

1 Mark R. Wolfe, CSB No. 176753
2 John H. Farrow, CSB No. 209221
3 M. R. WOLFE & ASSOCIATES, P.C.
4 555 Sutter Street, Suite 405
5 San Francisco, CA 94102
6 Telephone: (415) 369-9400
7 Fax: (415) 369-9405
8 jfarrow@mrwolfeassociates.com

9
10 Attorneys for Petitioner

11
12 THE SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF MONTEREY

14 LANDWATCH MONTEREY COUNTY,

15 Case No.:

16 Petitioner,

17 vs.
18
19
20
21
22
23
24
25
26
27
28
PETITION FOR WRIT OF MANDATE

20 CITY OF DEL REY OAKS, and DOES 1
21 through 25, inclusive;

22
23
24
25
26
27
28 (Code Civ. Proc., §§ 1085, 1094.5; California
Environmental Quality Act, Pub. Res. Code, §§
21000 et seq.; Planning And Zoning Law, Gov.
Code, §§ 65000)

29 Respondents.

INTRODUCTION

2 This Petition challenges the December 17, 2019 actions of Respondent CITY OF DEL REY
3 OAK’s (“City”) adopting Resolution No. 2019-27 that included approval of the December 13, 2019
4 Housing Element, City of Del Rey Oaks, (“Housing Element”) and the Initial Study/Negative
5 Declaration for the Del Rey Oaks Housing Element, SCH #2019109070, (“Negative Declaration”); and
6 making findings that there is no evidence that significant adverse impacts on the environment will occur
7 as a result of approval of the Housing Element. This Petition also challenges the City’s failures to
8 comply with Government Code, Title 7, Division 1, Chapter 3, Article 10.6 (“Housing Element Law”),
9 which mandates and regulates the adoption and periodic update of a housing element in a city’s general
10 plan, including designation of an adequate inventory of sites for affordable housing and rezoning as
11 necessary to accommodate affordable housing.

12 Petitioner LANDWATCH MONTEREY COUNTY (“LandWatch”) alleges that the City’s
13 actions and omissions violate applicable provisions of CEQA, Public Resources Code, §§ 21000 et seq.;
14 the Housing Element Law, Government Code, §§ 65580 et seq; and Government Code, § 65356.

15 The City has failed to honor the mandate to periodically update its housing element since 1992.
16 The City has failed to maintain an adequate inventory of residentially zoned sites to accommodate its
17 fair share of needed regional affordable housing, i.e., its Regional Housing Needs Allocation (“RHNA”).
18 The Housing Element approved in Resolution No. 2019-27 does not correct these failures because it
19 does not include a mandatory program to rezone sites for residential use. The Housing Element
20 approval fails to comply with CEQA because the Negative Declaration fails to disclose that the City’s
21 actions and omissions with regard to its Housing Element will result in foreseeable significant impacts
22 to the Salinas Valley Groundwater Basin through the development of housing reliant on groundwater on
23 the former Fort Ord.

24 LandWatch seeks a writ of mandate under Code of Civil Procedure §§ 1085 and/or 1094.5
25 commanding the City to set aside and rescind Resolution No. 2019-27, including approval of the
26 Housing Element, the Initial Study/Negative Declaration for the Housing Element, and its CEQA
27 findings regarding the Housing Element. LandWatch also seeks an order commanding the City to
28 comply with the Housing Element Law by, *inter alia*, preparing and adopting a housing element update

1 that does designate an adequate inventory of sites for affordable housing. LandWatch also seeks an
2 order granting temporary injunctive relief and/or a stay of the effect of the City's actions during the
3 pendency of these proceedings, including an order suspending the City's authority to take any further
4 actions regarding the Housing Element that could result in changes to the physical environment.
5 LandWatch seeks an award of costs and attorney's fees under Code of Civil Procedure § 1021.5,
6 together with any other relief the Court deems necessary and proper.

7 In support whereof, LandWatch alleges:

8 **PARTIES**

9 **LandWatch Monterey County**

10 1. Petitioner LANDWATCH MONTEREY COUNTY is a California non-profit public
11 benefit corporation exempt from federal income taxation under Section 501(c)(3) of the U.S. Internal
12 Revenue Code. Its principal place of business is Salinas, California. LandWatch's organizational
13 purpose is to promote sound land use planning and legislation at the city, county, and regional levels, to
14 combat urban sprawl, and to promote livability in the region's cities and towns, through public policy
15 development, advocacy, and education. LandWatch is dedicated to preserving economic vitality, high
16 agricultural productivity, and environmental health in Monterey County by encouraging effective
17 public participation in the land use planning process.

18 2. LandWatch's members, directors, and staff include residents, taxpayers, and electors in
19 the City and Monterey County who currently depend on and enjoy the housing and water supply
20 benefits stemming from the current state of the area included in and affected by the Housing Element.
21 These include housing and water supply and water quality conditions that are significantly better than
22 those they will experience as a result of the City's actions and omissions with regard to its Housing
23 Element.

24 3. LandWatch's members, directors, and staff have a clear and present right to, and
25 beneficial interest in, the City's performance of its duties to comply with the Housing Element Law and
26 CEQA. As citizens, homeowners, taxpayers, and electors, LandWatch's members, directors, and staff
27 are within the class of persons to whom the City owes such duties.

4. LandWatch's members, directors, and staff will also suffer direct injury as a result of the adverse environmental and land use impacts caused by the City's actions and omissions with regard to its Housing Element. These include impacts to water supply, impacts to water quality, lack of affordable housing, and an overall decrease in quality of life.

5. By this action, LandWatch seeks to protect the interests of its members, directors, and staff, and to enforce a public duty owed to them by the City. Because the claims asserted and the relief sought in this petition are broad-based and of a public as opposed to a purely private or pecuniary nature, direct participation in this litigation by LandWatch's individual members is not necessary.

6. LandWatch presented comments to the City opposing the Housing Element and the Negative Declaration prior to the public hearings culminating in the City's December 17, 2019 action on Resolution No. 2019-27. LandWatch and its members have actively participated in the legislative and administrative actions involving water supply for, and groundwater impacts from, new development in the former Fort Ord area, including, e.g., the reassessment of the Fort Ord Reuse Plan, determinations of consistency for the 2010 Monterey County General Plan, the proposed Whispering Oaks development, the proposed Monterey Downs project, and the proposed Marina Coast Water District annexation of portions of the former Fort Ord, including areas designated for housing in the City's Housing Element.

City of Del Rey Oaks

7. LandWatch is informed and believes that Respondent CITY OF DEL REY OAKS is an incorporated City in the County of Monterey. The City is the entity responsible under the State Planning and Zoning Law and the Housing Element Law for updating its housing element to comply with all applicable statutory requirements. The City is the lead agency responsible under CEQA for evaluating the environmental impacts of the Housing Element. The City is the entity responsible under the Fort Ord Reuse Authority Act for compliance with the Fort Ord Reuse Plan in approving development projects in the former Fort Ord area.

8. On December 17, 2019, the City, through its City Council, adopted Resolution No. 2019-27, approving the Negative Declaration and Housing Element and making findings that there is no evidence that significant adverse impacts on the environment will occur as a result of approval of the

1 Housing Element.

2 **Does**

3 9. LandWatch currently does not know the true names of DOES 1-25 inclusive, who may
4 have some interest in the action such that they may be respondents or real parties, and therefore names
5 them by such fictitious names. LandWatch will seek leave from the court to amend this petition to
6 reflect the true names and capacities of DOES 1-25 inclusive once ascertained.

7 **JURISDICTION AND VENUE**

8 10. This action is brought pursuant to Government Code §§ 65587 and 65751; Public
9 Resources Code (“P.R.C.”) §§ 21167, 21168, and 21168.5; and Code of Civil Procedure §§ 1085 and
10 1094.5. Venue is proper in the County of Monterey under Code of Civil Procedure §§ 393 and 395.

11 **BACKGROUND FACTS, PROCEDURAL HISTORY, AND AGENCY ACTION**

12 **Housing Element Update**

13 11. The California Legislature has found that the availability of affordable housing is of
14 vital statewide importance; that provision of housing affordable to low- and moderate-income
15 households requires the cooperation of all levels of government; and that local governments have a
16 responsibility to use the powers vested in them to facilitate the improvement and development of
17 housing to make adequate provision for the housing needs of all economic segments of the community.
18 (Gov. Code, § 65580.) The detailed statutory requirements for preparing a housing element are
19 codified in the California Government Code at sections 65580–65589.

20 12. Under the requirements of State law, every city and county in California must prepare a
21 housing element as part of its general plan. The housing element requirements are intended to ensure
22 that each local government cooperates with other local governments in order to address regional
23 housing needs. (Gov. Code, § 65581.) Each local government is assigned responsibility to
24 accommodate its share of the regional housing needs as determined through a regional housing needs
25 allocation system. (Gov. Code, §§ 65584-65584.09.)

26 13. A housing element must be updated on a regular basis to facilitate the improvement and
27 development of housing within a community and must also be reviewed and certified by the State
28 Department of Housing and Community Development (“HCD”).

14. A city must update its housing element in accordance with periodic cycles. (Gov. Code, § 65888.)

15. Landwatch is informed and believes that the City failed to submit a housing element adopted for the 4th Cycle, which was due June 30, 2009. (Gov. Code, § 65588(e)(1)(D).)

16. Landwatch is informed and believes that the City's 5th Cycle planning period is December 31, 2015 to December 31, 2023.

17. Landwatch is informed and believes that the City's 5th Cycle housing element revision was due on December 15, 2015. (Gov. Code, § 65588(e)(2)(C); HCD, Housing Element Update Schedule, available at <https://www.hcd.ca.gov/community-development/housing-element/docs/housing-element-update-schedule.pdf>.)

18. Landwatch is informed and believes that the City had failed to submit a draft housing adopted for the 5th Cycle as of December 14, 2018. (Zachary Olmstead, deputy Director, HCD, letter to Dino Pick, City Manager, Del Rey Oaks, December 14, 2018.)

Regional Housing Needs Allocation to be accommodated in 5th Cycle

19. The official definition of housing needs is provided by HCD for each city and county within its geographic jurisdiction. The process to update a housing element must include an evaluation of the community's Regional Housing Needs Allocation ("RHNA"), which provides an estimate of the number of housing units that should be provided in the community to meet its share of new households in the region.

20. As the regional planning agency, the Association of Monterey Bay Area Governments (“AMBAG”), is responsible for allocating the region’s share of the statewide housing need to each jurisdiction based on population projections and regional population.

21. AMBAG determined that the City's RHNA for the 5th Planning Cycle consists of 27 housing units, including 7 very low-income units, 4 low-income units, 5 moderate-income units, and 11 above moderate-income units.

22. The City failed to accommodate its RHNA for very-low and low-income units in the 4th Planning Cycle, consisting of 34 very low-income units and 25 low-income units.

23. Because the City failed to accommodate its RHNA for very-low and low-income units in the 4th Planning Cycle, it was required to include those 59 units in its 5th Planning Cycle.

24. In sum, the City was required to accommodate a total of 86 housing units in its housing element update for the 5th Cycle, consisting of the 27-unit 5th Cycle RHNA and the 59-unit 4th Cycle RHNA carryover for very-low and low-income units.

Proposed housing sites in Fort Ord in the draft Housing Element and the draft Initial Study/Negative Declaration

25. A valid housing element must contain an “inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites.” (Gov. Code, § 65583(a)(3).) That inventory must identify sites sufficient to meet the City's RHNA within the planning period. (Gov. Code, § 65583.2(a).)

26. The City must “make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning.” (Gov. Code, § 65583(c)(1).)

27. Although the inventory of land suitable to accommodate the RHNA may include sites that are not zoned residential, the housing element must then include a program to rezone those sites to permit residential use. (Gov. Code, § 65583.2(a)(4).)

28. The sites in the inventory must meet specified criteria. (Gov. Code, § 65583.2.). In particular, the sites listed in the inventory must have an available and accessible water supply or a mandatory program or plan to provide it. (Gov. Code, § 65583.2(b)(5)(B).)

29. LandWatch is informed and believes that the City submitted a draft housing element to HCD dated September 18, 2019.

30. The September 18, 2019 version of the housing element purports to evaluate 5 possible sites to accommodate the City's RHNA, Sites 1, 1a, 2, 3, and 4.

31. The September 18, 2019 version of the housing element states that Sites 2, 3, and 4 are within the City and the service area for the California-American Water Company (“Cal-Am”). It states that Sites 2, 3, and 4 are not suitable for housing because the State Water Resources Control Board has ordered a moratorium on new water supply hook-ups within the Cal-Am service area.

32. By contrast, the September 18, 2019 version of the housing element states that Sites 1 and 1a, located within the former Fort Ord, would have an adequate source of water, based on an allocation of groundwater made by the Fort Ord Reuse Agency and to be provided by the Marina Coast Water District (“MCWD”).

33. Sites 1 and 1a are not designated for residential use in the City's General Plan or in the Fort Ord Reuse Plan, with which the City's General Plan must remain consistent. Sites 1 and 1a are not zoned for residential use.

34. The City circulated a draft Initial Study/Negative Declaration for the Housing Element for public review on October 24, 2019.

35. Appendix A to the draft Initial Study/Negative Declaration includes a new version of Chapter 7 of the Housing Element that was revised based on comments from HCD on the September 18 draft Housing Element. The new version of Chapter 7 includes Programs A.1, A.2, and A.3, which were revised to mandate that the City update its General Plan land use designations and update its Zoning ordinance to permit residential uses on Sites 1 and 1a.

36. HCD advised the City on November 14 that the draft housing element would meet the statutory requirements of the Housing Element Law based on the revisions to Program A.1, which would have committed the City to rezone the Sites 1 and 1a to accommodate the RHNA. (Shannan West, Land Use and Planning Manager, HCD, letter to Dino Pick, City Manager, City of Del Rey Oaks, Nov. 14, 2019.)

LandWatch comments on draft Initial Study/Negative Declaration

37. On November 14, 2019, LandWatch submitted timely comments on the draft Initial Study/Negative Declaration.

38. LandWatch objected that permitting housing on Sites 1 and 1a in the former Fort Ord would cause or make considerable contribution to significant impacts to the groundwater resources in

1 the form of aquifer depletion and seawater intrusion. LandWatch submitted letters from hydrologist
2 Timothy Parker substantiating this objection based on facts and expert opinion. LandWatch objected
3 that the City would violate CEQA if it permitted housing development in the former Fort Ord without
4 preparing an Environmental Impact Report (“EIR”).

5 39. LandWatch objected that the City does not have any enforceable claim for a
6 groundwater supply for Fort Ord development because the right to pump groundwater to support Fort
7 Ord development is “paper water,” which is temporary and conditional on that pumping not
8 aggravating seawater intrusion. Additional pumping will in fact aggravate seawater intrusion.

9 40. LandWatch also objected that the City does not have any enforceable claim for a
10 groundwater supply for Fort Ord development because its allocation will expire when the Fort Ord
11 Reuse Agency sunsets on June 30, 2020 and there is no mandatory program or plan to supply water
12 after that time.

13 41. LandWatch objected that, contrary to the City’s claim in the September 18, 2019 draft
14 housing element, there is in fact a water supply for Sites 2, 3, and 4 because the California Public
15 utilities Commission has authorized and ordered Cal-Am to construct a desalination project to supply
16 water by December 31, 2021, within the 5th Cycle planning period; and that supply will be sufficient to
17 lift the moratorium on new water supply hookups with the Cal-Am service area.

18 42. LandWatch advised the City that it should revise the housing element to omit the Fort
19 Ord sites 1 and 1a and substitute instead the Sites 2, 3, and 4.

20 **Planning Commission recommends housing element with Fort Ord sites 1 and 1a only**

21 43. The Planning Commission met on November 25, 2019 to consider the housing element
22 as revised on November 20, 2019 to incorporate the changes committing the City to re-designate and
23 rezone Sites 1 and 1a as set out in Appendix A to the draft Initial Study/Negative Declaration.

24 44. City staff advised the Planning Commission that, despite LandWatch’s objections, there
25 was no need to prepare an EIR because the housing element was merely a statement of policy that
26 would not by itself result in any groundwater pumping.

45. The Planning Commission adopted Resolution No. 2019-01 recommending that the City Council approve the draft Initial Study/Negative Declaration and the November 20, 2019 revised housing element.

LandWatch repeatedly asks City staff to revise the housing element

46. On December 5 and December 11, 2019, LandWatch conferred at length with the City Manager and City Attorney, asking that they recommend that the City either prepare an EIR before committing to permit housing on Sites 1 and 1a or else revise the draft housing element to rely on Sites 2, 3, and 4 instead.

47. On December 11, 2019, staff sent LandWatch a proposed revision of the housing element policies and programs that would remove the commitment to rezone Sites 1 and 1a and would state that the City has described 5 sites under consideration to meet the City's RHNA.

City revises Housing Element to include additional sites outside of Fort Ord in the inventory of suitable sites and to remove the programs requiring rezoning.

48. On Friday, December 13, 2019, after the close of business, the City posted the Housing Element that it subsequently adopted with only two changes. The Housing Element differed from the earlier drafts because, *inter alia*, it (1) determines that Sites 2, 3, and 4 *could* be served with water by Cal-Am within the planning period and therefore included those sites in the inventory of sites that could accommodate the RHNA; (2) deletes the commitment to re-designation and rezoning *any* sites by deleting Programs A.2 and A.3 and revising Program A.1 so that it “removes future rezoning action as a program.”

49. LandWatch submitted a letter on Monday, December 16, 2019 to respond to the revised Housing Element and staff report. LandWatch objected that (1) the revised Housing Element fails to provide an accurate description of water supplies and (2) fails to comply with the mandate to include a rezoning program when designating a RHNA site inventory that includes sites not zoned residential. LandWatch also objected that, despite the removal of the rezoning commitment, the mere designation of suitable sites would permit future housing on the sites included in the inventory, and would require its approval without CEQA review. Accordingly, LandWatch objected that the City was obliged to evaluate water supply impacts in an EIR before adopting the proposed Housing Element.

50. LandWatch repeated its objections to the City Council at its December 17, 2019 hearing. At that hearing, City staff announced for the first time to the public that it had prepared a “Final Initial Statement/Negative Declaration” and made it available for public review that afternoon.

51. City staff advised the City Council that there was no need to prepare an EIR for the Housing Element because it was merely a high-level policy document that does not commit the City to permit residential projects. City staff pointed to the elimination of the programs to require rezoning as evidence that there would be no commitment to permit residential projects.

52. Despite LandWatch’s objections, the City adopted Resolution 2019-027, approving the Housing Element that had been released in the December 13, 2019 staff report, making two textual revisions regarding water supply infrastructure funding and water supply “controversy.”

Groundwater conditions

53. Groundwater pumping in the Salinas Valley Groundwater Basin (“Basin”) since the 1930’s has exceeded recharge, causing seawater intrusion as inland groundwater elevations dropped below sea level, which permitted the hydraulically connected seawater to flow inland. Seawater intrusion has advanced inland since the 1930’s, rendering significant areas of groundwater unusable for irrigation or domestic uses.

54. Projects to mitigate seawater intrusion have focused on increasing Basin recharge and on reducing pumping from the 180-foot and 400-foot Aquifers proximate to the coastal area in which seawater intrusion is advancing. Pumping proximate to the coastal seawater intrusion area contributes more to seawater intrusion than the same amount of pumping farther inland.

55. Due to seawater intrusion, wells serving Fort Ord and the Ord community have had to be abandoned and new wells have had to be drilled farther inland. MCWD's current groundwater pumping to support demand from the Ord community includes some pumping from the 400-foot Aquifer proximate to the seawater intrusion front.

56. Despite groundwater management projects intended to halt it, seawater intrusion continues to advance due to continuing overdraft conditions. For example, the most recent mapping of the seawater intrusion advancement, prepared by the Monterey County Water Resources Agency (“MCWRA”) shows substantial new areas in which the groundwater has been degraded.

57. MCWD also pumps groundwater from the 900-foot or Deep Aquifers. Recent studies have determined that the Deep Aquifers consists of ancient groundwater and is not recharged except incidentally by leakage from the overlying 180-foot and 400-foot Aquifers. Hydrologists have concluded that increased pumping of the Deep Aquifers will cause their depletion, will induce further seawater intrusion in the 180-foot and 400-foot Aquifers, and may result in seawater intrusion of the Deep Aquifers themselves. Despite this, cumulative pumping from the Deep Aquifers has rapidly increased since the time of the environmental reviews for the Fort Ord Reuse Plan and the City's General Plan cited in the Negative Declaration.

58. In 2017, MCWRA recommended a moratorium on new wells in the Deep Aquifers and new wells in the 400-foot Aquifer proximate to the seawater intrusion front because of its concerns about further pumping exacerbating seawater intrusion and harming the Deep Aquifers.

Fort Ord Reuse Plan water supply policies and mitigation

59. In 1994, the California Legislature authorized creation of the Fort Ord Reuse Authority (“FORA”) to facilitate disposition and reuse of Fort Ord for civilian purposes. (Gov. Code §§ 6750 et seq.) The FORA Act required FORA to adopt the Fort Ord Reuse Plan before any development of the Ord community by its member agencies. FORA is governed by a Board of Directors consisting of representatives of its member agencies, which include the County of Monterey and cities with territory within or proximate to Fort Ord, including Del Rey Oaks.

60. In 1997, FORA adopted the Fort Ord Reuse Plan purporting to provide a plan for the reuse and development of the Ord community in former Fort Ord.

61. The Environmental Impact Report (“EIR”) for the Fort Ord Reuse Plan acknowledges that pumping in the 180-foot and 400-foot Aquifers has “exceeded safe yield, as indicated by seawater intrusion and water levels below sea level.” The EIR for the Fort Ord Reuse Plan states that the “conditions of the 900-foot aquifer are uncertain,” including the safe yield of the aquifer and whether the aquifer is in overdraft.

62. The Fort Ord Reuse Plan implementation provisions include the Development and Resource Management Plan (“DRMP”) that is intended to limit the level of development to the available resources, including water resources. The DRMP allocates the “existing potable water

1 supply" of 6,600 acre-feet per year ("AFY") to the member agencies for future development. The
2 DRMP assigns responsibility for managing water supply allocation to FORA.

3 63. The Fort Ord Reuse Plan provides specific policy requirements purporting to ensure
4 adequate, timely mitigation of seawater intrusion. Those provisions do not permit reliance on
5 continued groundwater pumping to support new development if seawater intrusion is not halted. For
6 example, Policy B-1 requires that the FORA members "shall ensure additional water supply." Policy
7 B-2 requires conditioning approval of development projects on verification of an "assured long-term
8 water supply." Policy C-3 requires the member agencies cooperate with MCWRA and the Monterey
9 Peninsula Water Management District ("MPWMD") "to mitigate further seawater intrusion based on
10 the Salinas Valley Basin Management Plan." Program C-3.1 requires the member agencies to work
11 with the water agencies "to estimate current safe yields within the context of the Salinas Valley Basin
12 Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside
13 groundwater basins, to determine available water supplies."

14 64. The EIR for the Fort Ord Reuse Plan explains that Policies B-1, B-2, and C-3 are
15 intended to "affirm the local jurisdictions' commitment to preventing further harm to the local aquifers
16 . . . by limiting development in accordance with the availability of secure supplies." The explicit
17 provisions for the determination of safe yield, and for the acceleration of water supply projects if 6,600
18 AFY cannot be supplied via groundwater pumping without further seawater intrusion, mean that
19 member agencies may not simply rely on their allocation of a portion of the 6,600 AFY of groundwater
20 pumping if seawater intrusion continues. The EIR for the Fort Ord Reuse Plan provides that reliance
21 on groundwater pumping was permitted only "provided that seawater intrusion conditions are not
22 exacerbated (Policy C-3)."

23 **MCWD agreement to provide Ord Community water supply under FORA oversight**

24 65. LandWatch is informed and believes that in 1998, FORA and MCWD entered into the
25 Water/Wastewater Facilities Agreement, in which FORA agreed to permit MCWD to acquire the Fort
26 Ord water distribution system from the Army and MCWD agreed to provide water under FORA's
27 supervision and oversight.

66. In the 1998 Water/Wastewater Facilities Agreement, FORA retained primary authority over Ord community water supply management, including authority to administer groundwater supply capacity rights consistent with the 1993 Army/MCWRA Annexation Agreement, to determine what additional facilities are necessary, to approve capital spending budgets, and to oversee MCWD's operations through a FORA staff Water/Wastewater Oversight Committee. The 1998 Facilities Agreement provides that MCWD may not pump more than 1,400 AFY from the Deep Aquifers for use on Fort Ord.

67. LandWatch is informed and believes that in 2001, consistent with the provisions of the 1998 Water/Wastewater Facilities Agreement, FORA granted the Fort Ord facilities to MCWD in the Assignments Of Easements On Former Fort Ord and Ord Military Community, County of Monterey, And Quitclaim Deed For Water And Wastewater Systems. This Assignment requires MCWD to assume and comply with the terms and conditions of the 2001 conveyance of the water systems from the Army to FORA in the Easement to FORA for Water And Wastewater Distribution Systems Located On Former Fort Ord, including the obligation “to cooperate and coordinate with parcel recipients, MCWRA, FORA, MCWD, and others to ensure that all owners of property at the former Fort will continue to be provided an equitable supply of water at equitable rates. The meaning of “equitable supply” is not defined. Critically, there is no assurance that the equitable considerations will take into account the environmental impacts of providing that supply.

Termination of FORA and Fort Ord Reuse Plan

68. The 1998 Facilities Agreement term coincides with the legal existence of FORA. Thus, when FORA is dissolved, the terms of the 1998 Water/Wastewater Facilities Agreement will no longer govern provision of water supply to the Ord community.

69. The legal existence of FORA and the operation of the Fort Ord Reuse Plan will terminate when the Fort Ord Reuse Act becomes inoperative. The Fort Ord Reuse Authority Act becomes inoperative on June 30, 2020. (Gov. Code, § 67700(a).)

70. Thus, by June 30, 2020, MCWD's provision of water to the Ord community would no longer be subject to the provisions of the 1998 Water/Wastewater Facilities Agreement, FORA oversight, or the operation of the Fort Ord Reuse Plan.

MCWD obligations to Del Rey Oaks

71. LandWatch is informed and believes that the City is not within the MCWD service territory.

72. LandWatch is informed and believes that there is no agreement that would commit MCWD to furnish a water supply to Del Rey Oaks after June 30, 2020.

FIRST CLAIM FOR RELIEF

(Violations of the Housing Element Law)

73. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

74. The City has violated and is violating the Housing Element Law by failing to ensure that at all times its housing element inventory can accommodate its remaining unmet RHNA. (Gov. Code, § 65863(a).) For example, the City failed to update its housing element from 1992 to 2019 and has still not adopted a program to rezone sufficient sites to accommodate its RHNA.

75. The City has violated and is violating the Housing Element Law by failing to submit housing elements timely to HCD for consideration and approval. (Gov. Code, § 65588.) For example, the City failed to update its housing element from 1992 to 2019, and it still cannot submit a compliant housing element to HCD because the housing Element approved in Resolution 2019-27 is not compliant.

76. The City has violated and is violating the Housing Element Law by failing timely to rezone sufficient sites to accommodate its RHNA. (Gov. Code, §§ 65583(c)(1)(A) [if city fails to adopt a housing element within 120 days of the statutory deadline in Government Code section 65588, it must accomplish that rezoning within three years and 120 days of that statutory deadline for adoption of the housing element]; 65584.09 [city shall zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period within the first year of the current planning period].) For example, the Housing Element acknowledges that there are not sufficient sites zoned residential to accommodate the City's 5th Cycle RHNA or the carryover of the unaccommodated 4th Cycle very-low and low-income RHNA.

77. The City has violated and is violating the Housing Element Law by failing to adopt a program to ensure the necessary rezoning of the land included in its inventory of suitable sites to meet its RHNAs. (Gov. Code, §§ 65583(a)(3), 65583.2(a), 65583.2(a)(4).) For example, the City has not adopted a program to rezone sufficient sites to accommodate its RHNAs because it removed the rezoning program when it made last-minute revisions to the draft housing element on December 13, 2019.

78. The City has violated and is violating the Housing Element Law by failing to provide an accurate description of existing or planned water supply. (Gov. Code, § 65583.2(b)(5)(A).) For example, the Housing Element fails to disclose that there is in fact a mandatory program or plan for providing water to Sites 2, 3, and 4 and it fails to acknowledge that there is no such mandatory program or plan for providing water to Sites 1 and 1a.

79. The City has violated and is violating the Housing Element Law by including Sites 1 and 1a in its inventory of suitable sites even though Sites 1 and 1a do not have sufficient water supply available and accessible to support housing or a mandatory program or plan to supply it. (Gov. Code, § 65583.2(b)(5)(B).)

SECOND CLAIM FOR RELIEF

(Other violations of the Planning and Zoning Law)

80. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

81. After a planning commission makes a recommendation for a general plan amendment, "any substantial modification proposed by the legislative body not previously considered by the commission during its hearings, shall first be referred to the planning commission for its recommendation." (Gov. Code, § 65356.)

82. The City Council made substantial modifications to the housing element recommend by the Planning Commission. The Planning Commissioners were clear that they were *not* approving Sites 2, 3, and 4 for inclusion in the inventory of sites suitable for residential development. Indeed, the Planning Commission Resolution 2019-01 included a request that the City Council consider rezoning the 17-acre Site 2 as open space in order to *preclude* residential development on that site. The most substantive discussion by the Planning Commission at its hearing was the choice of sites.

83. The City Council also substantially revised the housing element by removing Programs A.2 and A.3 and revising Program A.1 in order to remove the commitment to rezone sites to accommodate housing.

84. The City violated the Planning and Zoning law by making substantial modifications to the housing element recommend by the Planning Commission without first referring the revised housing element to the Planning Commission for its recommendation.

THIRD CLAIM FOR RELIEF

(Violations of CEQA)

85. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

Improper reliance on negative declaration

86. CEQA permits an agency to rely on a negative declaration only if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment. (14 C.C.R. §§ 15063(b), 15074(b).)

87. By relying on a negative declaration, the City prejudicially abused its discretion by failing to proceed as required by CEQA and by failing to make findings that are supported by substantial evidence in the record. Evidence in the record establishes that there will be significant impacts from the Housing Element, including, for example, increased seawater intrusion of the 180-Foot and 400-Foot Aquifers and depletion of the Deep Aquifers.

Failure to evaluate impacts

88. An agency must provide an adequate review of potentially significant impacts. (14 C.C.R. §§ 15063(d)(3), 15064, 15126, 15126.2, 15130.)

89. Where an agency cannot rely on a negative declaration or exemption, CEQA requires an agency to evaluate potential impacts of a project, either by preparing an environmental impact report (“EIR”), using a previously prepared EIR, or determining that the project’s effects were adequately evaluated in another appropriate process. (14 C.C.R. §15063(b)(1).)

90. The City could not rely on a CEQA exemption because the Housing Element will foreseeably result in indirect impacts on the environment. For example, it is foreseeable that the City will act to permit residential development on Sites 1 and 1a that will result in groundwater impacts.

1 And, even if the City does rezone those sites, it is foreseeable that residential development will occur
2 on Sites 1 and 1a, and will occur without further CEQA review, because the City may not disapprove a
3 housing project located on the sites identified as suitable or available for affordable housing in the
4 Housing Element and may not subject such a housing project to a locally imposed discretionary permit.
5 (Gov. Code, §§ 65589.5(d)(5)(A), 65583(g).)

6 91. The City prejudicially abused its discretion by failing to proceed as required by CEQA
7 and by failing to make findings that are supported by substantial evidence in the record because it
8 “determined that the proposed actions will not result in any environmental impacts” and the Negative
9 Declaration claimed that the Housing Element would not directly or indirectly result in groundwater
10 pumping.

11 92. CEQA permits an agency to rely on tiering only to the extent that significant impacts
12 have been adequately addressed in the prior EIR; if they have not, a later EIR shall be required. (14
13 C.C.R. §15152(f).)

14 93. None of the prior environmental reviews adequately addressed the impacts of the
15 Housing Element.

16 94. The City prejudicially violated CEQA by relying on a negative declaration because prior
17 environmental reviews did not adequately address the significant impacts or cumulative effects of the
18 Housing Element, and substantial evidence supports a fair argument that the Housing Element may
19 have a significant effect on the environment. For example, hydrologist Timothy Parker presented
20 substantial evidence that permitting residential development on Sites 1 and 1a in the Former Fort Ord
21 would cause significant impacts and make a considerable contribution to significant cumulative impacts
22 to the 400-Foot Aquifer and the Deep Aquifers in the form of overdraft, aquifer depletion and seawater
23 intrusion.

24 95. CEQA requires that an agency relying on information in a previous environmental
25 document must actually incorporate and describe that information to provide an adequate road map to
26 that material and its relevance. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho*
27 *Cordova* (2007) 40 Cal.4th 412, 423, 442-443; 14 C.C.R. §15150(c).)

96. The City prejudicially violated CEQA by failing to provide a road map to the material in prior environmental reviews that the Initial Study/Negative Declaration purported to incorporate by reference.

97. CEQA requires a subsequent EIR if “(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.” (P.R.C., § 21166.)

98. Even if the City were not required to prepare an EIR for the Housing Element, the City prejudicially violated CEQA by failing to prepare subsequent EIR because there were substantial changes to the projects previously reviewed, there were substantial changes to circumstances, and there was new information, all of which will require major revisions to previous EIRs cited by the City.

99. For example, prior reviews of Fort Ord development assumed that groundwater to support Fort Ord development would be pumped only temporarily pending a replacement water supply project to provide potable water to Fort Ord, at which point all groundwater pumping for Fort Ord was to cease. Twenty six years later, there is no replacement water supply project.

100. And, for example, prior reviews of Fort Ord development assumed that local agencies would implement the Fort Ord Reuse Plan policies and programs to mitigate seawater intrusion, but they have not done so.

101. And, for example, prior environmental reviews assumed that groundwater would not be pumped to support Fort Ord development if that pumping aggravated seawater intrusion. However, groundwater pumping from the 400-foot Aquifer and Deep Aquifers to support Fort Ord development is aggravating seawater intrusion, and overdraft and seawater intrusion has continued and accelerated due to that pumping and other cumulative pumping.

Inadequate cumulative analysis

102. CEQA requires an agency to evaluate cumulative impacts by determining whether there is a significant cumulative impact from the project together with all past, present, and foreseeable

1 future projects with related impacts, and, if so, to determine whether the project makes a considerable
2 contribution. (14 C.C.R. §§ 15064(h), 15065(a)(3), 15130.) An agency may not truncate the
3 geographic scope of cumulative analysis to omit projects that case related effects.

4 103. The City prejudicially abused its discretion by failing to proceed as required by CEQA
5 and by failing to make findings that are supported by substantial evidence in the record because it failed
6 to provide an adequate cumulative analysis. For example, the City failed to assess the cumulative
7 effects of the Housing Element together with the effects of groundwater pumping from past, present,
8 and foreseeable future projects outside the Ord community that are supplied with groundwater from
9 the 400-foot and Deep Aquifers.

10 **Other CEQA claims**

11 104. The City prejudicially abused its discretion by failing to proceed as required by CEQA
12 and by failing to make findings that are supported by substantial evidence in the record because it failed
13 to provide an adequate description of the environmental setting. (14 C.C.R. §§ 15063(d)(2), 15125.)
14 For example, the Negative Declaration failed to disclose current information about seawater intrusion
15 and the Deep Aquifers, including the extent of seawater intrusion and the failure of groundwater
16 management projects to halt seawater intrusion.

17 105. The City prejudicially abused its discretion by failing to proceed as required by CEQA
18 and by failing to make findings that are supported by substantial evidence in the record because it failed
19 to provide analysis that assess the effects of the Housing Element on existing conditions rather than on
20 planned future conditions. (14 C.C.R. §§ 15064(d), 15125(a).) For example, the Negative Declaration
21 contends that the Housing Element would have no effect on the environment because, it claims, there
22 would be no change in plans for future development.

23 106. The City prejudicially abused its discretion by failing to proceed as required by CEQA
24 and by failing to make findings that are supported by substantial evidence in the record because it failed
25 to provide a stable project description that was sufficient to support analysis and inform the public. (14
26 C.C.R. §§ 15063(d)(1), 15124.) For example, the City revised the description of the sites of future
27 housing projects.

1 107. The City prejudicially abused its discretion by failing to proceed as required by CEQA
2 and by failing to make findings that are supported by substantial evidence in the record because it
3 adopted mitigation or a project alternative without recirculating the proposed negative declaration for
4 public review and comment. (14 C.C.R. § 15073.5(b).) For example, the City revised the sites for
5 future housing projects and eliminated the commitment to rezoning, but failed to recirculate the
6 negative declaration.

7 108. The City prejudicially abused its discretion by failing to proceed as required by CEQA
8 and by failing to make findings that are supported by substantial evidence in the record because it failed
9 to identify a water supply for the sites identified as suitable for housing in the Housing Element, to
10 acknowledge the uncertainty of a water supply, or to assess the impacts of providing a water supply.
11 (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412,
12 429-434.) An agency may not rely on “paper water.” (*Id.* at 430.) For example, the Negative
13 Declaration relies on the purported availability of a 6,600 AFY of water “allocation” without disclosing
14 the impacts of using such an allocation of groundwater or the constraints on the actual availability of
15 that allocation. And although the Negative Declaration mentions some potential replacement water
16 supplies, it fails to provide an adequate evaluation and disclosure of the impacts of possible
17 replacement water supplies.

18 109. CEQA bars project approval “if there are feasible alternatives . . . or mitigation measures
19 available” that would substantially lessen the project’s significant environmental effects. (P.R.C., §
20 21002; 14 C.C.R., § 15021(a).) A lead agency must describe and evaluate feasible measures for
21 minimizing or avoiding a project’s direct, indirect, and cumulative impacts on the environment.
22 (P.R.C., § 21100(b)(3); 14 C.C.R., §§ 15063(d)(4), 15126.4.) The City prejudicially abused its
23 discretion by failing to proceed as required by CEQA and by failing to make findings that are supported
24 by substantial evidence in the record because it failed to consider, discuss, and impose feasible
25 mitigation, or to consider and adopt feasible alternatives, to lessen the Housing Element’s impacts. For
26 example, the City failed to limit the sites identified as appropriate for housing development to just those
27 parcels on Sites 2, 3, and 4, for which there is an adequate water supply.

28 /

EXHAUSTION OF ADMINISTRATIVE REMEDIES

110. This action is brought consistent with the requirements of Public Resources Code § 21177 and Code of Civil Procedure §§ 1085 and/or 1094.5. LandWatch objected to the City's approval of the Housing Element orally and in writing prior to the close of the public hearing before the issuance of the Notice of Determination. LandWatch and/or other agencies, organizations, and/or individuals raised the legal deficiencies asserted in this petition orally or in writing prior to the close of the public hearing on the Housing Element before the issuance of the Notices of Determination. LandWatch and its counsel spoke to the City staff and the City Attorney by telephone on two occasions to ask for relief.

111. LandWatch has performed all conditions precedent to filing this action by complying with the requirements of Public Resources Code § 21167.5 in serving notice of the commencement of this action by mail and email on December 23, 2019. A copy of that notice is attached as Exhibit A.

INADEQUATE REMEDY AT LAW

112. LandWatch declares that it has no plain, speedy, and adequate remedy in the ordinary course of law for the improper action of the City.

NECESSITY FOR TEMPORARY RELIEF

113. If the Housing Element is allowed to remain in place prior to the Court's final judgment on the merits, LandWatch and the environment will be greatly, permanently and irreparably injured from the resulting unmitigated environmental and land use impacts.

114. Under Code of Civil Procedure § 1094.5(g), this Court may issue a stay order during the pendency of the proceedings unless it is satisfied that a stay would be against the public interest. Imposition of a stay would not be against the public interest in that the public will derive no benefit from the Housing Element prior to the Court's final judgment.

115. Under Code of Civil Procedure § 526, this Court may issue a restraining order or preliminary injunction during the pendency of the proceedings. This temporary relief is warranted because LandWatch is likely to prevail on the merits and because commencement of physical development activities will cause great and irreparable injury.

1

ATTORNEYS' FEES

116. LandWatch is entitled to recover attorneys' fees as provided in Code of Civil Procedure § 1021.5 and other applicable legal theories if it prevails in this action and the Court finds that a significant benefit has been conferred on the general public or a large class of persons, and that the necessity and burden of private enforcement is such as to make an award of fees appropriate. LandWatch and its members have no substantial financial interest in the subject matter of this action and LandWatch brings this action in the public interest. Relief in this action would confer a substantial public benefit.

PRAYER

WHEREFORE, LandWatch prays for entry of judgment as follows:

1. For a peremptory writ of mandate directing the City:
 - (a) to set aside its December 17, 2019 actions approving the Negative Declaration and the Housing Element;
 - (b) to set aside its December 17, 2019 findings that there is no evidence that a significant adverse effect on the environment will occur as a result of approval of the Housing Element;
 - (c) to set aside its December 17, 2019 finding that the proposed actions will not result in any environmental impacts;
 - (d) to comply with CEQA in any subsequent action or actions taken to approve housing element update;
 - (e) to comply with the Housing Element Law by, *inter alia*, timely updating its Housing Element; identifying suitable sites for affordable housing if and only if there is a mandatory program or plan for a water supply and a program to rezone sites as necessary; and timely rezoning sites for affordable housing; and
 - (f) to comply with Government Code, § 65356, in any subsequent action or actions taken to approve housing element update.
 2. For other relief that prevents the City's actions, determinations, and approvals for the Housing Element from taking effect and/or that requires the City to rescind, modify, or invalidate its actions related to the Housing Element;

3. For an order granting temporary relief, including an order prohibiting the City and any other party from proceeding in reliance on the Housing Element, pending the outcome of this proceeding;

4. For a preliminary and permanent injunction directing the City to cease and refrain from engaging in any action purporting to be authorized by the Housing Element that could result in any change or alteration in the physical environment until the City takes any necessary action to bring its action into compliance with CEQA, the Housing Element Law, and Government Code, § 65356.

5. For its costs of suit;

6. For an award of attorneys' fees, including attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and/or the catalyst theory; and

7. For other legal or equitable relief that the Court deems just and proper.

Dated: December 26, 2019

Respectfully submitted,
M. R. WOLFE AND ASSOCIATES, P.C.

92

By:

Mark R. Wolfe
John H. Farrow
Attorneys for Petitioner

VERIFICATION

I, Michael D. DeLapa, declare:

I am the Executive Director of LandWatch Monterey County, the Petitioner in the above-captioned action. I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I am signing this document at Carmel Valley, California, and affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: December 26, 2019

Michael D. DeWitt

Michael D. DeLapa

EXHIBIT A

December 23, 2019

Via e-mail and US Mail

City Council
Dino Pick, City Manager
City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940
dpick@delreyoaks.org

Re: Notice of Intent to file CEQA Action – re Del Rey Oaks Housing Element

Dear Members of the City Council and Mr. Pick:

NOTICE IS HEREBY GIVEN to Respondent CITY OF DEL REY OAK's ("City") that Petitioner LANDWATCH MONTEREY COUNTY ("LandWatch") intends to file a petition pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code sections 21000 et seq., challenging the City's actions taken on or about December 17, 2019 adopting Resolution No. 2019-27 that included approval of the December, 2019 Housing Element, City of Del Rey Oaks, ("Housing Element") and the Initial Study/Negative Declaration for the Del Rey Oaks Housing Element, SCH #2019109070, ("Negative Declaration"); and making findings that there is no evidence that significant adverse impacts on the environment will occur as a result of approval of the Housing Element.

The Petition will also challenge the City's failures to comply with Government Code, Title 7, Division 1, Chapter 3, Article 10.6 ("Housing Element Law"), which mandates and regulates the adoption and periodic update of a housing element in a city's general plan, including designation of an adequate inventory of sites for affordable housing and rezoning as necessary to accommodate affordable housing.

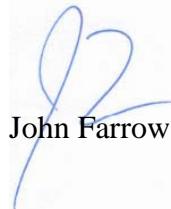
LandWatch intends to seek a writ of mandate under Code of Civil Procedure §§ 1085 and/or 1094.5 commanding the City to set aside and rescind Resolution No. 2019-27, including approval of the Housing Element, the Initial Study/Negative Declaration for the Housing Element, and its CEQA findings regarding the Housing Element. LandWatch also intends to seek an order commanding the City to comply with the Housing Element Law by, *inter alia*, preparing and adopting a housing element update that does designate an adequate inventory of sites for affordable housing. LandWatch also intends to seek an order granting temporary injunctive relief and/or a stay of the effect of the City's actions during the pendency of these proceedings, including an order suspending the City's authority to take any further actions regarding the Housing Element that could result in changes to the physical environment. LandWatch intends to seek an award of costs and attorney's fees under Code of Civil Procedure § 1021.5, together with any other relief the Court deems necessary and proper.

LandWatch intends to petition for the following relief:

1. For a peremptory writ of mandate directing the City:
 - (a) to set aside its December 17, 2019 actions approving the Negative Declaration and the Housing Element;
 - (b) to set aside its December 17, 2019 findings that there is no evidence that a significant adverse effect on the environment will occur as a result of approval of the Housing Element;
 - (c) to set aside its December 17, 2019 finding that the proposed actions will not result in any environmental impacts;
 - (d) to comply with CEQA in any subsequent action or actions taken to approve housing element update;
 - (e) to comply with the Housing Element Law by, *inter alia*, timely updating its Housing Element; identifying suitable sites for affordable housing if and only if there is a mandatory program or plan for a water supply and a program to rezone sites as necessary; and timely rezoning sites for affordable housing; and
 - (f) to comply with Government Code, § 65356, in any subsequent action or actions taken to approve housing element update.
2. For other relief that prevents the City's actions, determinations, and approvals for the Housing Element from taking effect and/or that requires the City to rescind, modify, or invalidate its actions related to the Housing Element;
3. For an order granting temporary relief, including an order prohibiting the City and any other party from proceeding in reliance on the Housing Element, pending the outcome of this proceeding;
4. For a preliminary and permanent injunction directing the City to cease and refrain from engaging in any action purporting to be authorized by the Housing Element that could result in any change or alteration in the physical environment until the City takes any necessary action to bring its action into compliance with CEQA, the Housing Element Law, and Government Code, § 65356.
5. For its costs of suit;
6. For an award of attorneys' fees, including attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and/or the catalyst theory; and
7. For other legal or equitable relief that the Court deems just and proper.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

PROOF OF SERVICE

I hereby declare that I am employed in the City San Francisco, County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 555 Sutter Street, Suite 405, San Francisco, CA 94102. I am familiar with this firm's practice for the collection and processing of mail sent via U.S. Mail, which provides that mail be deposited with the U.S. Postal Service on the same day in the ordinary court of business.

On December 23, 2019, I served the attached **Notice of Intent to file CEQA Action – re Del Rey Oaks Housing Element** in this action via email at dpick@delreyoaks.org and by U.S. Mail by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid addressed to:

City Council
Dino Pick, City Manager
City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940

for collection and deposit with the U.S. mail on this date according to ordinary business practices.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Mateo, California on December 24, 2019.



John Farrow