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6 Keep Fort Ord Wild

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF MONTEREY**

9 KEEP FORT ORD WILD,
10 Petitioner,

Case No. 16CV003795

11 v.
12 CITY OF SEASIDE, and DOES 1-50,
13 Respondents.

**PETITION FOR WRIT OF MANDATE TO
ENFORCE THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT;
CALIFORNIA PLANNING AND ZONING
LAWS, AND FORT ORD REUSE
AUTHORITY ACT**

14 _____ /
15 MONTEREY DOWNS, LLC,
16 and ROES 1-50,
17 Real Parties in Interest.

18 Petitioner KEEP FORT ORD WILD alleges as follows:

19 **PETITION FOR WRIT OF MANDATE**

20 **First Claim for Relief: Violations of the California Environmental Quality Act.**

21 **Summary and Background**

22 1. This petition is brought under the California Environmental Quality Act
23 (CEQA; Pub. Resources Code, § 21000 et seq.), Code of Civil Procedure sections
24 1085 and 1094.5; the California Planning and Zoning Law (Gov. Code, § 65000 et
25 seq.), and the Fort Ord Reuse Authority Act (Gov. Code, § 67650 et seq.).

26 2. Keep Fort Ord Wild in this petition challenges the actions of the City of
27 Seaside in November 2016 to certify an environmental impact report (EIR) prepared
28 for the "Monterey Downs and Monterey Horse Park and Central Coast Veterans

1 Cemetery Specific Plan,” approve the specific plan, adopt general plan amendments,
2 and make other related approvals. The proposed project is partly in the
3 unincorporated County of Monterey and partly within the city limits of Seaside.

4 3. The wooded, gently rolling hills in the undeveloped area of Fort Ord on
5 which Monterey Downs, LLC has proposed developing its project are heavily used for
6 free recreation by the residents of the neighboring communities of Seaside, Marina
7 and Salinas and by other persons. According to the 2005 Seaside Park, Recreation
8 and Community Services Plan, Seaside has a regional parks ratio of 0.33 acres per
9 1000 residents. That ratio is significantly below the 3.69 acres per 1000 average in
10 western communities and significantly below the recommended desired regional
11 parklands standards of 4.77 acres per 1000 residents, as described in the adopted
12 plan.

13 4. Fort Ord is a former United States Army base that closed in 1994, at
14 which time the United States Department of Defense transferred land to governmental
15 entities and other entities. In 1994, the Legislature enacted the Fort Ord Reuse
16 Authority Act (Gov. Code, § 67650, et seq.). The primary purpose of the Act was to
17 create a governmental structure to plan for, finance, and carry out the transfer and
18 reuse of the base in a cooperative, coordinated, balanced, and decisive manner.
19 (Gov. Code, § 67652.)

20 5. The Fort Ord Reuse Authority (FORA) was created in 1994 to facilitate
21 the transfer and reuse of certain real and other property comprising the Fort Ord
22 military reservation after the reservation’s closure. (Gov. Code, § 67650 et seq.) The
23 Fort Ord Reuse Authority is governed by a 13-member Board of Directors that includes
24 two representatives of the City of Seaside. (See Gov. Code, § 67660, subd. (a)(8).)
25 For several years the Seaside representatives on the FORA Board have been Mayor
26 Rubio and Council member Oglesby.

27 6. The Fort Ord Reuse Authority Act charged FORA with the goal and duty
28 of “minimiz[ing] the disruption caused by the base’s closure on the civilian economy

1 and the people of the Monterey Bay area,” “maintain[ing] and protect[ing] the unique
2 environmental resources of the area,” and accomplishing these tasks “in ways that
3 enhance the economy and quality of life of the Monterey Bay community.” (Gov.
4 Code, § 67651, subds. (a)-(d).)

5 7. In 1996, FORA released for public review a proposed draft Fort Ord
6 Reuse Plan and an draft environmental impact report on the draft Reuse Plan. In
7 1997, FORA responded to comments on the draft EIR, added some additional
8 mitigations, and certified the final environmental documentation for the Fort Ord Reuse
9 Plan. On the basis of the environmental documentation, FORA adopted a Reuse Plan
10 as amended by the environmental documents. FORA incorporated the EIR’s
11 mitigation measures into the Reuse Plan text. (See CEQA Guidelines, § 15097, subd.
12 (b).) Public Resources Code section 21081.6, subdivision (b) requires “in the case of
13 the adoption of a plan” that mitigation measures be fully enforceable “by incorporating
14 the mitigation measures into the plan.” The Reuse Plan was intended to address, inter
15 alia, land use, transportation, conservation, and recreation in Fort Ord. (See Gov.
16 Code, § 67675, subd. (c).) As the Reuse Plan states, the Reuse Plan policies and
17 programs were developed for each resource element in order to alleviate potential
18 impacts and make the Reuse Plan as self-mitigating as possible. The policies and
19 programs assigned to the FORA member jurisdictions, including the City of Seaside,
20 assign the mitigation responsibilities by jurisdiction. According to the Reuse Plan,
21 FORA adopted the Reuse Plan, including all policies and programs incorporated in it,
22 in order to approve implementation of the Reuse Plan. According to FORA, FORA’s
23 approval of the Reuse Plan “assumed implementation of the policies and programs as
24 a pre-condition of reuse” of Fort Ord.

25 8. The Legislature designed FORA to sunset on June 30, 2014. (Gov.
26 Code, § 67700, as enacted.) In approximately 2012, FORA lobbied for and got an
27 extension to June 30, 2020. (Gov. Code, § 67700, as amended.)

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Parties

Keep Fort Ord Wild

9. Petitioner Keep Fort Ord Wild (Petitioner) is an unincorporated association under California law. Petitioner and its members are beneficially interested in the enforcement and application of environmental laws and laws assuring public disclosure and responsible decision making by local governments. Petitioner and its members are beneficially interested in the way and manner that land use decisions are made and in the environmental consequences of development in Fort Ord, including the impacts of the Monterey Downs project. Petitioner's members live in Seaside, Marina, unincorporated areas of the County of Monterey, Salinas, and all Peninsula cities. Petitioner's members recreate frequently at Fort Ord and on the trails and in the woodlands and open areas that are the site of the proposed Monterey Downs project, and Petitioner's members would lose that recreation if those woodlands and open areas are developed as proposed by the project. Petitioner has members who are residents and business owners in the City of Marina and members who are residents and business owners in the former Fort Ord (whether in Seaside, Marina or the unincorporated County) who get their potable water from the same unsustainable water supply that would be further and additionally pumped to supply the demand of the Monterey Downs project. The water supply of those members of Petitioner would be placed at risk by the further pumping for the project. Petitioner's members drive the streets and highways that would be impacted by the Monterey Downs project, they would bear the impacts of the increased noise from the project, the loss of enjoyment due to the project's development and destruction of the natural environment, including protected species and habitats, and the reduced air quality as a result of the loss of trees and increased traffic.

10. Keep Fort Ord Wild members and representatives participated in the City of Seaside's public process for the review the Monterey Downs project application by, inter alia, attending and speaking at public meetings including the Seaside Planning

1 Commission and Seaside City Council meetings at which those bodies made their final
2 decisions, commenting on the draft environmental impact report, and making requests
3 under the California Public Records Act for public records with regard to the Monterey
4 Downs project and the related activities by Seaside. Keep Fort Ord Wild files this
5 action in the public interest and on behalf of the public. Petitioner has standing to
6 pursue this action.

7 11. Keep Fort Ord Wild has been active in Fort Ord issues for more than five
8 years. The mission statement of Keep Fort Ord Wild is as follows:

9 Keep Fort Ord Wild is a community coalition
10 dedicated to the preservation of trails,
11 recreation, wildlife and habitat on Fort Ord.
12 We support sensible, economically viable,
13 redevelopment of the extensive blight within
14 the urban footprint of the former base. We
15 support conservation of existing undeveloped
open space for the enjoyment of current and
future generations.

16 12. Members, supporters and representatives of Keep Fort Ord Wild have
17 spoken at public hearings, attended public meetings, written letters, gotten other
18 interested persons involved, gathered signatures on petitions for referendum and
19 initiative measures, sponsored a ballot measure, campaigned on measures and
20 candidates, run for elected positions with the City of Seaside, and actively participated
21 in other ways in the public process for the Monterey Downs project. Members of Keep
22 Fort Ord Wild "in their capacities as Proponents of the Protect Fort Ord Open Space
23 Access Initiative" were sued by a litigant who was financially backed by the Monterey
24 Downs LLC project applicants; the litigation (Monterey Superior Court, case no. GNM
25 122980) sought to keep the open space access initiative off the ballot. The litigation
26 against the members of Keep Fort Ord Wild was not successful and as a result
27 Monterey County voters were able to vote on the measure. Keep Fort Ord Wild has
28 participated in public hearings held by the City of Seaside and the County of Monterey

1 with regard to the Monterey Downs project. Keep Fort Ord Wild and its members
2 regularly participate and speak at hearings regarding actions on Fort Ord, and have
3 for some years informed the Fort Ord Reuse Authority of the failures to comply with the
4 Reuse Plan and the Reuse Plan mitigations, including Seaside's failures to adopt
5 required policies and programs. Since at least 2012, Keep Fort Ord Wild
6 representatives have informed the Fort Ord Reuse Authority that FORA is relying on
7 paper water to approve development at Fort Ord and FORA is not adequately
8 protecting the water supply. Keep Fort Ord Wild and its members actively
9 participated in the reassessment of the Fort Ord Reuse Plan. The reassessment was
10 required by the 1998 settlement agreement in the 1997 *Sierra Club v. Fort Ord Reuse*
11 *Authority* CEQA litigation arising from the FORA approvals of the Reuse Plan and its
12 EIR. Keep Fort Ord Wild filed a petition under the California Environmental Quality
13 Act against the Fort Ord Reuse Authority and the County of Monterey for their actions
14 related to approvals of the Eastside Parkway. Keep Fort Ord Wild has successfully
15 filed a petition under the California Public Records Act against the Fort Ord Reuse
16 Authority for public records. As a result of the litigation, FORA produced key public
17 records that FORA had not previously produced and had denied access by the public,
18 including an insurance policy for which FORA had paid approximately \$100 million of
19 public funds.

20 City of Seaside

21 13. Respondent City of Seaside (Respondent or Seaside) is a public agency,
22 a charter city, and a governmental entity under the laws of the State of California.
23 Respondent was the lead agency under CEQA for the Monterey Downs project.
24 Respondent's actions at issue in this case are subject to the California Environmental
25 Quality Act (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal.
26 Code Regs., tit. 14, ch. 3, § 15000 et seq), California Planning and Zoning Law, and
27 the Fort Ord Reuse Authority Act. Respondent is governed by a Mayor and City
28

1 Council. The Mayor and the four members of the City Council are elected by voters in
2 Seaside.

3 14. Petitioner is informed and believes and on that basis alleges that each of
4 the fictitiously named respondents DOES 1-50 has jurisdiction by law over one or
5 more aspects of the proposed project that is the subject of this proceeding. Petitioner
6 does not know their true names and therefore names them by such fictitious names.
7 Petitioner will seek leave from the Court to amend this petition to reflect the true
8 names and capacities of DOES 1-50 once they are ascertained.

9 15. Petitioner is informed and believes and thereon alleges that at all times
10 material to the petition, each of the respondents and each of the respondents
11 fictitiously named in this petition, in addition to acting for himself/herself/itself, and on
12 his/her/its behalf individually, is and was acting as the agent, servant, employee, and
13 representative of, and with the knowledge, consent, and permission of, and in concert
14 with, each and all of the respondents and within the course, scope, and authority of
15 that agency, service, employment, representation, and conspiracy. Petitioner further
16 alleges on information and belief that the acts of each of the respondents were fully
17 ratified by each and all of the respondents. Specifically, and without limitation,
18 Petitioner alleges on information and belief that the actions, failures to act, breaches,
19 and misrepresentations alleged herein and attributed to one or more of the specific
20 respondents were approved, ratified and done with the cooperation and knowledge of
21 each and all of the respondents.

22 Real Party in Interest Monterey Downs, LLC

23 16. The City of Seaside's Notice of Determination filed November 14, 2016
24 and its Notice of Determination filed on November 18, 2016 each named "Monterey
25 Downs, LLC" as the "project applicant." Thus, Petitioner is informed and believes and
26 on that basis alleges that Monterey Downs, LLC is the recipient of the approvals at
27 issue in this action. (See Pub. Resources Code, § 21167.6.5, subd. (a).) No other
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1 entity was named as a "project applicant" on the two Seaside Notices of
2 Determination.

3 17. Petitioner is informed and believes and on that basis alleges that real
4 party in interest Monterey Downs, LLC is a limited liability company registered in the
5 State of California.

6 18. Petitioner is informed and believes and on that basis alleges that each of
7 the fictitiously named real parties in interest ROES 1 through 50 either claims an
8 ownership interest in the proposed project or has some other cognizable interest in the
9 proposed project such that they may be real parties in interest. Petitioner does not
10 know their true names and therefore names them by such fictitious names. Petitioner
11 will seek leave from the Court to amend this petition to reflect the true names and
12 capacities of ROES 1-50 once they are ascertained.

13 19. Petitioner is informed and believes and thereon alleges that at all times
14 material to the petition, each of the real parties in interest and each of the real parties
15 in interest fictitiously named in this petition, in addition to acting for
16 himself/herself/itself, and on his/her/its behalf individually, is and was acting as the
17 agent, servant, employee, and representative of, and with the knowledge, consent,
18 and permission of, and in concert with, each and all of the real parties in interest and
19 within the course, scope, and authority of that agency, service, employment,
20 representation, and conspiracy. Petitioner further alleges on information and belief
21 that the acts of each of the real parties were fully ratified by each and all of the real
22 parties. Specifically, and without limitation, Petitioner alleges on information and belief
23 that the actions, failures to act, breaches, and misrepresentations alleged herein and
24 attributed to one or more of the specific real parties in interest were approved, ratified
25 and done with the cooperation and knowledge of each and all of the real parties in
26 interest.

27 Entities Not Listed as Project Applicants on the Seaside Notices of Determination

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1 20. Other than Monterey Downs, LLC, no other entity was named on the
2 Seaside notices of determination as a "project applicant" or a recipient of approval.
3 (See Pub. Resources Code, §§ 21167.6.5, subd. (a), 21152, subd. (a).)

4 21. Although the "Monterey Horse Park" was listed second on the name of
5 the specific plan proposed by Monterey Downs, LLC, Petitioner is informed and
6 believes and on that basis alleges that the non-profit Monterey Horse Park
7 organization did not act as an applicant in this matter and instead deferred to
8 Monterey Downs, LLC. For example, when Seaside and the County had hearings on
9 the project, and asked "the applicant" to come forward to speak, the speakers who
10 stepped forward were Brian Boudreau and/or Beth Palmer of Monterey Downs, LLC,
11 and not a representative of the Monterey Horse Park. As another example, Seaside
12 emails and meetings with the applicant regarding the specific plan and the EIR were
13 with Mr. Boudreau and Ms. Palmer and other Monterey Downs, LLC representatives
14 such as engineer Dustin Woomer of Diamond West Engineers and attorney Colin
15 Pearce. Petitioner notes that many documents and oral statements, including official
16 Seaside, FORA and County records, refer incorrectly to the for-profit Monterey Downs,
17 LLC commercial/residential project as the "Monterey Horse Park." Petitioner is
18 informed and believes and thereon alleges that "Monterey Horse Park" is a nonprofit
19 organization that is seeking to develop "an equestrian venue" at Fort Ord, according to
20 its website, and is not the recipient of any entitlement challenged in this action.

21 22. Although the "California Central Coast Veterans' Cemetery" was listed
22 third on the name of the specific plan proposed by Monterey Downs, LLC, Petitioner is
23 informed and believes and on that basis alleges that neither the State of California
24 Department of Veterans' Affairs (CalVet) nor the United States Department of
25 Veterans' Affairs (USDVA) had a role in the application process before the City of
26 Seaside or endorsed the application of Monterey Downs, LLC or the Seaside review
27 process, or sought or received any permits as an entitlement in the approvals granted
28 by Seaside to the project. To the contrary, the CalVet and USDVA prepared a joint

1 mitigated negative declaration pursuant to CEQA jointly with an environmental
2 assessment pursuant to NEPA to approve the Phase One of the Veterans' Cemetery.
3 Construction on Phase One broke ground on March 13, 2015. (City of Seaside,
4 Monterey Downs DSEIR, p. 2-37.) Phase One of the Veterans' Cemetery opened in
5 October 2016 for interments. The State of California now owns the 78-acre cemetery
6 property. The State does not need any zoning or general plan modifications by the
7 City of Seaside to move forward on Phase Two of the cemetery. The State expects to
8 prepare its own environmental review for the remaining development of the cemetery,
9 and not to rely on the EIR prepared by the City of Seaside. The Monterey Downs EIR
10 is not needed in order to approve the cemetery. Indeed, the Monterey Downs EIR
11 admits that the state and federal agencies intend to prepare their own environmental
12 review documents for the cemetery phases: "CalVet/USDVA . . . anticipate preparing
13 CEQA/NEPA documentation with each phase." (*Ibid.*)

14 The Monterey Downs Project.

15 23. In approximately 2010, County supervisor Dave Potter introduced Brian
16 Boudreau to the Fort Ord area, according to separate statements by Mr. Potter and Mr.
17 Boudreau. Petitioner is informed and believes that Mr. Boudreau lives in Calabasas in
18 southern California. He has a history of litigation against and with public agencies in
19 California related to property development and his efforts to get development
20 approvals in Southern California. He has a horse racing background. Petitioner is
21 informed and believes and on that basis alleges that Mr. Boudreau has not
22 successfully developed large projects.

23 24. At a time not much later, Mr. Boudreau, as head of a new entity called
24 Monterey Downs, LLC, started talking with the County of Monterey and the City of
25 Seaside with regard to a new horse racing-centered development that he proposed for
26 approximately 550 acres of undeveloped Fort Ord land. The site of the proposed
27 development included what is known as Parker Flats, several hundred acres of largely
28 oak woodlands, criss-crossed by trails used by walkers, bikers, and horses. Most of

1 the land is in the County of Monterey, with less than 150 acres in the City of Seaside
2 at the City's eastern boundary. Initially Mr. Boudreau proposed that the County would
3 be the lead agency under CEQA (see Pub. Resources Code, § 21067) for the
4 development. In approximately May 2010, Monterey Downs, LLC entered into an
5 exclusive negotiating agreement (ENA) with the County. That agreement has expired.

6 25. According to the California Secretary of State's online database, Mr.
7 Boudreau is the agent for service of process for Monterey Downs, LLC.

8 26. In September 2010, Monterey Downs, LLC entered into an exclusive
9 negotiating agreement (ENA) with the City of Seaside for the property. That ENA has
10 been amended three or more times, including most recently in March 2016. Members
11 of Keep Fort Ord Wild objected to each proposed extension, arguing, inter alia, that
12 the project was deeply flawed and there was inadequate water supply, the Reuse Plan
13 had not been complied with, the project would cause environmental harm, and the
14 public did not support the proposed project.

15 27. In mid-2011, the Monterey County Board of Supervisors certified a
16 project environmental impact report and approved the "Whispering Oaks" project on
17 Fort Ord, a transit facility for vehicle storage and new businesses. The Whispering
18 Oaks project would have removed approximately 4,400 oak trees. Opponents
19 gathered more than 18,000 signatures on a referendum. In early 2012, the Board of
20 Supervisors rescinded their project approvals and their certification of the Whispering
21 Oaks EIR.

22 28. A short time later, Monterey Downs, LLC changed its approach and
23 arranged that instead of the County of Monterey, the City of Seaside would be the lead
24 agency for the Monterey Downs project application.

25 Monterey Downs Applied to City of Seaside for Project Approvals.

26 Seaside Prepared Environmental Documents for the Project.

27 29. In or around 2012, Monterey Downs, LLC applied to the City of Seaside
28 for approvals to develop the Fort Ord into a large development known as the Monterey

1 Downs project. The entire 710-acre Project site is located within the Fort Ord Reuse
2 Plan area and is subject to the Reuse Plan. (City of Seaside, DSEIR, p. 2-1.) The
3 Project site is covered in rolling topography. (*Ibid.*) Approximately 550 acres are in
4 the unincorporated County of Monterey, and approximately 150 acres are in the City of
5 Seaside. (*Id.* at p. 2-7.) The Monterey Downs, LLC application sought a proposed
6 annexation of the 550 acres into the City of Seaside, and the development of the
7 project. The Monterey Downs project required Seaside approvals of a specific plan
8 and other governmental actions.

9 30. Monterey Downs, LLC proposed to develop hundreds of acres of
10 primarily undeveloped land as a commercial and residential development centered on
11 a horse-racing track. The Monterey Downs development proposal includes 225,000
12 square feet of horse-related uses including a horse race track, a 6,500-seat indoor
13 sports arena, a 1,500-seat grandstand, barns for up to 1,500 horses, housing for
14 horse-related traveling workers, many acres of parking, 535,000 square feet of
15 commercial development, 400 hotel rooms, and more than 1500 housing units.
16 Approximately 39,000 oak trees would be destroyed for the Monterey Downs project,
17 according to Seaside's draft EIR (p. 4.3-72).

18 31. The proposed Monterey Downs site is essentially undeveloped and lacks
19 infrastructure, and thus would need a new major road to provide to the project
20 essential access and infrastructure such as water and sewage. That new road would
21 be the proposed Eastside Parkway. FORA is the lead agency for the Eastside
22 Parkway project. FORA has acknowledged in writing that the Eastside Parkway will
23 require an environmental impact report. Petitioner is informed and believes and on
24 that basis alleges that as of the date of filing of this petition, FORA has not released a
25 notice of preparation (NOP) for the EIR for the Eastside Parkway. The Eastside
26 Parkway would destroy an additional more 11,000 coast live oak trees, according to
27 the forestry report prepared for FORA in 2011.

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1 32. Monterey Downs, LLC representative Beth Palmer has repeatedly stated
2 at public meetings that the Monterey Downs development would not include horse
3 boarding. Instead, Monterey Downs would provide temporary housing of racehorses
4 for training, racing, and event purposes, as well as temporary housing for hundreds of
5 horse racing and training workers.

6 33. The specific plan proposed by Monterey Downs LLC included a separate
7 "Monterey Horse Park" to be owned and operated by an independent non-profit entity,
8 as well as a veterans cemetery. The cemetery had long been proposed by elected
9 officials and was already in process. The two public entities sponsoring the cemetery
10 were the United States and the State of California. Petitioner is informed and believes
11 that neither of those entities asked Monterey Downs, LLC to include the cemetery in
12 the Monterey Downs project, or the Monterey Downs specific plan, or the Monterey
13 Downs EIR. Monterey Downs apparently included the cemetery in the Monterey
14 Downs specific plan in order to gain support for the unpopular Monterey Downs, LLC
15 horse-centered project.

16 34. On or around September 2012, the City of Seaside released a Notice of
17 Preparation of an environmental impact report for the "Monterey Downs and Monterey
18 Horse Park and Central Coast Veterans Cemetery Specific Plan."

19 35. In 2013, local residents including members of Keep Fort Ord Wild
20 sponsored Measure M. Measure M sought to preserve 540 acres of the Fort Ord open
21 space property as "wild" and prohibit certain industrial commercial development.
22 Petitioner is informed and believes and on that basis alleges that Mr. Boudreau and
23 financial backers of the Monterey Downs, LLC project directly or indirectly funded the
24 effort to keep Measure M off the ballot, including the litigation filed against the
25 Measure M sponsors, Monterey County Case no. GNM122980. Petitioner's allegation
26 is based on Petitioner's review of the documentation filed and produced in that case,
27 as well as the correspondence in that case. The lawsuit funded by Monterey Downs,
28 LLC sought unsuccessfully to prevent Measure M from being placed on the ballot.

1 Petitioner is informed and believes and on that basis alleges that in reaction to
2 Measure M, Mr. Boudreau and Monterey Downs, LLC sponsored a different ballot
3 measure. The Monterey-Downs-sponsored Measure K was defeated at the polls with
4 approximately 28,000 County voters voting no. 56 percent of Seaside voters voted no
5 on Measure K.

6 36. On or around March 2015, the City of Seaside released for public
7 comment a draft EIR for the Monterey Downs project. Approximately 335
8 organizations and individuals commented on the draft EIR. Keep Fort Ord Wild
9 submitted a lengthy and detailed comment letter, and its members and supporters
10 submitted many additional comments.

11 September 2016: The Seaside Planning Commission Action.

12 37. On or about September 7, 2016, the Seaside Planning Commission
13 considered the project, its EIR and related approvals. The Planning Commission
14 heard lengthy comments from the Seaside planning staff, including a new
15 recommendation to remove "horse racing" as an allowed use. The EIR was not
16 modified to reflect the changed project description. The Commission did not place a
17 time limit on the lengthy presentation by Ms. Palmer, the representative of Monterey
18 Downs, LLC. As part of her comments, Ms. Palmer stated that the applicant would
19 "abide by staff recommendation" to eliminate horse racing and that "we are no longer
20 proposing to have live racing" and "we're just taking that live racing portion out of it."
21 Members of the public left because there was no available seating, the hour was
22 getting late, and the room was very stuffy. When the public was allowed to speak, the
23 speakers were limited to three minutes each. Commenters, including petitioner,
24 pointed out that the staff recommendation to eliminate horse racing would not
25 eliminate the horse race track, the training of horses for racing, and the related uses.
26 The Planning Commission then allowed Ms. Palmer a lengthy rebuttal period with no
27 time limitation. The Chair, prompted by the planning staff, stated that the public
28 hearing was closed. He then continued the item to September 13 without substantive

1 discussion by the planning commissioners, and adjourned the meeting. The item had
2 lasted more than 4 and a half hours.

3 38. On or about September 13, 2016, the Seaside Planning Commission
4 again considered the project, its EIR and related approvals. The planning staff and
5 the Monterey Downs applicant Ms. Palmer again made lengthy presentations without
6 time limits. The Chair then opened the public hearing for three-minute comments from
7 the public. Keep Fort Ord Wild's legal counsel objected that the Chair had closed the
8 public hearing at the previous meeting and more members of the public would have
9 been present to speak if Seaside had informed the public in advance that public
10 comments would be taken. After closing the public hearing again, the Chair again
11 invited Ms. Palmer to respond, which she did, at length. The Commissioners then
12 addressed the substantive issues. Two longtime Commissioners, Ross and Dodson,
13 spoke in detail as to their concerns about the nature of the project and its uses and the
14 flaws in the environmental review documents. Chair Olson then spoke in favor of the
15 project with focus on anticipated jobs, as did the two newest Commissioners appointed
16 in the previous few weeks, LaMica and Spalletta. The Commission voted three to two
17 to recommend that the Council certify the EIR and approve the project.

18 October and November 2016: The Seaside City Council Actions
19 to Certify the EIR and Approve the Project.

20 39. On or about September and October, 2016, the Seaside City Council
21 held study sessions and a hearing to consider the EIR and project. After the notice
22 was published, the Council moved the meeting to a different location across the city,
23 which meant that people, included Petitioner's representatives, went to the wrong
24 location. The meeting process was highly unusual and confusing. At the beginning of
25 the Monterey Downs agenda item, the Mayor opened the floor to public comment
26 before the scheduled presentation on the project and the project EIR. When
27 Petitioner's legal representative questioned the process and objected, the Mayor
28 insisted that the project would be presented *after* the public had commented. Later,

1 the Seaside project manager gave a rapid-fire presentation on the project that was
2 difficult to understand and used slides that were unreadable from the public seats.
3 Then the Monterey Downs project applicant gave a presentation of more than an hour,
4 with many more illegible slides. During the hearing, Petitioner submitted a letter with
5 comments. At the end of the meeting, the City Council continued the hearing a month
6 to allow the EIR preparer to consider the written comments submitted by Petitioner and
7 LandWatch.

8 40. On or about November 10, 2016, the City Council considered the EIR,
9 the Specific Plan, and related project approvals.

10 41. The public spoke in opposition. Keep Fort Ord Wild spoke in opposition
11 and presented a letter and asked the Council to consider it. The Mayor closed the
12 public hearing and then allowed the applicant to speak at some length. The Mayor
13 recessed the meeting so he and the Council could read the letter from Petitioner.

14 42. After the close of the public hearing, the Mayor ran the meeting and
15 relied on a lengthy written script that had been prepared for him by legal counsel and
16 the City Manager. Keep Fort Ord Wild had obtained from the City Manager a copy of
17 the script in advance. Seaside did not distribute the script to the attendees at the
18 meeting and the Mayor did not tell the attendees that he was using a prepared script.
19 In accordance with the script, the Mayor started the discussion by proposing that
20 Seaside rename the proposed project from "Monterey Downs" to "Monument Village."
21 The Mayor also proposed renaming the "Monterey Horse Park" to the "Seaside Horse
22 Park." The Seaside staff admitted that the names that Seaside called the project
23 components were not binding on the applicant or the developers. The names of the
24 specific plan and the name of the environmental documents remained the same.

25 43. On the substance of the issues, the EIR and the Monterey Downs
26 project, Council members Pacheco and Campbell spoke eloquently and at length in
27 opposition to the project, its inconsistency with plans and policies, its environmental
28 impacts, and the inadequacy of the EIR. The Mayor stated his support for the project

1 because he wanted people to be able to keep horses. Council member Oglesby
2 spoke in favor of the project. Council member Alexander said he wanted funds for
3 public safety.

4 44. The City Council then voted three to two to adopt a resolution certifying
5 the environmental impact report and a resolution approving the specific plan. The City
6 Council adopted a statement of overriding considerations because the project has
7 unmitigated and unavoidable significant impacts. The City Council in reliance on the
8 certified EIR also approved general plan amendments, zoning ordinance amendments
9 and related approvals in order to enable and facilitate the project. In so doing,
10 Seaside purported to rely on maps, plans, appendices, figures, and other apparently
11 official documents that in fact were not the official adopted maps, plans and similar
12 documents, and had not had previously certified environmental documents or other
13 mandatory CEQA analysis applied to them and approved by a public agency.

14 45. On November 17, 2016, the Seaside City Council approved ordinances
15 to adopt the specific plan, amend the zoning ordinance for the project, and make
16 related approvals.

17 November 14 and November 18, 2016: Seaside Filed Notices of Determination.

18 46. On or about November 14, 2016, Seaside filed a Notice of Determination
19 with the County Clerk. The Notice stated that Seaside had approved “a General Plan
20 Amendment that adds a specific plan” for Monterey Downs, including, inter alia, “a
21 mixed-use project including residential, commercial/retail” and “an event center with an
22 indoor sports area and an outside equestrian training track.” The Notice stated that
23 the “project applicant” was “Monterey Downs, LLC.”

24 47. On or about November 18, 2016, Seaside filed a second Notice of
25 Determination with the County Clerk. The Notice stated that Seaside had approved
26 the adoption by ordinance of a specific plan” and also adopted an ordinance to amend
27 Seaside’s zoning ordinance to incorporate the specific plan. The Notice stated that
28 the “project applicant” was “Monterey Downs, LLC.”

1 (2005) 130 Cal.App.4th 1491, 1508.) There was no evidence before the Seaside City
2 Council that Fort Ord Reuse Plan policies and programs were impractical or
3 unworkable. To the contrary, the policies and programs are more necessary than ever
4 to mitigate the development at Fort Ord that has been approved and is in the process
5 of being approved.

6 53. The public interest in public agencies enforcing their adopted
7 environmental mitigations is high. There is strong public policy and public interest in
8 favor of ensuring an agency's commitment to its CEQA mitigations adopted at the time
9 of the agency's project approvals. There is strong public policy and public interest in
10 favor of ensuring the compliance with FORA's adopted mitigations for the reuse of Fort
11 Ord. Keep Fort Ord Wild in this action is representing the public and the public
12 interest with regard to the need for an adequate environmental review and adequate
13 mitigation of impacts, and the injury to the public interest will be irreparable if the
14 petition is not heard. (*Environmental Law Fund, Inc. v. Town of Corte Madera* (1975)
15 49 Cal.App.3d 105, 114-115.) If not redressed, Seaside's November 2016 actions
16 would perpetuate a public wrong and would burden the public of Seaside and the
17 County, in perpetuity, with the effects of the inadequate environmental review.

18 54. Respondent's actions, and each of them, as described above and as
19 shown in the record of proceedings herein, without adequate compliance with the
20 provisions of the CEQA, constitute a prejudicial abuse of discretion. Respondent
21 failed to proceed in the manner required by law, did not apply or satisfy the procedural
22 and substantive safeguards and requirements of CEQA, did not engage in a legally
23 sufficient fact-finding endeavor, and did not adequately identify and mitigate impacts.
24 The flaws and inadequacies of the environmental review include a prejudicially
25 incomplete and changing project description, a materially inaccurate discussion of the
26 environmental setting and the impacts of the project, the failure to adequately
27 investigate the baseline conditions including the water supply, the failure to
28 adequately investigate and disclose the impacts of the project, the inadequate

1 responses to comments, the piecemealing of the environmental review so as to
2 exclude the new Eastside Parkway road project, the inadequate analysis of cumulative
3 impacts of the project in combination with the Eastside Parkway project, the improper
4 tiering of the environmental impact analysis, the failure to make a reasonable and
5 supported statement of overriding considerations, the failure to recirculate the
6 environmental documents based on significant new information, the inadequate
7 consideration of mitigations and alternatives, the improper deferral of formulation of
8 mitigation, and the lack of necessary specificity and criteria and performance
9 standards in the mitigations.

10 55. As an example of the flaws, and not to limit the arguments that Petitioner
11 intends to present in briefing, Petitioner points out that the project EIR relies on a
12 paper water supply of a theoretical 6600 acre feet (AF) of groundwater which is the
13 amount that the project EIR claims that the Army gave to FORA for use. The EIR
14 failed to investigate and disclose the known information about the actual (wet) primary
15 water supply for Fort Ord. That primary water supply is what is called the Deep
16 Aquifer, which has a limited small supply which has not been quantified. The Deep
17 Aquifer is ancient water, more than 20,000 years old, which is evidence that is it not
18 being recharged, and thus is not sustainable. No safe yield has been established for
19 the Deep Aquifer. The Deep Aquifer is a tiny fraction of the size of the Salinas Valley
20 Groundwater Basin, which the EIR incorrectly relied upon. The EIR failed to
21 adequately investigate or quantify the actual demand on the Deep Aquifer supply, and
22 the impacts of the new demand that the project would place on the supply. The EIR
23 failed to adequately investigate and disclose the uncertainty of the water supply and
24 the water rights for the project. The EIR failed to adequately disclose the other
25 demand on the water supply, and inaccurately characterized the other pumping from
26 the water supply. The EIR failed to adequately determine whether the supply was a
27 long term sustainable supply, as required by Monterey County General Plan policy
28 PS-3.1. The EIR listed other County General Plan policies that applied to the project

1 and purported to analyze the project's consistency therewith, but the EIR omitted
2 mentioning or analyzing adequately the critical policy PS-3.1 and the Monterey Downs
3 project's inconsistency with that policy. The EIR did not respond adequately to
4 comments on the water supply. For example, the EIR insisted that the paper water
5 was a sustainable supply and that, as a percentage of the much larger Salinas Valley
6 Groundwater Basin, the supply was reliable, even though Fort Ord does not get its
7 water supply from the larger aquifers in the greater groundwater basin. As another
8 example, the EIR failed to adequately consider and investigate the risk of seawater
9 intrusion into the Deep Aquifer, either as a foreseeable future circumstance or as a
10 result of increased pumping from the Deep Aquifer, and to mitigate for that potential
11 impact. In fact, in November 2016, the sentinel wells in the Deep Aquifer along the
12 coast showed the first signs of seawater intrusion, which is a significant alarm bell that
13 the EIR did not consider. As another example of the flawed EIR, the EIR rejected
14 available information about the water supply and other environmental aspects
15 purportedly on the basis that the information became available after the notice of
16 preparation was prepared. That is a violation of the requirement to consider on-the-
17 ground information. As another example, to appropriate new water for the project, the
18 water supplier would have to pump additional groundwater from the over pumped and
19 overdrafted groundwater basin. In an overdrafted groundwater basin, there is no
20 surplus water available to be appropriated. The EIR did not investigate whether
21 anyone has the rights to pump the additional groundwater for this project in the
22 overdrafted basin, and instead the EIR improperly relied on paper water.

23 56. As another example of the flawed EIR, the EIR inadequately
24 investigated, quantified and mitigated the project-related impacts of removing more
25 than 39,000 oak trees and the cumulative impacts of removing more than 49,000 oak
26 trees, and did not respond adequately to comments on those issues. As another
27 example, the Reuse Plan specifically protected oaks woodlands at Fort Ord, stating as
28 follows:

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Oak Woodland Protection

The Oak Woodlands at Fort Ord represent an outstanding environmental asset.

. . . . A significant amount of these oak woodlands, however, are located in polygons that are designated for development. It is an objective of the Reuse Plan to accommodate the development programs on these polygons while protecting to the greatest extent possible the oak woodland resource.

“Development Character and Design Objectives” are defined for these polygons in the [Reuse Plan]. In addition, policies and programs to encourage the preservation and enhancement of oak woodland elements in the natural and building environment are included in . . . the Reuse Plan.

For example, the Fort Ord Reuse Plan Biological Resources policy B-2 and program B-2.1 require Seaside and the County to designate an oak woodlands conservation area for their land at Fort Ord and to assure those areas are managed to maintain or enhance habitat values, with specific identified management measures. This policy and program are mitigation measures of the Reuse Plan. For nearly 20 years, Seaside has failed to comply with those mandatory policy and program and to designate the oak woodlands conservation area, and instead approved the Monterey Downs project and its EIR, even though the project site had more than 39,000 oak trees that the Reuse Plan intended to be protected prior to the approval of development.

57. As another example, Seaside changed the text of the project approvals at the last minute including at the November 10, 2016 Council meeting when the project manager announced there was additional language but did not present it to the public. When Keep Fort Ord Wild’s counsel asked to see it, the Seaside project manager said she did not have a copy and the EIR preparer said she did not have a copy either. The purported deletion of the horse racing use at the last minute made

1 the project less consistent with the jobs/housing ratio policies in the Seaside General
2 Plan and the Fort Ord Reuse Plan, but the last-minute change was not reflected in the
3 EIR analysis of the project's consistency with those plans.

4 58. Respondents' actions, and each of them, as described above and as
5 shown in the record of proceedings herein, including but not limited to failure to
6 prepare an adequate environmental impact report in compliance with the provisions of
7 the California Environmental Quality Act, constitute a prejudicial abuse of discretion in
8 that Respondents failed to proceed in the manner required by law, did not satisfy the
9 procedural and substantive requirements of CEQA, did not engage in a legally
10 sufficient fact-finding endeavor, did not meet the informational requirements of CEQA
11 and did not adequately identify and mitigate impacts.

12 59. The flaws and inadequacies of the environmental review use an
13 incomplete and inadequate discussion of environmental setting, an inadequate and
14 incomplete project description, an inaccurate baseline, and an inadequate and
15 incomplete investigation, discussion or analysis of potentially adverse impacts to, of,
16 and/or on water supply and availability, water sources, water demand, water recharge,
17 hydrogeology, hydrology, water quality, water contamination, water quality, seawater
18 intrusion, water rights, appropriative rights, pumping, recharge, soil contamination,
19 soils and geology, baselines, views, aesthetics, rural characteristics, endangered or
20 protected species, biological resources, wildlife linkages, parking, development on
21 slopes, erosion, traffic, traffic metrics and methodology, transportation, circulation,
22 infrastructure, access, public utilities, wastewater, sewage, grading, public services,
23 air quality, greenhouse gases, global warming, noise, oak trees, habitats, vegetation
24 types, ecosystems, land use, conservation easements, setbacks, open space, and
25 cultural resources. The flaws and inadequacies of environmental review include an
26 incomplete and inadequate discussion, investigation, or analysis of cumulative
27 impacts, growth-inducing impacts, piecemealing, inconsistency with area plan policies,
28 inconsistency with general plan policies, precedent-setting nature of the approvals,

1 inconsistency with the County Code, mitigations, adequacy of alternatives, the hiding
2 or omission of expert reports and analyses, other missing documents, anonymous
3 changes to environmental documents, and other defects. These issues, the violations
4 of CEQA, and the potential adverse environmental effects of these violations were not
5 investigated adequately or addressed adequately in the CEQA documentation or by
6 Respondent.

7 60. The flaws and inadequacies of the environmental review include
8 inadequate investigation and discussion of the project's inconsistency with the zoning
9 ordinance, adopted land use plans and the General Plan. The environmental review
10 was piecemealed and environmental review was inappropriately deferred.
11 Respondents failed to incorporate reasonable mitigation measures that would
12 eliminate or substantially reduce the environmental impacts of the project. Many of the
13 mitigations adopted by Respondent do not have adequate metrics or performance
14 standards or are measured from an inaccurate baseline. Many of the mitigations
15 adopted by Respondent are unfunded and unlikely to be implemented. The EIR
16 analysis is based on flawed assumptions, assumptions that are inadequately
17 explained, or assumptions that have influence or effects that are inadequately
18 investigated or discussed. The EIR failed to adequately address alternatives within
19 the range of activities contemplated by the commitment to the project. The EIR did not
20 adequately respond to comments under CEQA. Respondent failed to adopt legally
21 adequate findings as required by law. Respondent failed to adopt a legally adequate
22 statement of overriding considerations. Respondent's EIR failed to comply with CEQA
23 requirements for consideration and evaluation of information. The EIR failed as an
24 informational document. There are unanalyzed potentially significant impacts.

25 61. The EIR's analysis of potential impacts of the project was based on
26 inaccurate, unexplained, and inappropriate assumptions. Those assumptions led to
27 incorrect conclusions about potential impacts, including underestimations of the
28 potentially significant impacts. The EIR's underestimations of the impacts meant that

1 the true impacts were not disclosed, adequately analyzed or mitigated. Maps used in
2 the EIR were inaccurate. Cumulative impacts were not adequately disclosed or
3 mitigated. The EIR relied on out-of-date and inaccurate information and assumptions.

4 62. The EIR incorrectly characterized the current baseline and regulatory
5 environment. The EIR failed to obtain information that was available and in the
6 possession of the Marina Coast Water District, the Fort Ord Reuse Authority, and/or
7 the Monterey County Water Resources Agency and that should have been used in the
8 EIR analysis. The EIR used terms that it did not define, which led to uncertainty,
9 confusion, and underestimation of impacts.

10 63. The EIR omissions violate informational mandates. "[F]ailure to comply
11 with the law subverts the purposes of CEQA if it omits material necessary to informed
12 decision making and informed public participation. Case law is clear that, in such
13 cases, the error is prejudicial." (*Sunnyvale West Neighborhood Association v. City of*
14 *Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1392.)

15 64. Petitioner seeks in this action to require Respondent to comply with
16 CEQA in its decisions with regard to the proposed project, to fulfill its statutory
17 obligations under CEQA, to provide the information and investigation required by law,
18 to comply with the procedural mandates of CEQA, and to proceed in the manner
19 required by law.

20 65. Petitioner brings this action consistent with the requirements of Public
21 Resources Code section 21177 and Code of Civil Procedure sections 1085 and/or
22 1094.5. Petitioner objected to Seaside's actions to certify the EIR and approve the
23 project orally and in writing prior to the close of the public hearing. Petitioner and/or
24 other agencies, organizations, and/or individuals raised the legal deficiencies asserted
25 in this petition orally or in writing prior to the close of Seaside's public hearing on the
26 project and prior to Seaside's filings of the Notices of Determination.

27 66. Petitioner performed all required conditions precedent to filing this action
28 by complying with the requirement of Public Resources Code section 21167.5 when on

1 November 23, 2016 Petitioner gave written notice to Seaside of Petitioner's intent to
2 file an action under CEQA to the City of Seaside. The letter and a certificate of
3 service of that letter is attached as Exhibit A.

4 67. After Petitioner gave written notice of its intent to file litigation, Seaside's
5 City Clerk after 5 PM on November 23, 2016 made an after-hours announcement of an
6 item proposed for the December 1, 2016 Council agenda at which the Council
7 potentially could rescind its Monterey Downs project approvals because Monterey
8 Downs, LLC has refused to sign the indemnification agreement. However, any future
9 action the City Council might take is uncertain and the Council agenda item does not
10 include rescission of the certification of the environmental impact report which is a key
11 part of the relief Petitioner seeks. The December 1 agenda item proposes that the
12 City Council remand the project to the Planning Commission for action on a revised
13 project, which shows that the project applicant wishes to continue to pursue the
14 project. Seaside's filing of the notice of determinations has triggered the short statute
15 of limitations on the time to challenge certain actions. Because Seaside has started
16 the clock running, Petitioner must file this petition promptly to protect Petitioner's
17 interests.

18 **Second Claim for Relief:**

19 **Failure to comply with California Planning & Zoning Laws.**

20 68. Petitioner incorporates and realleges the preceding paragraphs 1
21 through 67, as if fully set forth herein.

22 69. Seaside's actions and documents, including the findings in the
23 resolutions, are not supported by substantial evidence, use incorrect legal standards,
24 do not comply with the state and local laws including the City of Seaside's General
25 Plan and are otherwise not consistent with California Planning and Zoning Law (Gov.
26 Code, §§ 65000-66499.58), and are arbitrary and capricious. Under California
27 Planning and Zoning law, a local public agency may amend its general plan, adopt a
28 specific plan, or entitle a proposed land use only if the amendment, specific plan, or

1 land use is consistent with the goals, policies, and objectives contained in a valid and
2 internally consistent General Plan. The Monterey Downs project is inconsistent with
3 City of Seaside General Plan policies, including policies related to economic
4 development and jobs/housing balance and policies related to the control of noise
5 impacts. Seaside prejudicially abused its discretion under California Planning and
6 Zoning law by adopting findings of General Plan consistency for the project that are
7 not supported by the evidence.

8 **Third Claim for Relief:**

9 **Failure to Comply with the Fort Ord Reuse Authority Act and Fort Ord Reuse**
10 **Plan.**

11 70. Petitioner incorporates and realleges the preceding paragraphs 1
12 through 69 as if fully set forth herein.

13 71. Seaside was required to comply with the Reuse Plan policies and
14 procedures that apply to Seaside. The project is not consistent with the Fort Ord
15 Reuse Plan and the policies and programs therein, and Seaside did not adequately
16 identify the inconsistencies or attempt to rectify or condition the project to make the
17 project consistent. As one example, and not to limit the arguments Petitioner intends
18 to make in this case, Seaside's last-minute change to delete the horse-racing use was
19 not reflected in the EIR analysis of the project's consistency with those the
20 jobs/housing ratio policies in the Reuse Plan. As another example, Seaside's failure
21 to prepare and adopt the Reuse Plan's required oak woodlands management plan
22 before Seaside approved the project shows that Seaside is acting inconsistently with
23 the Reuse Plan. Many of the Reuse Plan policies and procedures are environmental
24 mitigations in the Fort Ord Reuse Plan. Seaside has failed to adopt numerous
25 material policies and programs required of Seaside. Keep Fort Ord Wild's interests
26 and the public interest would be adversely affected by Seaside's actions to avoid its
27 responsibilities as a jurisdiction to adopt the policies and programs that it is required to

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1 adopt, while at the same time to claim that the project is consistent with the Reuse
2 Plan.

3 72. Under the Fort Ord Reuse Authority Act, Seaside may not amend its
4 general plan or zoning or approve a development project in a manner that is not
5 consistent with the Reuse Plan. The Monterey Downs project is inconsistent with
6 Reuse Plan policies and programs, including policies and programs intended to
7 protect water supplies, protect biological resources, maintain an adequate
8 jobs/housing balance, and limit unbalanced residential development. Seaside thereby
9 prejudicially abused its discretion under the Fort Ord Reuse Authority Act by adopting
10 findings of consistency with the Fort Ord Reuse Plan that are not supported by the
11 evidence.

12 WHEREFORE, Petitioner prays for entry of judgment as described below.

13 **PRAYER**

14 **WHEREFORE**, Petitioner prays for:

15 1. A peremptory writ of mandate directing Respondent to (a) vacate and set
16 aside its November 10, 2016 resolution certifying the environmental impact report for
17 the project, (b) prepare, circulate and consider a legally adequate environmental
18 impact report and otherwise fully comply with the California Environmental Quality Act
19 in any subsequent action taken to consider the project, and (c) vacate its November
20 2016 resolutions of approval due to lack of compliance with the California
21 Environmental Quality Act, California Planning and Zoning Laws, and the Fort Ord
22 Reuse Authority Act.


23 2. Other relief that prevents Respondent's certification and approvals of
24 November 10, 2016 and November 17, 2016 regarding the Monterey Downs project
25 and the Monterey Downs EIR from taking effect, or relief that requires or results in
26 Respondent withdrawing or invalidating its decisions of November 2016 referenced
27 above, or any portions thereof.

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- 3. An award of attorney fees and costs to Petitioner as permitted by law, including Code of Civil Procedure section 1021.5.
- 4. Temporary and permanent injunctive relief.
- 5. Such other and further relief that the Court considers just and proper.

Dated: November 28, 2016 STAMP | ERICKSON



by: Molly Erickson

Attorneys for Petitioner
Keep Fort Ord Wild

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VERIFICATION

I, Michael Salerno, declare as follows:

I am the authorized representative of Keep Fort Ord Wild, petitioner in the above matter. I have read the petition in this matter, and know the contents thereof. The same is true of my own knowledge, except as to matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed this 28th day of November, 2016, in Marina, California.

 11/28/16

Michael Salerno

Michael W. Stamp
Molly Erickson

STAMP | ERICKSON
Attorneys at Law

479 Pacific Street, Suite One
Monterey, California 93940
T: (831) 373-1214
F: (831) 373-0242

November 23, 2016

Lesley Milton-Rerig, City Clerk
Craig Malin, City Manager
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

Subject: Notice of intent to initiate litigation – City actions to certify the environmental impact report (EIR) for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (SCH NO. 2012091056), approve the project, and take related actions

Dear City of Seaside:

This is written notice that Keep Fort Ord Wild intends to file a petition and complaint under the California Environmental Quality Act and other laws to challenge the actions of the Seaside City Council on November 10, 2016 and November 17, 2016 with regard to the certification of the EIR for the Monterey Downs project and the related approvals and actions regarding the project. (See Pub. Resources Code, § 21167.5.) Seaside recently changed the name that Seaside calls the Monterey Downs project; the names of the EIR and the specific plan remain unchanged. If you have any questions about which project we mean, please feel free to contact me.

Keep Fort Ord Wild has written numerous letters to Seaside regarding the project and its environmental impacts, including letters dated June 19, 2015, October 13, 2016 and November 10, 2016, among others, and appeared in person over the years at Seaside workshops and before the Seaside City Council and Planning Commission at hearings on the Monterey Downs project, addressing the significant issues.

Most recently Keep Fort Ord Wild representatives and legal counsel spoke at the City Council meetings of September 29, October 13, and November 10, 2016, and at the Planning Commission meetings of September 7 and September 21, 2016. Keep Fort Ord Wild has identified the problems with the environmental review by Seaside. At the meetings, KFOR has emphasized the basis for its claims and invited Seaside to learn about and discuss the issues with an eye toward settling the matter much earlier in the process. Seaside has undertaken no meaningful review of our submittals and proposals, has not revised its documents to address the concerns we expressed, and has emphatically announced Seaside's intent to proceed. Seaside has full control over its project review and approval schedule. Keep Fort Ord Wild would like to resolve these matters. Keep Fort Ord Wild has offered to meet with Seaside. Despite the efforts of Keep Fort Ord Wild, Seaside has not responded. Keep Fort Ord Wild seeks to have the certification of the EIR vacated, rescinded or otherwise nullified for use for

City of Seaside
November 23, 2016
Page 2

the proposed project, and to have the related project approvals vacated, rescinded, or otherwise nullified. We remain willing to meet with you in hopes that the matter can be resolved. If you would like to do so, please contact me promptly.

Thank you.

Very truly yours,

STAMP | ERICKSON


Molly Erickson

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF MONTEREY

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action. My business address is 479 Pacific Street, Suite One, Monterey, California 93940.

On November 23, 2016, I served the document described as follows:

Letter to City of Seaside regarding Notice of intent to initiate litigation – City actions to certify the environmental impact report (EIR) for the Monterey Downs and Monterey Horse Park and Central Coast Veterans Cemetery Specific Plan (SCH NO. 2012091056), approve the project, and take related actions


(X) by placing a true copy thereof enclosed in a sealed envelope with first class postage fully prepaid and addressed as shown below, and depositing it with the United States Postal Service.

Addressed as follows:

Lesley Milton-Rerig, City Clerk
Craig Malin, City Manager
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

Executed and mailed on November 23, 2106 at Monterey, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Molly Erickson