underway with BRAC and the City. See Chapter 5, Changes to the Draft EIR, EIR Section 3.9 Hazards and Hazardous Materials.

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**Page 3.9-4** The following text has been added as a footnote to paragraph 4 under Site History and Characteristics.

Footnote: BRAC commented that data provided by Monterey County for APN parcels shown on Figure 2-6 appear to encroach onto the Army’s BRAC property will be corrected and incorporated into future maps provided for any future projects on the sites.

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**Page 3.9-12** The following text has been added after paragraph 3 under the Wildfire heading, before Section 3.9.3 Regulatory Framework.

The HMP identifies requirements that apply to "Borderland Development Areas Along Natural Resource Management Area (NRMA) Interface." As the eastern boundary of Site 1 is bordering the NRMA, the borderland interface requirements of the HMP also requires parking lots, greenbelts, or other nonflammable or fire-resistant land uses will be located as a buffer between the NRMA and development. Future development of structures will therefore be required to be sited entirely behind the land use/land area that is to be developed as a firebreak.

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**Page 3.9-18** The following text has been added as a footnote to the last paragraph of Impact HAZ-2.

Impact HAZ-2 is amended to clarify Sites K1 and K2 area is also subject to the residential use restriction and land use controls that are in place for Site 1a and portions of Site 1.

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## CHANGES TO 3.16 TRANSPORTATION

**Page 3.16-1** The following has been added to paragraph 3 under the Transit Service subheading of Section 3.16.2 Environmental Setting on page 3.16-1:

In addition to Line 7, Jazz A, Jazz B, and Line 94 provide indirect service to the City of Del Rey Oaks and offer connections to neighboring cities. Residents can board these routes using the following stop: Stop ID 6798 – Fremont / Portola Drive. Both Jazz A and Jazz B have a combined frequency of 15 minutes and provide services to the Monterey Bay Aquarium and the Monterey Transit Plaza via Hilby Avenue (Jazz A) or Broadway Avenue (Jazz B). Line 94, also known as a senior shuttle, provides service from Sand City to Carmel and has a frequency of two (2) hours from 9:26 AM to 4:46 PM. Developers can enroll in MST’s Group Discount Program to offer residents substantially reduced cost bus passes to incentivize transit use and further mitigate transportation impacts.

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## CHANGES TO 3.18 WILDFIRE

**Page 3.18-5** The following is added to paragraph 2 of Impact WF-3, above Impact WF-4:

The project area within former Fort Ord is currently planned for development of commercial, hotel and office use. The development of these allowable uses as well as future residential development in the project area will require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, powerlines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment. As the eastern boundary of Site 1 is bordering the NRMA, the borderland interface requirements of the HMP require parking lots, greenbelts, or other nonflammable or fire-resistant land uses will be located as a buffer between the NRMA and development. Additionally, future development of structures will therefore be required to be sited entirely behind the land use/land area that is to be developed as a firebreak. potential future residential development resulting from implementation of the proposed project would be required to adhere to a wide range of state and local codes pertaining to flood or wildfire protection and would be required to ensure that new developments would not exacerbate fire hazards.

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## CHANGES TO CHAPTER 6, REFERENCES/PERSONS CONSULTED

### CHANGES TO 6.2 PERSONS CONSULTED

**Page 6-7** The following has been inserted in the final list of Persons Consulted:

Evelyn Bajaras-Perez, CDFW

Dave Kereazis, DTSC

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Appendix A  
Final EIR Mitigation Monitoring and Reporting Program



**APPENDIX A**

**Mitigation Monitoring and Reporting Program**

The California Environmental Quality Act (CEQA) and CEQA Guidelines (PRC Section 21081.6 and State CEQA Guidelines Sections 15091[d] and 15097) require Lead Agencies to adopt a program for monitoring the mitigation measures required to avoid the significant environmental impacts of a project. The Mitigation Monitoring and Reporting Program (MMRP) ensures that mitigation measures imposed by the District are completed at the appropriate time, specific to the future connection process. The mitigation measures identified in the Draft EIR are listed in the MMRP along with the party responsible for monitoring implementation of the mitigation measure, the milestones for implementation and monitoring, and confirmation the mitigation measure has been implemented. The following mitigation measures are specific to the City of Del Rey Oaks 2023 Cycle Housing Element Update Environmental Impact Report (EIR) project.

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
<b>Air Quality</b>				
<b>Impact AQ-2: Criteria Pollutant Emissions</b>	<b>Mitigation Measure 3.3-1:</b> Prior to start of construction, the project applicant or contractor shall submit a construction dust mitigation plan to the City of Del Rey Oaks for review and approval. This plan shall specify the methods of dust control that would be utilized, demonstrate the availability of needed equipment and personnel, use reclaimed water for dust control, and identify a responsible individual who, if needed, can authorize implementation of additional measures. The construction dust mitigation plan shall, at a minimum, include the following measures: <ul style="list-style-type: none"> <li>• Limit grading activity to a maximum of 2.2 acres daily.</li> <li>• Water all active construction areas at least three times daily and more often during windy periods. Active areas adjacent to existing businesses should be kept damp at all times. If necessary, during windy periods, watering is to occur on all days of the week regardless of onsite activities.</li> <li>• Cover all trucks hauling trucks or maintain at least two feet of freeboard.</li> </ul>	Project Applicant or Construction Contractor	Prior to start of construction	City of Del Rey Oaks

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<ul style="list-style-type: none"> <li>• Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.</li> <li>• Sweep daily all paved access roads, parking areas and staging areas at construction sites.</li> <li>• Sweep streets daily if visible soil material is deposited onto the adjacent roads.</li> <li>• Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).</li> <li>• Enclose, cover, water three times daily or apply (non-toxic) soil binders to exposed stockpiles.</li> <li>• Limit traffic speeds on unpaved roads to 15 mph.</li> <li>• Replant vegetation in disturbed areas as quickly as possible.</li> <li>• Suspend excavation and grading activity when hourly-average winds exceed 15 mph and visible dust clouds cannot be contained within the site.</li> </ul>			
<b>Biological Resources</b>				
<p><b>Impact BIO-1: Special-Status Species.</b></p> <p><b>Impact BIO-5: Adopted Habitat Conservation Plans.</b></p>	<p><b>Mitigation Measure 3.4-1: Project Specific Biological Assessments (HMP Species).</b> The City shall require that a biological survey of development sites be conducted by a qualified biologist to determine if the development could potentially impact HMP species of potential habitat. A report describing the results of the surveys will be provided to the City prior to any ground disturbing activities. The report will include, but not be limited to: 1) a description of the biological conditions at the site; 2) identification of the potential for HMP species to occur or HMP species observed, if any; and 3) maps of the locations of HMP species or potential habitat, if observed.</p>	<p>Project Applicant, Qualified Biologist</p>	<p>Prior to ground disturbing activities</p> <p>Project Applicant shall retain qualified biologist to perform biological survey(s) prior</p>	<p>City of Del Rey Oaks, Project Applicant, Qualified Biologist</p>

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>If HMP species that do not require take authorization from the USFWS or CDFW are identified within the development site, salvage efforts for these species will be evaluated by a qualified biologist in coordination with the City’s consulting biologist to further reduce impacts per the requirements of the HMP and BO. Where salvage is determined feasible and proposed, seed collection should occur from plants within the development site and/or topsoil should be salvaged within occupied areas to be disturbed. Seeds should be collected during the appropriate time of year for each species by qualified biologists. The collected seeds and topsoil should be used to revegetate temporarily disturbed construction areas and reseeded and restoration efforts on- or off-site, as determined appropriate by the qualified biologist and the City.</p> <p>If HMP species that require take authorization from the USFWS and/or CDFW are identified within the development site, the City will ensure that developers comply with ESA and CESA and obtain necessary permits prior to construction.</p> <p><b>Mitigation Measure 3.4-2: Project-Specific Biological Assessments (Non-HMP Species).</b> The City shall require that a biological survey of development sites be conducted by a qualified biologist to determine if the development could potentially impact a special-status species or their habitat. A report describing the results of the surveys will be provided to the City prior to any ground disturbing activities. The report will include, but not be limited to: 1) a description of the biological conditions at the site; 2) an search of relevant resources to generate an updated list of special-status species known within the project vicinity; 3) identification of the potential for special-status species to occur or special-status species observed, if any; 4) maps of the locations of special-status species or potential habitat, if observed; and 5) recommended mitigation measures, if applicable.</p>		to ground disturbance activities.	

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>If special-status species are determined not to occur at the development site, no additional mitigation is necessary.</p> <p>If special-status species are observed or determined to have the potential to occur, the project biologist shall recommend measures necessary to avoid, minimize, and/or compensate for identified impacts. Measures may include, but are not limited to, revisions to the project design and project modifications, pre-construction surveys, construction buffers, construction best management practices, monitoring, non-native species control, restoration and preservation, and salvage and relocation.</p> <p>If species that require take authorization from the USFWS and/or CDFW are identified within the development site, the City will comply with ESA and CESA and obtain necessary permits prior to construction.</p> <p><b>Mitigation Measure 3.4-3: Pre-Construction Surveys for Protected Avian Species.</b> Construction activities that may directly (e.g., vegetation removal) or indirectly (e.g., noise/ground disturbance) affect protected nesting avian species will be timed to avoid the breeding and nesting season. Specifically, vegetation and/or tree removal can be scheduled after August 31 and before January 31. Alternatively, a qualified biologist will be retained by the City to conduct pre-construction surveys for nesting raptors and other protected avian species within 500 feet of proposed construction activities if construction occurs between February 1 and August 31. Pre-construction surveys will be conducted no more than 14 days prior to the start of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). Because some bird species</p>			

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>nest early in spring and others nest later in summer, surveys for nesting birds may be required to continue during construction to address new arrivals, and because some species breed multiple times in a season. The necessity and timing of these continued surveys will be determined by the qualified biologist based on review of the final construction plans and in coordination with the USFWS and CDFW, as needed.</p> <p>If raptors or other protected avian species nests are identified during the pre-construction surveys, the qualified biologist will notify the City and an appropriate no-disturbance buffer will be imposed within which no construction activities or disturbance shall take place (generally 500 feet in all directions for raptors; other avian species may have species-specific requirements) until the young of the year have fledged and are no longer reliant upon the nest or parental care for survival, as determined by a qualified biologist.</p> <p><b>Mitigation Measure 3.4-4: Implement Open Space Requirements.</b> For open space areas adjacent to the project area, the following measures shall be implemented:</p> <ul style="list-style-type: none"> <li>▪ <b>Conduct an access assessment to identify necessary access controls.</b> In some cases, structures including fences or other appropriate barriers may be required within the future development to control access into the habitat areas. An assessment of access issues and necessary controls will be completed as part of planning for the development and submitted to the City for review and approval, prior to development.</li> <li>▪ Signs, interpretive displays, trailhead markers, or other information will be installed and maintained at identified urban/wildland interface that illustrate the importance of the adjacent habitat area and prohibit trespass, motor vehicle entry, dumping of trash or yard</li> </ul>			

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>wastes, pets off-leash, capture or harassment of wildlife, impacts to special-status species, and other unauthorized activities.</p> <ul style="list-style-type: none"> <li>▪ <b>Incorporate non-native species control features into site design.</b> Detention ponds or other water features associated with future development will be sited as far from the urban/wildland interface as possible. Suitable barriers will be located between these features and the habitat area boundary to prevent these features from becoming “sinks” for special-status wildlife species, as well as sources for invasive non-natives that could then move into the adjacent habitat area. If detention ponds or other waterbodies must be located at the urban/wildland interface, a specific management program addressing control of non-native animals (e.g., bullfrogs) must be prepared and submitted for review and approval by the City, prior to development.</li> <li>▪ Landscaping within the areas adjacent to open space areas will consist of native or non-native plant species that will not colonize reserve areas in the former Fort Ord outside the project area. Any landscaping or replanting required for the project will not use species listed as noxious by the California Department of Food and Agriculture (CDFA). All landscape plans will be reviewed by the City.</li> <li>▪ <b>Limit artificial lighting at the urban/wildland interface.</b> Outdoor lighting associated with future development will be low intensity, focused, and directional to preclude night illumination of the adjacent habitat area. Outdoor lighting will be placed as far from the urban/wildland interface as possible given safety constraints. High-intensity lighting facing the habitat areas will be directional and as low to the ground as possible to minimize long distance glare.</li> <li>▪ Develop and implement erosion control measures to prevent sediment transport into and within habitat areas. Erosion control measures will be required where vegetation removal or soil</li> </ul>			

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>disturbance occurs as a result of all construction and maintenance, including trail, road, or fuelbreak construction/maintenance, access controls, or stormwater management, consistent with existing stormwater management plans. Specific measures to be implemented shall be detailed in an erosion control plan. The erosion control plan will include, at a minimum, the following measures.</p> <ul style="list-style-type: none"> <li>○ Re-contour eroded areas.</li> <li>○ Maintain and grade areas along the reserve perimeter and main roads as appropriate to avoid washouts. Gullies will be repaired as needed.</li> <li>○ Install drainage features such as outlet ditches, rolling dips (similar to waterbars), and berms as needed to facilitate the proper drainage of storm runoff.</li> <li>○ Add soil amendments such as fertilizers and gypsum for designated development areas only.</li> <li>○ Prevent sediments from entering basins or swales that could be used by HMP species during erosion control activities.</li> <li>○ Design and conduct erosion control measures to minimize the footprint of the structures and repairs, and design structures to minimize potential impacts on California tiger salamander and California red-legged frog that may be moving between breeding and upland habitats.</li> <li>○ Use weed-free mulch, weed-free rice, sterile barley straw, or other similar functioning product where needed for erosion control. Seed native plant species to stabilize soils disturbed by erosion control activities and prevent colonization by invasive weeds. Incorporate native plant species to the extent practicable.</li> </ul> <p><b>Mitigation Measure 3.4-6: Potential Impacts to Western Bumble Bee*</b></p>			

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p><b>3.4-6A</b> A qualified biologist shall determine if suitable habitat is present within the Project site. If suitable habitat is present, a qualified biologist shall conduct focused surveys for WBB and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance associated with the Project.</p> <p><b>3.4-6B</b> If surveys cannot be completed, all small mammal burrows and thatched/bunch grasses shall be avoided by a minimum of 50 feet to avoid and minimize take and potentially significant impacts any detection of WBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take, or if take cannot be avoided, what take authorization may be necessary to comply with CESA.</p> <p>*Special Status Wildlife Species – Western Bumble Bee: WBB was once common throughout most of California. Potential impacts to WBB were analyzed in the Draft EIR. The Draft EIR determined that WBB was unlikely to occur within the survey area and be impacted by the project. However, based on consultation with CDFW, the CDFW suggested a higher level be identified in the EIR regarding the WBB due to the more recent listing of WBB and that potential ground-disturbing activities associated with future development have the potential to impact WBB and the EIR should identify specific avoidance and minimization measures. These are listed above</p>			
<b>Impact BIO-2: Riparian and Wetland Habitat.</b>	<b>Mitigation Measure 3.4-5: Project-Specific Sensitive Natural Community Assessments.</b> The City shall require that any development that could potentially impact a sensitive natural community shall be required to conduct a survey of the site by a qualified biologist. A report describing the results of the survey will be provided to the City prior to any ground disturbing activities. The report will include, but is not	Project Applicant, Qualified Biologist	Prior to ground disturbing activities, prior to construction.	City of Del Rey Oaks, Project Applicant, Qualified Biologist

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>limited to: 1) a description of the biological conditions at the site; 2) identification of the potential for sensitive habitats or sensitive habitats observed, if any; 3) maps of the locations of sensitive habitats or potential sensitive habitat, if observed; and 4) recommended avoidance and minimization measures, if applicable. If a potential state or federally protected wetland or other are identified to be present on the site, a formal wetland delineation will be conducted in accordance to ACOE methodology.</p> <p>If a proposed development cannot avoid impacts to sensitive habitat areas, the City shall require a compensatory habitat-based mitigation to reduce impacts. Compensatory mitigation must involve the preservation, restoration, or purchase of off-site mitigation credits for impacts to sensitive habitats. Mitigation must be conducted in-kind or within an approved mitigation bank in the region. The specific mitigation ratio for habitat-based mitigation will be determined through consultation with the appropriate agency (i.e., CDFW, ACOE, or SWRCB) on a project-by-project basis.</p> <p>Impacts to sensitive habitats, including but not limited to, vernal pools, streambeds, waterways, or riparian habitat, protected under Section 1600 of Fish and Wildlife Code and Sections 401 and 404 of the CWA, require regulatory permitting to reduce impacts. Acquisition of permits and implementation of the approved mitigation strategy would ensure impacts are fully mitigated and “no net loss” of wetland habitat would occur.</p>		Project Applicant shall retain qualified biologist to perform biological survey(s) prior to ground disturbance activities.	
<b>Cultural and Tribal Resources</b>				
<b>Impact CTR-2: Archaeological Resources.</b>	<b>Mitigation Measure 3.5-1:</b> The following measures would be implemented in the event of an unanticipated discovery of cultural resources:	Construction Contractor, Qualified	During construction	Construction Contractor, Qualified

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
<p><b>Impact CTR-4: Tribal Cultural Resources.</b><sup>1</sup></p>	<p>a. If subsurface deposits believed to be cultural or human in origin are discovered during construction, then all work must halt within a 100-foot radius of the discovery. A qualified professional archaeologist, meeting the Secretary of the Interior’s Professional Qualification Standards for prehistoric and historic archaeologist, shall be retained to evaluate the significance of the find, and shall have the authority to modify the no-work radius as appropriate, using professional judgement. A Native American monitor, following the Guidelines for Monitors/Consultants of Native American Cultural, Religious, and Burial Sites established by the Native American Heritage Commission, shall be required if the nature of the unanticipated discovery is prehistoric.</p> <p>Work cannot continue within the no-work radius until the archaeologist conducts sufficient research and data collection to make a determination that the resource is either: 1) not cultural in origin; or 2) not potentially significant or eligible for listing on the NRHP or CRHR.</p> <p>b. If a potentially eligible resource is encountered, then the archaeologist and lead agency shall arrange for either: 1) total avoidance of the resource, if possible; or 2) test excavations to evaluate eligibility.</p> <p>If found to be eligible for either the NRHP or CRHR, then significant impacts would be resolved/mitigated through data recovery excavations to the extent of obtaining enough information to address applicable research questions.</p> <p>If data recovery is necessary, a data recovery plan will be prepared, reviewed by the lead agency, and implemented. Determinations of</p>	<p>Archaeologist Monitor</p>	<p>Contractor or assigned Monitor shall be responsible for reporting compliance to the City of Del Rey Oaks and County Coroner</p>	<p>Archaeologist Monitor, City of Del Rey Oaks</p>

<sup>1</sup> see also Mitigation Measure 3.5-3

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>eligibility and completion of data recovery (if necessary) shall be formally documented in writing and submitted to the lead agency as verification that the provisions in CEQA for managing unanticipated discoveries have been met.</p> <p><b>Mitigation Measure 3.5-2:</b> Worker Awareness Training will be developed and conducted prior to any construction operations for development within the portion of the project area within former Fort Ord. The training program will inform crew members of the potential for archaeological finds and the protocols to be followed in the event of the discovery of archaeological materials. The program will be presented by a Professional Archaeologist and include an ALERT Sheet with visual aids with a focus on archaeological objects and other cultural materials that could be present within the project area. The training will also provide protocols in the event of an unexpected discovery and points of contact in the event of an unexpected find including Native American burials. The training will include a briefing to supervisory construction personnel and “tailgate” training to field personnel.</p>			
<p><b>Impact CTR-3: Disturbance of Human Remains</b></p>	<p><b>Mitigation Measure 3.5-3:</b> In the event that evidence of human remains is discovered, construction activities within 100 meters of the discovery shall be halted or diverted and the requirements of Mitigation Measure 3.5-1 will be implemented. In addition, the County Coroner shall be notified in accordance with provisions of PRC Sections 5097.98-99. If the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, the Coroner shall ensure that notification is provided to the NAHC within twenty-four hours of the determination, as required by California Health and Safety Code Section 7050.5(c) and PRC 5097. The NAHC shall identify the person or persons it believes to be most likely descended (MLD) from the deceased Native American (PRC Section</p>	<p>Construction Contractor, Qualified Archaeologist Monitor</p>	<p>During construction, Contractor or assigned Monitor shall be responsible for reporting compliance to the City of Del Rey Oaks and County</p>	<p>Construction Contractor, Qualified Archaeologist Monitor, City of Del Rey Oaks</p>

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	5097.98). The designated MLD then has 48 hours from the time access to the property is granted to make recommendations concerning treatment of the remains (AB 2641). If the landowner does not agree with the recommendations of the MLD, the NAHC can mediate (Section 5097.94 of the Public Resources Code). If no agreement is reached, the landowner must rebury the remains where they will not be further disturbed (Section 5097.98 of the Public Resources Code). This will also include either recording the site with the NAHC or the appropriate Information Center; using an open space or conservation zoning designation or easement; or recording a document with the county in which the property is located (AB 2641).		Coroner and NAHC?	
<b>Geology and Soils</b>				
<b>Impact GEO-1: Seismic Hazards</b>	<p><b>Mitigation Measure 3.7-1:</b> To minimize the potential effects from strong seismic ground shaking on project components, a geotechnical engineer report shall be prepared for the site specific area of future construction of housing. At a minimum, all recommendations from the project’s Preliminary Geotechnical Design Report prepared by LFR Inc. (November 2007) shall be incorporated by the project proponent into final design plans for future construction, subject to review of the City Engineer prior to construction activities.</p> <p><b>Mitigation Measure 3.7-2:</b> In order to minimize strong seismic shaking on project components, the project proponent shall incorporate the recommendations of the Preliminary Geotechnical Design Report prepared by LFR Inc. (November 2007) into project design. In addition, the project engineer shall ensure all structures will be designed to the most current standards of the California Building Code, at a minimum. Adherence into final design plans shall be reviewed by the City Engineer prior to future construction activities.</p>	City Engineer, Project Applicant, Construction Contractor	Prior to approval of final design plans	City Engineer, Project Applicant, Construction Contractor

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p><b>Mitigation Measure 3.7-3:</b> Future development projects shall be required to prepare geologic/geotechnical investigations by a registered geologist/geotechnical engineer to provide recommendations and requirements for site preparation and grading, excavations, utility trench excavation and backfill, site drainage, building foundations, pavements, and concrete slabs-on-grade. All recommendations from the site-specific report shall be incorporated by the project proponent into final design plans for future construction, subject to review of the City Engineer prior to construction activities.</p>			
<p><b>Impact GEO-2: Soil Erosion.</b></p>	<p><b>Mitigation Measure 3.7-4:</b> In order to reduce wind and water erosion, an erosion control plan and/or Storm Water Pollution Prevention Plan shall be prepared for the site preparation, construction, and post-construction periods by the project proponent. The erosion control plan shall incorporate best management practices consistent with the requirements of the National Pollution Discharge Elimination System (NPDES). The following measures shall be implemented, where appropriate, to control erosion:</p> <ol style="list-style-type: none"> <li>1) keep construction machinery off of established vegetation as much as possible, especially the vegetation on the upwind side of the construction site;</li> <li>2) establish specific access routes at the planning phase of the project, and limits of grading prior to development, which should be strictly observed;</li> <li>3) utilize mechanical measures (i.e. walls from sand bags and/or wooden slat or fabric fences) to reduce sand movement;</li> <li>4) immediate revegetation (plus the use of temporary stabilizing sprays), to keep sand movement to a minimum; and</li> <li>5) for larger-scale construction, fabric or wooden slat fences should be placed around the construction location to reduce sand movement.</li> </ol>	<p>City Engineer, Project Applicant, Construction Contractor, Landscape Architect</p>	<p>Prior to approval of final design plans</p>	<p>City Engineer, Project Applicant, Construction Contractor</p>

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
	<p>The erosion control plan and Storm Water Pollution Prevention Plan shall be incorporated into final design plans by the project proponent and submitted to the City Engineer for approval prior to approval of final design plans.</p> <p><b>Mitigation Measure 3.7-5:</b> Areas disturbed by grading shall be stabilized with adequate landscaping vegetative cover. A re-vegetation and landscaping plan shall be prepared by a landscape architect with experience in working with the type of soils that are characteristic of the site. The project proponent shall be responsible for retaining a landscape professional and for incorporating the landscaping plan into final design plans.</p> <p><b>Mitigation Measure 3.7-6:</b> All drainage from improved surfaces shall be captured by closed pipe or lined ditches and carried to neighborhood storm sewers or natural drainages. At no time shall any concentrated discharge be allowed to spill directly onto the ground adjacent to structures or to fall directly onto steep slopes.</p>			
<b>Impact GEO-4: Expansive Soil.</b>	<p><b>Mitigation Measure 3.7-7:</b> In order to minimize potential safety risks associated with seismic hazards and on-site soils, a design-level geotechnical analysis by a registered engineer shall be prepared prior to the issuance of any grading and/or building permit. The design-level analysis shall address site preparation measures and foundation design requirements appropriate for on-site soils. The design-level analysis shall be approved by the City of Del Rey Oaks Engineer and Consulting Building Inspector prior to the issuance of any grading and/or building permit. Final design-level project plans shall be designed in accordance with the approved geotechnical analysis.</p>	City Engineer, Building Inspector, Project Applicant	Prior to issuance of any grading and/or building permit	City Engineer, Project Applicant, Construction Contractor

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
<b>Hazards and Hazardous Materials</b>				
<p><b>Impact HAZ-1: Routine Transport, Use, or Disposal of Hazardous Materials.</b></p> <p><b>Impact HAZ-4: Hazardous Materials Site.</b></p>	<p><b>Mitigation Measure 3.9-1:</b> Prior to approval of residential development plans on the project area, environmental agencies, including the Army, and the state lead regulatory agency, DTSC, shall confirm that the clearances to be conducted and those conducted to date together with approved remedial actions, as required, will be sufficient to allow the Former Fort Ord site to be developed for residential reuse.</p> <p>Residential use for the specified areas identified herein will be prohibited until the landowner provides advance notification to the Army, EPA, and DTSC of its intent to change a designated area’s use to residential, and until DTSC concurs that residential use is appropriate. DTSC’s evaluation may consider the Residential Protocol or further site evaluation incorporating new information (e.g., geophysical mapping, site development).</p>	<p>Environmental agencies (including Army, EPA and DTSC), City of Del Rey Oaks</p>	<p>Prior to approval of final plans</p>	<p>Environmental agencies (including Army, EPA and DTSC)</p>
<b>Hydrology and Water Quality</b>				
<p><b>Impact HYD-1: Surface Water Quality Standards and Waste Discharge Requirements, Alteration of Stormwater Drainage Pattern, and Conflicting or Obstructing with Plans.</b></p>	<p><b>Mitigation Measure 3.10-1:</b> Prior to construction, further analysis shall be completed to confirm that proposed drainage facilities such as storm drains, pipes and future engineered drainage basins to retain or detain waters, (such as retention basins/detention basins) have the capacity to contain runoff from a 100-year storm event, subject to the review and approval of the City Consulting Engineer.</p>	<p>Project Applicant, City Engineer</p>	<p>Prior to issuance of a grading permit</p>	<p>City Engineer</p>

Impacts	Mitigation Measures	Implementation Responsibility	Required Timing	Compliance Monitoring
<b>Transportation</b>				
<b>Impact TR-2: Vehicle Miles Travelled.</b>	<b>Mitigation Measure 3.16-1:</b> Future development projects shall maintain bicycle, pedestrian, and public transit access during construction and provide bicycle storage facilities at all residential developments. All future development would be subject to and implement City guidelines and General Plan policies applicable to transit, bicycle, and pedestrian facilities. Specifically, any modifications or new transit, bicycle, and pedestrian facilities would be subject to and designed in accordance with all applicable General Plan policies.	Project Applicant	Prior to approval of final project plans.	City of Del Rey Oaks, Project Applicant