

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of September 17, 2018 by and between Petitioners LANDWATCH MONTEREY COUNTY (“LandWatch”) and KEEP FORT ORD WILD (“KFW”) (collectively referred to herein as “Petitioners”) and Respondents MARINA COAST WATER DISTRICT and MARINA COAST WATER DISTRICT BOARD OF DIRECTORS (collectively referred to herein as “MCWD”). The parties hereto are LandWatch, KFW, and MCWD, and may be collectively referred to as the “Parties” and individually as a “Party.”

DEFINITIONS

For the purposes of this Agreement, including the Exhibits hereto, the terms listed below are defined as follows:

1. “Actions” mean *LandWatch Monterey County v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000877) and *Keep Fort Ord Wild v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000883).
2. “ATW” means advanced treated water.
3. “Agreement” means this Settlement Agreement.
4. “Annexation” means the Annexation Application to the Local Agency Formation Commission (“LAFCO”) of Monterey County approved by the MCWD Board of Directors in Resolution No. 2018-09 on February 20, 2018.
5. “CEQA” means the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.).
6. “CEQA Guidelines” means the Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations, title 14, Section 15000 et seq.)
7. “County” means the County of Monterey.
8. “Court” means the Superior Court of the State of California in and for the County of Monterey.

9. "Effective Date" means the date this Agreement takes effect. The Effective Date shall be the date the Parties sign this Agreement, as indicated below. If the Parties sign this Agreement on different dates, then the latest date of signing by a Party shall be the Effective Date.

10. "Final Land Use Approval" means that a parcel or a portion of a parcel has received final land use approval by the Land Use Jurisdiction through a specific plan, master plan, or individual project approval adopted or approved in reliance on a post-1997 CEQA document prepared and approved by the Land Use Jurisdiction for that plan or project. "Final" means that the Land Use Approval has not been challenged in court and the limitations period for a challenge has run.

11. "FORA" means the Fort Ord Reuse Authority.

12. "Future Annexation of Deleted Areas" means approval by MCWD of any application for annexation of any of the parcels or portions of parcels listed in Exhibit A to this Agreement that were included in the Project but are not included in the Modified Project, or approval by LAFCO of such an application.

13. "GS Plan" means the future Groundwater Sustainability Plan for the Monterey Subbasin.

14. "IS/ND" means the Initial Study/Negative Declaration adopted by the MCWD Board of Directors on February 20, 2018 for the Ord Community Sphere of Influence Amendment and Annexation.

15. "KFOW" means Keep Fort Ord Wild, the unincorporated association identified in the *Keep Fort Ord Wild v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000883), including its officers, directors, and agents, to the extent the officer, director, or agent is acting in his or her capacity as a representative or agent of Keep Fort Ord Wild.

16. "LAFCO" means the Local Agency Formation Commission of Monterey County.

17. “LandWatch” means LandWatch Monterey County, the California non-profit public benefit corporation identified in *LandWatch Monterey County v. Marina Coast Water District, et al.* (Monterey County Superior Court, Case No. 18CV000877), including its officers, directors, and agents, to the extent the officer, director, or agent is acting in his or her capacity as a representative or agent of LandWatch Monterey County.

18. “LUJ” means Land Use Jurisdiction.

19. “MCWD” means Marina Coast Water District.

20. “Modified Project” means the MCWD’s Ord Community Sphere of Influence Amendment and Annexation Application that the Board authorized MCWD’s General Manager to file with LAFCO on February 20, 2018, as modified by MCWD to be consistent with the terms of this Agreement. The Modified Project includes all the parcels or portion of parcels included in MCWD’s February 20, 2018 approvals with the exception of the parcels or portions of parcels listed in Exhibit A to this Agreement.

21. “Petitioners” means the Keep Fort Ord Wild and LandWatch Monterey County, individually and jointly, including each entities’ officers, directors, and agents.

22. “Project” means MCWD’s Ord Community Sphere of Influence Amendment and Annexation Application that the Board authorized MCWD’s General Manager to file with LAFCO on February 20, 2018.

23. “SGMA” means the Sustainable Groundwater Management Act (SGMA).

24. “SOI” means Sphere of Influence.

25. “SVBGSA” means the Salinas Valley Basin Groundwater Sustainability Agency.

RECITALS

A. On February 20, 2018, the Board of Directors for Respondent MARINA COAST WATER DISTRICT (“MCWD”) adopted Resolution No. 2018-09 that authorized the filing of a Sphere of Influence (“SOI”) amendment and annexation application with the Local Agency Formation Commission (“LAFCO”) of Monterey County and adopted the Initial Study/Negative Declaration (“IS/ND”) for the Ord Community Sphere of Influence Amendment and Annexation (“Annexation” or “Project”) pursuant to the California Environmental Quality Act (“CEQA”). As part of Project approval, the Board of Directors adopted findings that the Annexation is not a project subject to CEQA; made findings that the Annexation is exempt from CEQA; authorized MCWD’ General Manager to submit an Annexation application to the Monterey County LAFCO; and directed staff to hold off submitting an application for the Annexation to LAFCO for 30 days to further work with Seaside County Sanitation District.

B. MCWD’s position is that it is contractually obligated to provide water, wastewater and recycled water service to the former Fort Ord (or “Ord Community”) under the Water/Wastewater Facilities Agreement with the Fort Ord Reuse Authority (“FORA”) dated March 13, 1998 and under contracts with the U. S. Army,-

C. FORA will cease to exist in 2020, unless extended by State legislation.

D. MCWD’s position is that it holds title to, and is the owner of, all of the public water, sewer and recycled water infrastructure within the Ord Community.

E. MCWD has made significant investments in the Ord Community in the form of water, wastewater and recycled water infrastructure, addition of staff and equipment, adoption of redevelopment standards and procedures, and the preparation of urban water management plans, master plans, and water supply project studies.

F. Annexation of the part of the Ord Community that MCWD currently serves for water supply and wastewater collection would provide improved governance for customers by virtue of their inclusion in the jurisdictional boundaries of the District for purposes of voting for, and being eligible to seek election to, the District’s Board of Directors.

G. In the LAFCO-adopted 2006 Municipal Services Review, the LAFCO made the determination that MCWD may consider annexation of the former Fort Ord portion of its service area.

H. MCWD exercises no land use authority for the areas to be annexed, therefore the boundary modification cannot grant any entitlement for land uses in the affected area.

I. The FORA Annual Report for FY 2016-17 on page 7 reports that total new residential units actually built within the former Fort Ord through FY 2016-17 was 909 residential units. The report projected an additional 234 new residential units would be built during FY 2017-18.

J. Except for the northern portion of the Marina Municipal Airport, a substantial portion of the former Fort Ord is located within the Monterey Subbasin along with all of MCWD's existing production wells. The southern portion of the former Fort Ord is within the adjudicated Seaside Subbasin and MCWD has no production wells within the Seaside Subbasin.

K. MCWD under a coordination agreement with the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) will be preparing the Groundwater Sustainability Plan (GS Plan) for the Monterey Subbasin pursuant to the Sustainable Groundwater Management Act (SGMA). The GS Plan will among other requirements identify the sustainable yield, the sustainability goal, and the sustainable groundwater management program for the Monterey Subbasin in accordance with SGMA. The GS Plan is required to be adopted no later than January 31, 2022 pursuant to Section 10720.7(a)(2) of the Water Code.

L. Pursuant to contractual rights to recycled water, MCWD is entitled to 1,427 AFY of advanced treated water from the Pure Water Monterey Project for use within the former Fort Ord. The first 600 AFY of that advanced treated water ("ATW") is projected to be available for use within the former Fort Ord in 2019. The intent of this ATW is to replace and offset existing groundwater irrigation uses and to provide ATW for uses within yet-to-be-built residential developments thereby eliminating the use of groundwater for non-potable uses for those new units.

M. Petitioner LandWatch filed a Petition for Writ of Mandate on March 9, 2017 against MCWD that challenged the Board of Directors adoption of Resolution No. 2018-09 pursuant to CEQA, including adoption of the Initial Study/Negative Declaration for the Annexation, its CEQA findings regarding the Annexation, and its authorization of an application to LAFCO for the Annexation.

N. Petitioner KFOW filed a separate Petition for Writ of Mandate on March 9, 2017 against MCWD that also challenged the Board of Directors adoption of Resolution No. 2018-09 pursuant to CEQA, including adoption of the Initial Study/Negative Declaration for the Annexation, its CEQA findings regarding the Annexation, and its authorization of an application to LAFCO for the Annexation.

O. On April 27, 2018, the Parties participated in a mandatory settlement conference pursuant to CEQA.

P. Following the April 27, 2018 settlement conference, the parties continued to engage in settlement discussions and exchanged proposed settlement terms until reaching this agreement.

Q. The Parties to this Agreement believe that their mutual interests will be best served if any and all legal disputes between them included in the Actions are resolved without further litigation.

[End of Recitals]

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS

The above recitals are true and are hereby incorporated by reference as part of this Agreement.

2. OBLIGATIONS OF MARINA COAST WATER DISTRICT

A. **Agreement Binding on MCWD.**

MCWD will abide by all terms of this Agreement for the term of this Agreement, including but not limited to the terms set forth in this Section.

B. **MCWD's Obligations Relating to Annexation Application.**

1. The MCWD Board will promptly consider approving a resolution in the form of the draft resolution attached as Exhibit B to this Agreement, which the Parties intend will modify its February 20, 2018 project approvals to delete parcels and portions of parcels that do not have Final Land Use Approvals.

2. If LAFCO objects to the exclusion of any parcels or portions of parcels set forth in this agreement or requires their inclusion in MCWD's proposed annexation, MCWD agrees to confer with Petitioners in good faith to amend this Agreement or take other action necessary to achieve the intent of this Agreement and to address LAFCO's concerns, if agreed by Petitioners.

3. Pursuant to contractual rights to recycled water, MCWD is entitled to 1,427 AFY of advanced treated water from the Pure Water Monterey Project for use within the former Fort Ord. The first 600 AFY of that advanced treated water (ATW) is projected to be available for use within the former Fort Ord in 2019. The intent of this ATW is to replace and offset existing groundwater irrigation uses and to provide ATW for uses within yet-to-be-built residential developments thereby eliminating the use of groundwater for non-potable uses for those new units. With reference to this provision, MCWD agrees that it will not provide, or commit to provide in the future, a groundwater-sourced water supply for new residential units in Fort Ord beyond the 6,160 of total new residential units within the former Fort Ord in accordance with Fort Ord Reuse Plan Section 3.11.5.4(b)(2) of the FORA's Development and Resource

Management Plan, as that number may be amended from time to time by FORA, and subject to the Groundwater Sustainability Plan for the Monterey Subbasin as approved by the California Department of Water Resources.

4. If the Exhibit B resolution is approved, MCWD will promptly file a Notice of Exemption and a Notice of Determination as specified in Exhibit B, notify LAFCO of the Modified Project, and will support and defend the Modified Project in good faith and consistently with this Agreement.

5. Notwithstanding Section 20, Notices, MCWD shall notify Petitioners as soon as practical by email, and no later than one (1) business day, of service of any initial pleadings on MCWD challenging the approval of the Modified Project.

6. If litigation is filed by a third party before the limitations period has expired for challenging approval of the Modified Project, MCWD agrees to confer with Petitioners in good faith to consider amending this Agreement or taking other action necessary to achieve the intent of this Agreement and to address LAFCO's concerns, if agreed by Petitioners.

3. PUBLIC AGENCY DISCRETION

The Parties understand and acknowledge that approval of the actions under this Settlement Agreement cannot be guaranteed, and may be subject to procedural or substantive obligations under CEQA, the CEQA Guidelines, the State Planning and Zoning Law, or other laws potentially applicable to such approvals. The Parties further understand and acknowledge that land use regulations involve the exercise of a public agency's police power and, at the time of executing this Agreement, it is settled California law that government may not contract away its right to exercise its police power in the future. (*Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 182–83; *Avco Community Developers Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800 (1976).)

4. OBLIGATIONS OF PETITIONERS

A. Agreement Binding on Petitioners.

Petitioners LandWatch and KFOW will abide by all the terms of this Agreement for the term of this Agreement, including but not limited to the terms set forth in this Section.

B. Dismissal of Lawsuit.

Petitioners agree to file fully executed requests for dismissal “with prejudice” in each Action within fifteen (15) days after the expiration of the 35-day limitations period for the Notice of Exemption and the 30-day limitations period for the Notice of Determination filed by MCWD pursuant to Section 2(B)(4), whichever is later, provided that no litigation has been filed by any third party challenging approval of the Modified Project. If litigation is filed by a third party before the limitations period has expired challenging approval of the Modified Project, Petitioners agree to confer with MCWD in good faith to consider amending this Agreement or taking other action necessary to achieve the intent of this Agreement, if agreed by MCWD.

C. Petitioners’ Agreements Regarding Future Approvals

1. If the Exhibit B resolution is approved by the Board, Petitioners shall not oppose MCWD’s annexation application and any discretionary approvals that may be required from any governmental agency to implement the Modified Project. Petitioners agree the spreadsheet and maps attached as Exhibit “A” to this Agreement list all of the parcels in dispute and how they are resolved by this Agreement. Petitioners agree the maps included in Exhibit “A” will resolve any question regarding what parcels and portions of parcels in dispute are to be excluded from MCWD’s annexation application.

2. If LAFCO objects to the exclusion of any parcels or portions of parcels set forth in this agreement or requires their inclusion in MCWD’s proposed annexation, Petitioners agree to confer with MCWD in good faith to amend this Agreement or take other action necessary to achieve the intent of this Agreement and to address LAFCO’s concerns, if agreed by MCWD.

3. Provided the Exhibit B resolution is approved by the Board and is being implemented and conducted in a manner consistent with its approval by MCWD’s Board and in accordance with the terms of this Agreement, Petitioners agree to the following:

a. Petitioners shall not submit any written comments or present oral testimony to MCWD or LAFCO objecting to the Modified Project or Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018;

b. Petitioners shall not submit written comments or present oral testimony to MCWD or LAFCO in connection with any environmental review of the Modified Project or

Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018;

c. Petitioners shall not file, join, or support any litigation challenging the Modified Project or Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018; and

d. Petitioners shall not fund any litigation by any other party challenging the Modified Project or Future Annexation of Deleted Areas provided that the area to be annexed has received a Final Land Use Approval subsequent to September 1, 2018.

3. Without limiting the generality of the foregoing, Petitioners shall not directly or indirectly participate in any activities described in Section 4(C)(3) above by or on behalf of any person or entity that is not a party to this Agreement.

4. Other than as specified in this Agreement with regard to MCWD and LAFCO, Petitioners shall retain and do not waive their rights in any way with regard to any actions by agencies, including land use actions related to water supply and groundwater. Petitioners retain and do not waive their right to challenge Future Annexation of Deleted Areas if the area to be annexed has not received a Final Land Use Approval subsequent to the effective date of this Agreement.

5. **ATTORNEY FEES AND COSTS**

Provided that the 35-day limitations period for the Notice of Exemption and the 30-day limitations period for the Notice of Determination filed by MCWD pursuant to Section 2(B)(4) expires and no litigation has been filed by any third party challenging approval of the Modified Project by the MCWD Board of Directors: (1) the Parties agree not to file a memorandum of costs with the Court, or otherwise claim or seek to recover costs or attorneys' fees against any other Party to this Agreement in connection with the Actions, and (2) as against any other Party to this Agreement, the Parties will not retain any rights to attorneys' fees or costs arising out of the Actions and no right to fees or costs in connection with the Actions accrue to any third parties. The Parties' counsel have been made aware of the releases of attorneys' fees and all other claims including, but not limited to, claims pursuant to Code of Civil Procedure section 1021.5 contained in this Agreement.

6. **TERMINATION**

This Agreement shall continue in effect from its effective date until the earlier of the following dates: (a) the date all parties agree in writing to terminate this Agreement; (b) litigation is filed by a third party before the limitations period has expired challenging approval of the Modified Project and the Parties are not able to reach an agreement to modify this Agreement satisfactory to all Parties; or (c) the date MCWD elects to terminate this Agreement in the event Petitioners fail to cure a breach of Sections 4(C)(3)(a) or 4(C)(3)(b) as provided in Section 17(B) of this Agreement. If MCWD elects to terminate this agreement based on the foregoing provision, MCWD shall provide Petitioners with notice 10 days in advance of the termination of this Agreement.

7. **NO ADMISSIONS**

The Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission by any Party of any inadequacy or impropriety in connection with the allegations contained in this Action. This Agreement is the result of a compromise and nothing contained herein shall be construed as an admission of liability, responsibility, or wrongdoing by any Party hereto. It is agreed that all statements contained herein and the conduct of any Party in connection with this Agreement shall be inadmissible as evidence under Federal Rules of Evidence 408 and California Evidence Code § 1152(a), except that the statements contained herein shall be admissible in any action to enforce or interpret this Agreement.

8. **MODIFICATIONS; WAIVER**

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, representations, and understandings of the Parties. This Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

Petitioners for and in consideration of the mutual promises and consideration set forth in this Agreement, expressly release, waive and relinquish and forever discharge MCWD from all

claims, demands, actions, liabilities and causes of action, of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, or hereafter discovered or ascertained, in law or equity, by reason of any matter, cause or thing whatsoever, it has with respect to MCWD's February 20, 2018 approval of the Project including claims set forth in the Petitions, and those claims Petitioners could have included in their Petitions or otherwise presented in the Actions. Petitioners understand, acknowledge, and agree that this Agreement constitutes a complete and sufficient defense barring any such claim, and MCWD can rely upon this Agreement as a complete defense.

Upon the Effective Date of this Agreement and consistent with Petitioners' representations and warranties contained herein, and except as to such rights or claims that may be created by this Agreement, Petitioners fully release and discharge MCWD, and all its directors, employees, attorneys, and consultants, from any and all claims of attorneys' fees or expenses in the Actions, including without limitation claims for private attorney general fees pursuant to Code of Civil Procedure section 1021.5, out-of-pocket expenses and costs, arising from the events and permit approval process that are the subject of the Actions and the Actions themselves.

Upon dismissal of the Actions as provided herein, and except as to such rights or claims that may be created by this Agreement, MCWD fully releases and discharges Petitioners and all its directors, employees, attorneys, and consultants, from any and all claims relating to attorneys' fees or expenses in the Actions, including those for attorneys' fees, out-of-pocket expenses and costs of suit, and claims for malicious prosecution and abuse of process arising from the events and permit approval process that is the subject of the Actions and the Action themselves.

The Parties acknowledge and agree that all rights under Section 1542 of the California Civil Code are expressly waived. That section provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that their attorneys-at-law have explained to it the meaning and effect of this statute. The Parties understand fully the statutory language of Civil Code Section 1542

and, with the understanding, the Parties nevertheless elect to, and do, assume all risk for claims released under this Agreement heretofore and hereafter arising, known or unknown, and the Parties specifically waive any rights it may have under Civil Code Section 1542. The Parties fully understand that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed by it to be true, that each party expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall be and remain effective, notwithstanding such difference in facts.

_____	LandWatch Monterey County (Initials)
_____	Keep Fort Ord Wild (Initials)
<u>WPM</u>	Marina Coast Water District (Initials)
<u>WPM</u>	MCWD Board of Directors (Initials)

Petitioners hereby further agree never to commence, prosecute, or fund against MCWD, any litigation based upon any rights, liens, claims, demands or causes of action waived, released or discharged by this Agreement. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or Party which arises out of the rights, liens, claims, demands or causes of action waived, released and discharged by this Agreement.

The Parties acknowledge that this Agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The Parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as an admission on the part of any Party of any liability regarding the claims in the Actions, and nothing herein shall be admissible in any proceeding as an admission of any factual matter, liability or fault against any Party.

9. AMBIGUITIES AND INTERPRETATION

This Agreement shall be deemed to have been drafted equally by all of the Parties and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each Party acknowledges that it is represented by counsel, and has had the benefit of advice from counsel with respect to this Agreement.

and, with the understanding, the Parties nevertheless elect to, and do, assume all risk for claims released under this Agreement heretofore and hereafter arising, known or unknown, and the Parties specifically waive any rights it may have under Civil Code Section 1542. The Parties fully understand that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed by it to be true, that each party expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall be and remain effective, notwithstanding such difference in facts.

 MDD **LandWatch Monterey County (Initials)**
 Keep Fort Ord Wild (Initials)
 Marina Coast Water District (Initials)
 MCWD Board of Directors (Initials)

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and, with the understanding, the Parties nevertheless elect to, and do, assume all risk for claims released under this Agreement heretofore and hereafter arising, known or unknown, and the Parties specifically waive any rights it may have under Civil Code Section 1542. The Parties fully understand that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed by it to be true, that each party expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall be and remain effective, notwithstanding such difference in facts.

_____ Land Watch Monterey County (Initials)
MS _____ Keep Fort Ord Wild (Initials)
_____ Marina Coast Water District (Initials)
_____ MCWD Board of Directors (Initials)

Petitioners hereby further agree never to commence, prosecute, or fund against MCWD, any litigation based upon any rights, liens, claims, demands or causes of action waived, released or discharged by this Agreement. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or Party which arises out of the rights, liens, claims, demands or causes of action waived, released and discharged by this Agreement.

The Parties acknowledge that this Agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The Parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as an admission on the part of any Party of any liability regarding the claims in the Actions, and nothing herein shall be admissible in any proceeding as an admission of any factual matter, liability or fault against any Party.

9. **AMBIGUITIES AND INTERPRETATION**

This Agreement shall be deemed to have been drafted equally by all of the Parties and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each Party acknowledges that it is represented by counsel, and has had the benefit of advice from counsel with respect to this Agreement.

10. CONVENIENCE AND REFERENCE

The headings and numbers used in this Agreement are included for the purpose of convenience of reference only and they shall not be used to explain, limit, or extend the meaning of any part of the Agreement.

11. MISTAKE

Each of the Parties to this Agreement has investigated the facts pertaining to the Petition and to this Agreement to the extent each Party deems necessary. In entering into this Agreement, each Party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.

12. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable, in which case the Parties shall work in good faith to amend this Agreement and/or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the court.

13. NO PRIOR ASSIGNMENT

The Parties represent and warrant that they have not sold, assigned, transferred, hypothecated, pledged, encumbered or otherwise disposed of or set over to any person or entity, in whole or in part, voluntarily or involuntarily, any claim, demand, or right covered by this Agreement.

14. SUCCESSORS AND ASSIGNS BOUND

The terms of this Agreement shall be binding and inure to the benefit of the Parties hereto and their successors, assigns, heirs, and representatives.

15. NO THIRD PARTY BENEFICIARIES

The Parties do not intend to create any third party beneficiaries to this Agreement. This Agreement is not intended to confer upon any person other than the Parties any rights or remedies thereunder and no person or entity other than the Parties shall have standing to enforce this Agreement.

16. GOVERNING LAW; VENUE

This Agreement shall be construed under and governed by the laws of the United States and the State of California with venue in Monterey County.

17. REMEDIES FOR BREACH OF AGREEMENT

A. Notice and Opportunity to Cure

The Parties agree that they will promptly meet and confer in good faith with regard to any alleged material breach of this Agreement. Any Party shall give written notice within 30 days of the discovery of any alleged material breach of this Agreement. Upon receipt of any written notice of material breach, the receiving Party has 30 days to cure the alleged material breach. If after 30 days the alleged breach has not been cured to the satisfaction of the Party alleging the material breach, the alleging Party may seek a court order demanding specific performance consistent with subparagraph B of this Section. The Party alleging the breach may not unreasonably refuse to accept a Party's cure of an alleged breach of an affirmative obligation as set forth in this Agreement. The Parties agree that the formal written withdrawal of a comment letter or oral testimony submitted to a governmental agency is an adequate for any violations of Sections 4(C)(3)(a) or 4(C)(3)(b) of this agreement. Any enforcement of this Agreement may be sought against only the Party or Parties claimed to be in breach of the Contract, as well as their heirs, successors, assignees, and transferees.

B. Remedy if Party Fails to Undertake an Obligation under This Settlement Agreement

The Parties agree that specific performance is the exclusive remedy for enforcement of this Agreement. The Parties further agree that MCWD may elect to terminate this Agreement if Petitioners fail to cure a breach of Sections 4(C)(3)(a) or 4(C)(3)(b) of this Agreement within 30 days as specified in subparagraph A of this Section. This Agreement shall be admissible in any proceeding for its enforcement in accordance with Sections 1118 and 1123 of the California

Evidence Code. The prevailing party in any action to enforce this Agreement shall be entitled to their reasonable attorney fees and costs.

18. AUTHORITY TO ENTER INTO THIS AGREEMENT

Each person signing this Agreement on behalf of a Party hereby represents and warrants that he or she has complete authority to bind that Party to the terms and conditions of this Agreement.

19. SUBJECT TO PUBLIC AGENCY APPROVAL

The Parties acknowledge that the Agreement is subject to approval by the MCWD Board of Directors. The individual signing this Agreement on behalf of MCWD represents that the governing body of that public agency has approved the Agreement.

20. NOTICES

All notices required under this Agreement shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested). Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. All notices required under this Agreement shall be given to the Parties at their addresses set forth below:

IF TO LANDWATCH:

Michael Delapa
LandWatch Monterey County
306 Capitol St. Suite 101
Salinas, CA 93901
execdir@landwatch.org

With copies to:

John H. Farrow
M. R. WOLFE & ASSOCIATES, P.C.
555 Sutter Street, Suite 405
San Francisco, CA 94102
jfarrow@mrwolfeassociates.com94111
Telephone: (415) 369-9400
Fax: (415) 369-9405

IF TO KFOW:

Michael Salerno
c/o Molly Erickson,
STAMP ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
erickson@stamplaw.us
Telephone: (831) 373-1214
Facsimile: (831) 373-0242

With copies to:

Molly Erickson,
STAMP ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
erickson@stamplaw.us
Telephone: (831) 373-1214
Facsimile: (831) 373-0242

IF TO MCWD:

Keith Van Der Maaten
General Manager
Marina Coast Water District
1 Reservation Road
Marina, CA 93933-2099
(831) 883-5938
KVanDerMaaten@mcwd.org

With copies to:

Howard F. Wilkins III
Christopher Stiles
Remy Moose Manley, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
(916) 443-2745
hwilkins@rmmenvirolaw.com

Roger K. Masuda
David L. Hobbs
Griffith & Masuda
A Professional Law Corporation
517 E. Olive Street
Turlock, CA 95380
(209) 667-5501
rmasuda@calwaterlaw.com

21. **COUNTERPART EXECUTION**

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinafter written.

LANDWATCH MONTEREY COUNTY

By: _____
Name: **Michael D. Delapa**
Title: **Executive Director**
Dated: September __, 2018

KEEP FORT ORD WILD

By: _____
Name: **Michael Salerno**
Title: **Authorized Representative**
Dated: September __, 2018

MARINA COAST WATER DISTRICT AND MARINA COAST WATER DISTRICT BOARD OF DIRECTORS

By: Thomas P. Moore
Name: Thomas P. Moore
Title: President
Dated: September 17, 2018



21. COUNTERPART EXECUTION

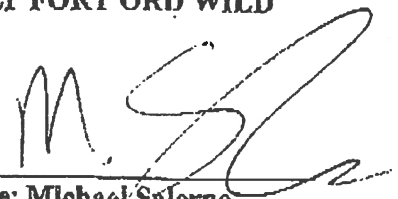
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MARINA COAST WATER DISTRICT AND MARINA COAST WATER DISTRICT BOARD OF DIRECTORS


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Title: **Executive Director**
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KEEP FORT ORD WILD

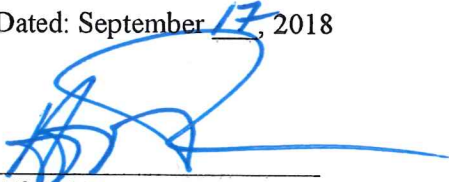
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BOARD OF DIRECTORS**

By: _____
Name: _____
Title: _____
Dated: September ____, 2018

Approved as to form:

Dated: September 17, 2018

A handwritten signature in blue ink, appearing to be 'HFW', written over a horizontal line.

HOWARD F. WILKINS III on behalf Marina Coast Water District and Marina Coast Water District Board of Directors

Dated: September ___, 2018

JOHN H. FARROW on behalf of LandWatch Monterey County

Dated: September ___, 2018

MOLLY ERICKSON on behalf of Keep Fort Ord Wild

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SETTLEMENT AGREEMENT
EXHIBIT A

Erickson Questioned Properties May 7, 2018 Letter; Proposed Removed June 25, 2018 (R1); Final List September 10, 2018 (R2)

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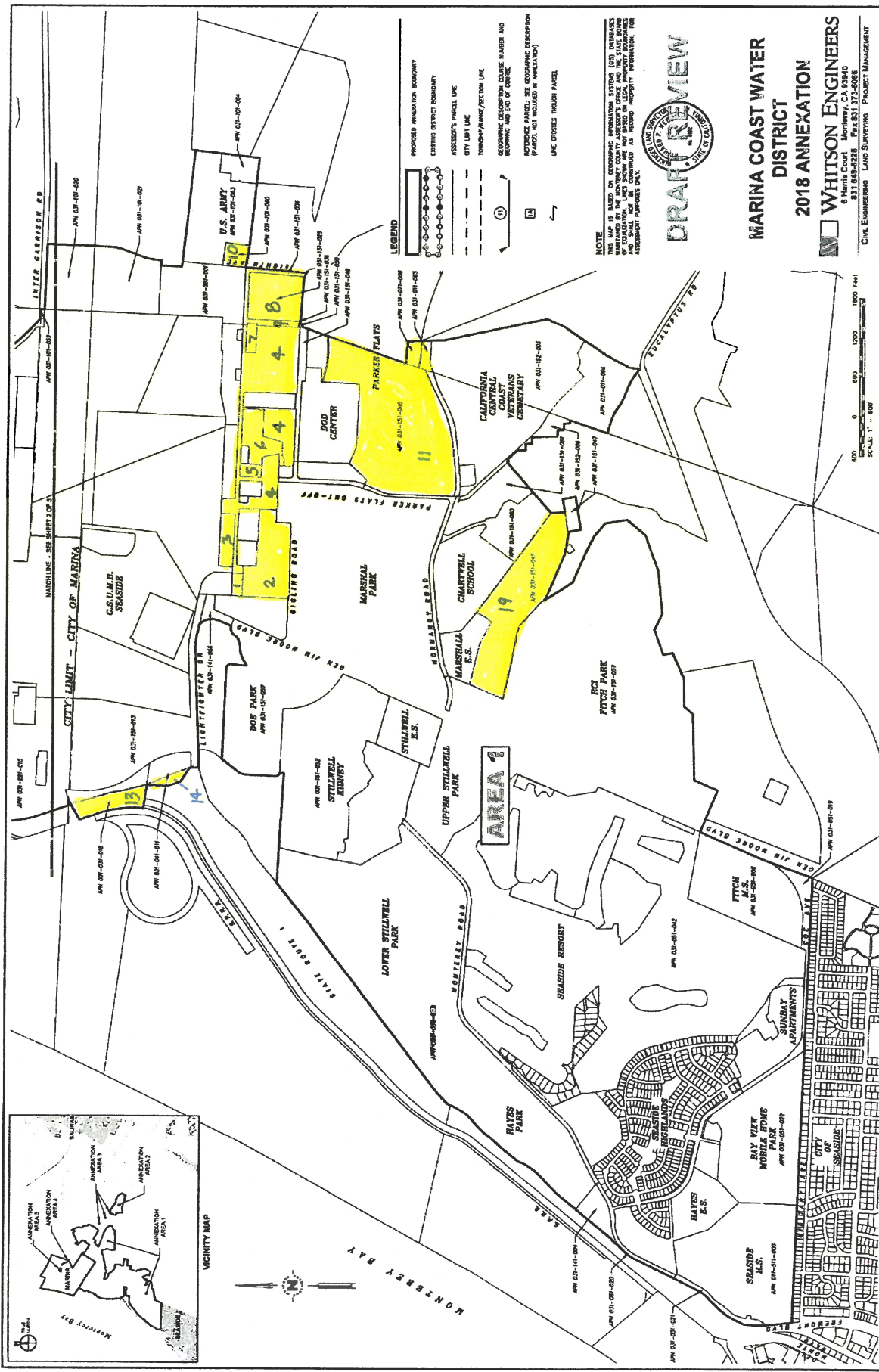
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DRAFT REVIEW

MARINA COAST WATER DISTRICT 2018 ANNEXATION

WHITSON ENGINEERS
 8 Harris Court Monterey, CA 93940
 408.382.1500
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 12, 2018 SHEET 1 OF 4
 NO. 2018-001

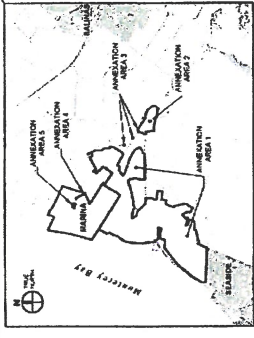
NOTE:
 THIS MAP IS BASED ON AERIAL PHOTOGRAPHY SYSTEM (GPS) DATA
 OBTAINED BY THE DISTRICT'S SURVEYING OFFICE AND THE STATE BOARD
 OF LAND SURVEYING. THE DISTRICT'S SURVEYING OFFICE SHALL NOT BE
 RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THAT MAY OCCUR AS A
 RESULT OF THIS MAP. THE DISTRICT'S SURVEYING OFFICE SHALL NOT BE
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- LEGEND**
- PROPOSED ANNEXATION BOUNDARY
 - EXISTING DISTRICT BOUNDARY
 - ASSessor'S PARCEL LINE
 - CITY LIMIT LINE
 - TOWNSHIP/SECTION LINE
 - GEODESIC DESCRIPTION COURSE NUMBER AND BEARING AND END OF COURSE
 - EXTENSIVE PARCEL, SEE GEODESIC DESCRIPTION (PARCEL NOT INCLUDED IN ANNEXATION)
 - LINE CROSSES THROUGH PARCEL

Removed Parcel (or partial Parcel)
 Parcels not in dispute, not exd. in annex. application

Key: [Yellow Box]

Pg 2/3



LEGEND

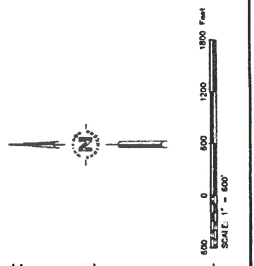
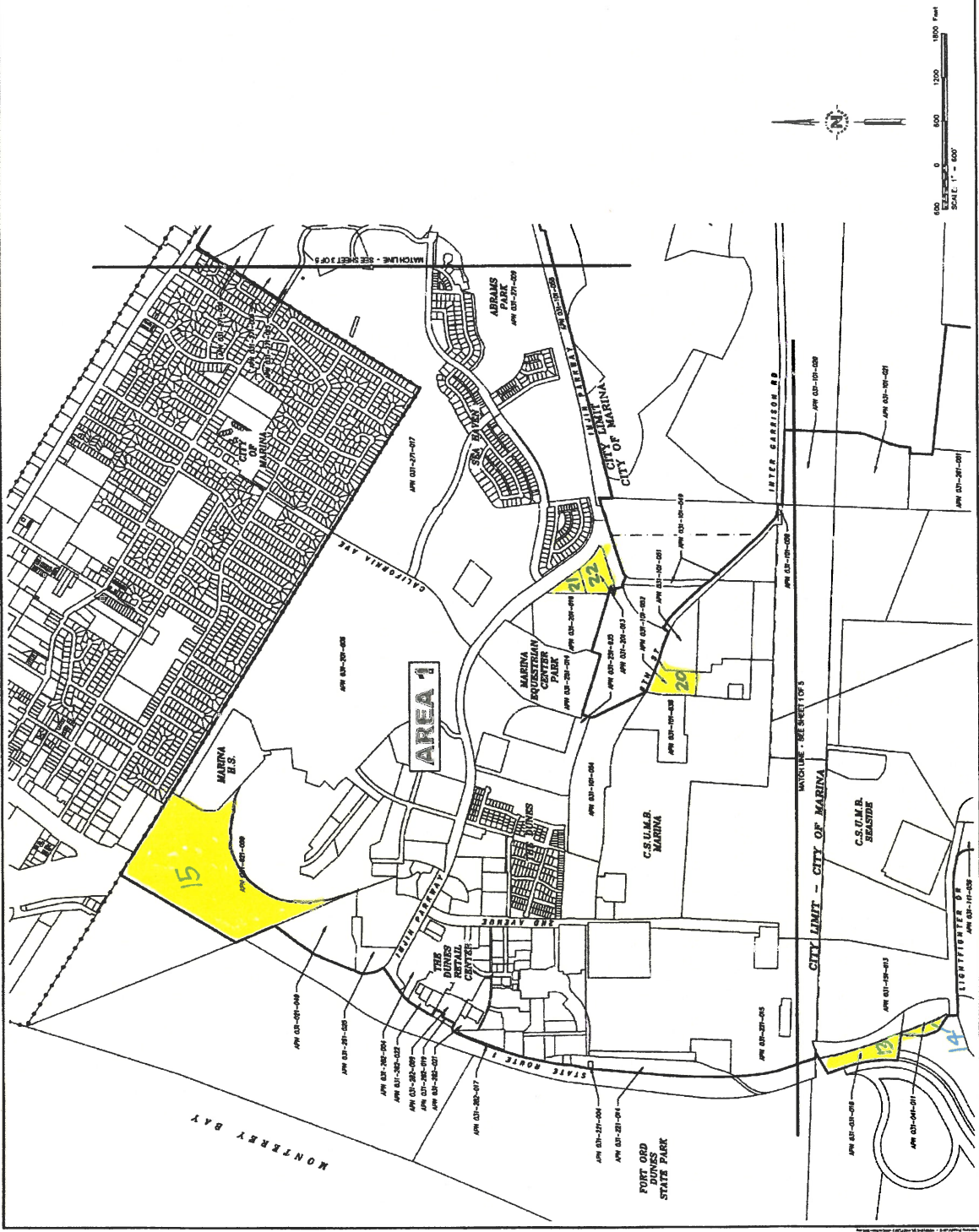
- PROMISED ANNEXATION BOUNDARY
- EXISTING DISTRICT BOUNDARY
- ADJACENT PARCEL LINE
- CITY LIMIT LINE
- TOWNSHIP/PARCELS/SECTION LINE
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NOTE
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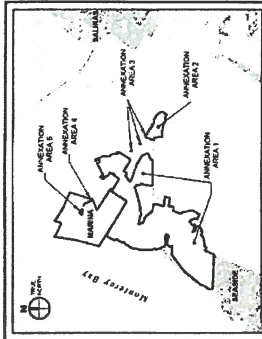


MARINA COAST WATER DISTRICT
2018 ANNEXATION
WHITSON ENGINEERS
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 15, 2018
 SHEET 2 OF 5



19/3/3



- LEGEND**
- PROPOSED ANNEXATION BOUNDARY
 - EXISTING DISTRICT BOUNDARY
 - ASSESSOR'S PARCEL LINE
 - CITY LIMIT LINE
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 - COORDINATE LOCATION CORNER NUMBER AND BEARING AND USE OF PLAT
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NOTE

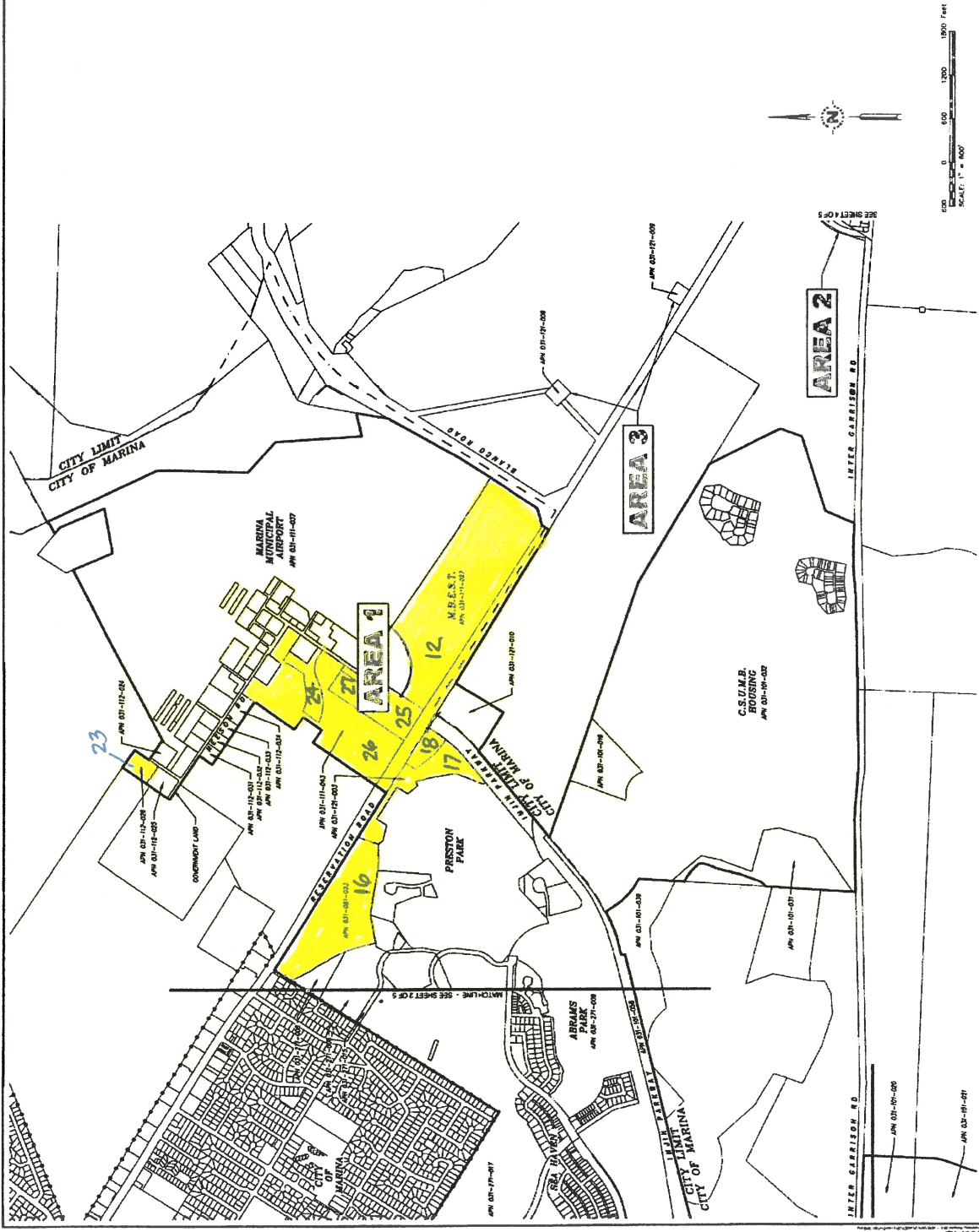
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MARINA COAST WATER DISTRICT
2018 ANNEXATION

WHITSON ENGINEERS
 6 Harris Court, Monterey, CA 93940
 831.648.8225 Fax 831.373.5985
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 12, 2018 ME JOB NO. 3012 SHEET 3 OF 5



SETTLEMENT AGREEMENT
EXHIBIT B

September 17, 2018

Resolution No. 2018-56
Resolution of the Board of Directors
Marina Coast Water District

Modifying Resolution No. 2018-09 by Excluding Certain Parcels and Portions of Parcels from the Ord Community Sphere of Influence Amendment and Annexation Application

RESOLVED by the Board of Directors (“Directors”) of the Marina Coast Water District (“District” or “MCWD”), at a regular meeting duly called and held on September 17, 2018, at 211 Hillcrest Avenue, Marina, California as follows:

WHEREAS, on February 20, 2018, the Directors adopted Resolution No. 2018-09, adopting an Initial Study/Negative Declaration for the Ord Community Sphere of Influence Amendment and Annexation, finding that the Ord Community Sphere of Influence Amendment and Annexation was not a project subject to CEQA and was also exempt from CEQA, and directing District staff to file the Sphere of Influence Amendment and Annexation Application (“Application”) with Monterey County Local Agency Formation Commission (“LAFCO”); and

WHEREAS, District staff filed the Application with LAFCO on April 17, 2018; and

WHEREAS, LandWatch Monterey County and Keep Fort Ord Wild each filed a Petition for Writ of Mandate in the Monterey County Superior Court challenging the Directors’ approval under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”); and

WHEREAS, a settlement agreement (“Settlement Agreement”) has been proposed that provides for modifications to the Ord Community Sphere of Influence Amendment and Annexation by excluding certain parcels and portions of certain parcels identified on the spreadsheet and maps attached as Exhibit A to this resolution and to the Settlement Agreement. The Ord Community Sphere of Influence Amendment and Annexation as modified by Exhibit A is referred to as the “Modified Project.”

NOW, THEREFORE, BE IT RESOLVED, that the MCWD Board of Directors, after consideration of the terms of the Settlement Agreement and the information contained in the September 17, 2018, Staff Report to the Directors, hereby:

1. Finds that it is in the best interests of the District to approve the Settlement Agreement (which is incorporated into this resolution by reference); approves the Settlement Agreement; and authorizes and directs the President to sign and initial the Settlement Agreement on behalf of the District and on behalf of the Board of Directors.

2. Finds that, pursuant to the Settlement Agreement, the parcels and portions of parcels set forth in Exhibit A shall be excluded from the District’s Ord Community Sphere of Influence Amendment and Annexation Application to LAFCO because they have not received final land use approvals by the applicable land use jurisdiction through a specific plan, master plan, or

individual project approval adopted or approved in reliance on a post-1997 CEQA document prepared and approved by the land use jurisdiction for that plan or project. All references in Resolution No. 2018-09 to parcels included in the Ord Community Sphere of Influence Amendment and Annexation hereby exclude all of the parcels and portions of parcels set forth in Exhibit A. All other parcels and portions of parcels shall remain in the Application unchanged. The excluded parcels shall be re-designated for future study only.

3. Rescinds the CEQA findings adopted in Resolution No. 2018-09 only as they relate to the parcels or portions of parcels listed in Exhibit A. The CEQA findings in Resolution No. 2018-09 shall otherwise remain unchanged.

4. Finds that any public agency considering land use approvals for the parcels or portions of parcels listed in Exhibit A will need to determine whether CEQA applies to said land use approvals independent of MCWD's February 20, 2018, project approvals and CEQA findings.

5. Finds that, having considered the Initial Study/Negative Declaration adopted by the Board on February 20, 2018, and the analysis in the Staff Report, the modifications to the Ord Community Sphere of Influence Amendment and Annexation under the "Modified Project" would not result in any potential environmental impacts beyond those analyzed in the Initial Study/Negative Declaration and none of the conditions in CEQA Guidelines section 15162 have occurred, and therefore, no additional environmental review is required under CEQA (see Public Recourses Code section 21166 and CEQA Guidelines sections 15162).

6. Finds that the "Modified Project" is not subject to CEQA because it would not cause or lead to any change in the physical environment.

7. Finds that the "Modified Project" is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15319, entitled "Annexations of Existing Facilities and Lots for Exempt Facilities" ("Class 19").

8. Finds that the "Modified Project" is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, entitled "Existing Facilities" ("Class 1").

9. Finds that the "Modified Project" is exempt from CEQA under the "common sense" exemption provided under CEQA Guidelines section 15061, subdivision (b)(3), which applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (see *Muzzy Ranch Co. v. Solano County Airport Land Use Comm.* (2007) 41 Cal.4th 372), because the "Modified Project" would not cause or allow any changes in the physical environment and there is no possibility that the project may have a significant effect on the environment.

10. Finds that there are no "exceptions" to the categorical exemptions that would remove the "Modified Project" from the exempt classes of projects; there are not unusual circumstances that distinguish this proposal from other projects covered under the categorical exemptions and the proposal would not cause any significant impacts due to any unusual circumstances; the proposal would not cause or contribute to any cumulatively significant impacts and there are no successive projects of the same type in the same place that will result in a significant cumulative impact.

11. Adopts this Resolution No. 2018-56.

12. Authorizes the General Manager to file a Notice of Determination and Notice of Exemption as soon as reasonably practical.

13. Authorizes and directs the General Manager to notify LAFCO of the "Modified Project" and to take all actions and execute all documents as may be necessary or appropriate to give effect to this resolution.


PASSED AND ADOPTED on September 17, 2018, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors Lee, Shriner, Moore

Noes: Directors Cortez, Gustafson

Absent: Directors None

Abstained: Directors None


Thomas P. Moore, President

ATTEST:


Keith Van Der Maaten, Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Marina Coast Water District hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 2018-56 adopted September 17, 2018.


Keith Van Der Maaten, Secretary

Exhibit A

Resolution No. 2018-56

Erickson Questioned Properties May 7, 2018 Letter; Proposed Removed June 25, 2018 (R1); Final List September 10, 2018 (R2)

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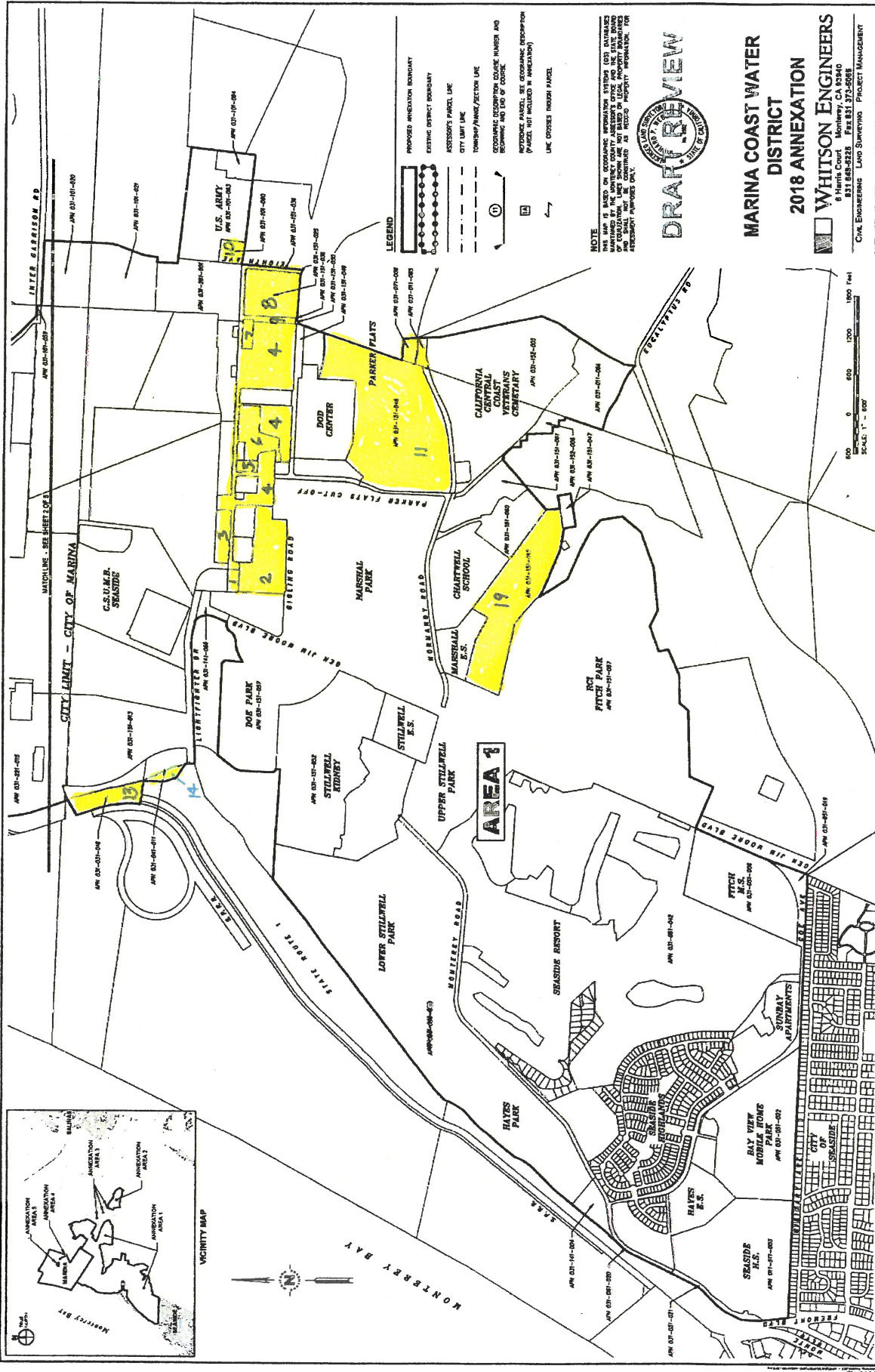
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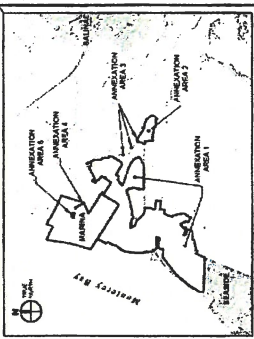
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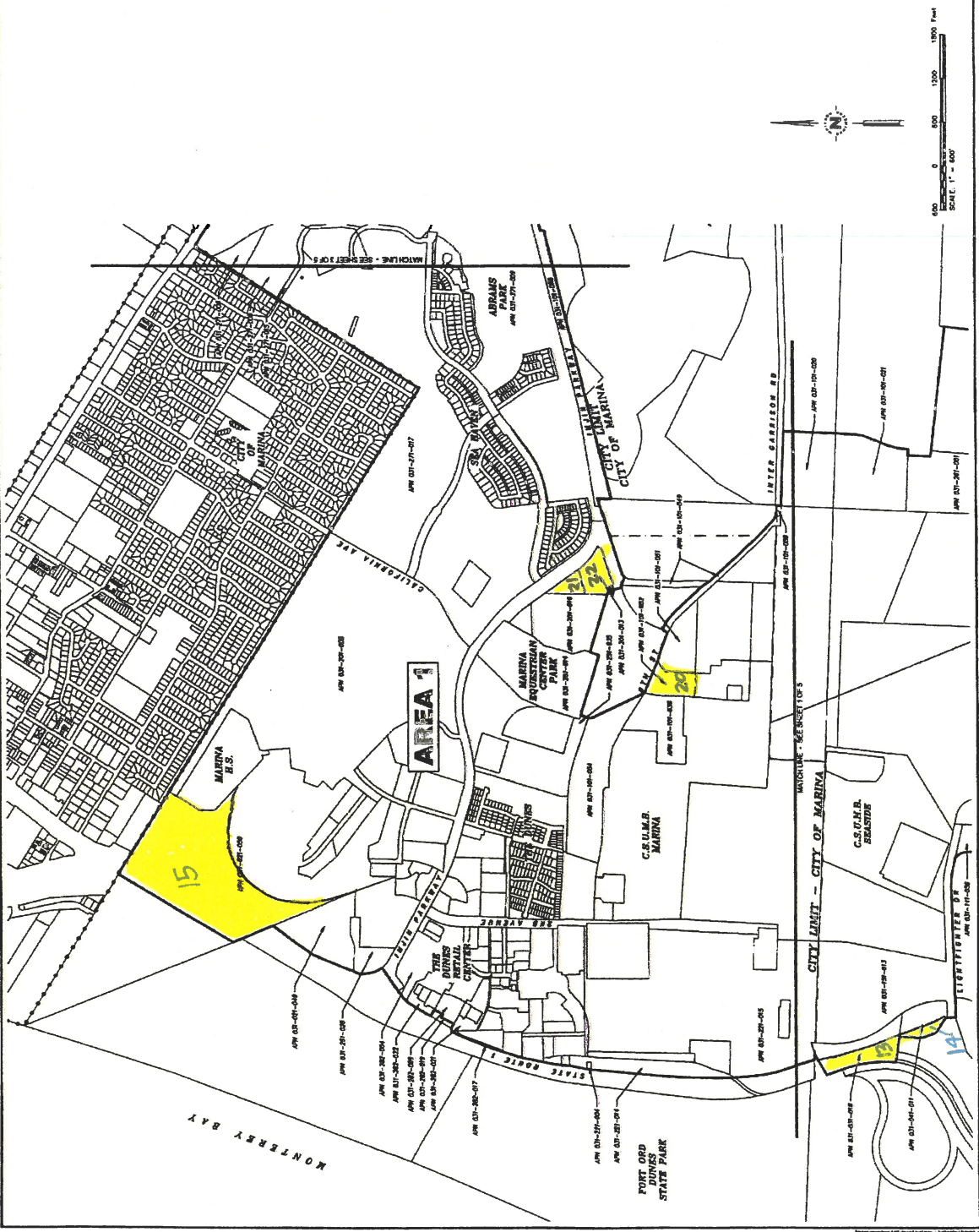
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- PROPOSED ANNEXATION BOUNDARY
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 - ANNEXATION AREA
 - CITY LIMIT LINE
 - TOWNSHIP/SECTION LINE
 - SECTIONAL DESCRIPTION COURSE, METERS AND BEARING AND USE OF COURSE
 - REFERENCE PARCEL, SEE COORDINATE DESCRIPTION PARCEL, NOT INCLUDED IN ANNEXATION
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NOTE
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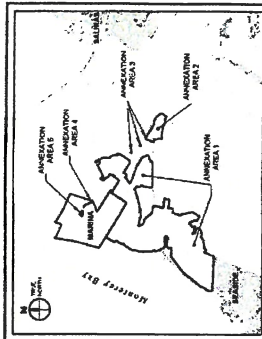


MARINA COAST WATER DISTRICT
2018 ANNEXATION
WHITSON ENGINEERS
 8 North Coast Monterey, CA 93940
 831.948.8225 Fax: 831.372.6586
 CIVIL ENGINEERING LAND SURVEYING PROJECT MANAGEMENT

DATE: APRIL 12, 2018 WE JOB NO. 1812 SHEET 2 OF 3



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- LEGEND**
- PROPOSED ANNEXATION BOUNDARY
 - EXISTING DISTRICT BOUNDARY
 - ASSESSOR'S PARCEL LINE
 - CITY LIMIT LINE
 - TOWNSHIP/RANGE/SECTION LINE
 - ECONOMIC ASSESSMENT CODES, NUMBER AND DESCRIBE AND USE OF ZONING
 - REFERENCE PARCEL, SEE ECONOMIC DESCRIPTION (PARCEL NOT INCLUDED IN ANNEXATION)
 - UIC CROSSES THROUGH PARCEL

NOTE
 THIS MAP IS BASED ON ECONOMIC INFORMATION SYSTEM (EIS) DATA AND IS NOT A GUARANTEE OF ACCURACY. THESE DATA ARE NOT BASED ON LOCAL PROPERTY RECORDS AND SHOULD BE VERIFIED AS ACCURATE BEFORE ANY INVESTMENT DECISIONS ARE MADE. FOR MORE INFORMATION, CONTACT THE PROJECT MANAGER.



**MARINA COAST WATER DISTRICT
 2018 ANNEXATION**

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