

**MEMORANDUM OF AGREEMENT
REGARDING HABITAT MANAGEMENT ON PORTIONS OF THE
PARKER FLATS RESERVE AT THE FORMER FORT ORD,
CALIFORNIA**

This Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the former Fort Ord, California (this "Agreement") is made and entered into by and among the **FORT ORD REUSE AUTHORITY** ("FORA"), the **COUNTY OF MONTEREY** ("County"), and **UCP EAST GARRISON, LLC** ("UCP") (each a "Party" and collectively, as the "Parties").

WITNESSETH THAT:

WHEREAS, FORA is a public corporation of the State of California created for the purpose of planning for, financing, and managing the transition of the property comprising the former Fort Ord military installation (the "Former Fort Ord") from military to civilian use by, among other things, facilitating the transfer of Former Fort Ord property from the United States Army (the "Army") to local governmental entities or their designees;

WHEREAS, County is a political subdivision of the State of California, which agency has been designated by the *Fort Ord Reuse Plan* (June 13, 1997) (the "Reuse Plan"), the Economic Development Conveyance Agreement between FORA and the Army dated June 20, 2000, and the Implementation Agreement between FORA and County dated May 8, 2001, as currently amended, to receive certain property from FORA that has been or will be transferred to FORA from the Army;

WHEREAS, UCP is a Delaware limited liability company and the private developer of the East Garrison Project located on the Former Fort Ord and within the unincorporated portion of the County of Monterey;

WHEREAS, FORA has already received or will soon receive fee title to certain land parcels of the Former Fort Ord from the Army pursuant to the Reuse Plan (the "FORA Property");

WHEREAS, pursuant to the Reuse Plan, FORA already has conveyed to County the following parcels of FORA Property on the Former Fort Ord: Parcels L5.7, L20.2.1 and portions of E19a.3 and E19a.4 (hereinafter referred to collectively as the "County North Property");

WHEREAS, Parcel E19a.4, a portion of which has been transferred to the County as part of the County North Property, is an approximately 379-acre parcel which is subject to development restrictions as "Habitat Reserve" under the *Installation Wide Multispecies Habitat Management Plan for the Former Fort Ord, California* (dated 1997) ("HMP"), as that HMP has been amended by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker Flats Land Use Modification (Agreement #A-09555, known as the "Land Swap Agreement," approved by the County Board of Supervisors on September 23, 2003);

WHEREAS, the County North Property includes the northerly approximately 134 acres of Parcel E19a.4 as depicted in **Exhibit "A"** attached hereto, which the Parties desire to preserve as habitat for the California tiger salamander (*Ambystoma californiense*) ("CTS") subject to the terms of this Agreement (the "CTS Preservation and Habitat Restoration Area");

WHEREAS, FORA has undertaken the preparation of the *Fort Ord Multispecies Habitat Conservation Plan* ("Fort Ord HCP"), and Parcel E19.a.4 has been designated as the "Parker Flats Reserve" habitat management area in the draft Fort Ord HCP. The CTS Preservation and Habitat Restoration Area comprises a portion of the Parker Flats Reserve habitat management area included in the draft Fort Ord HCP; however, the Parties recognize that the draft Fort Ord HCP has not yet been adopted and could change in the course of the environmental review and adoption proceedings;

WHEREAS, all necessary environmental assessments for the East Garrison Project were conducted and all then required permits for the East Garrison Project were issued and obtained, prior to the initiation of physical construction. Although CTS was not listed under California law as endangered or threatened at the time of environmental review and approval of the East Garrison Project and no Section 2081 incidental take permit for CTS was then required, FORA has since that time been preparing the Fort Ord HCP in coordination with United States Fish and Wildlife Service ("USFWS") and the California Department of Fish and Wildlife ("CDFW"). This Fort Ord HCP will include mitigation measures relating to CTS. The draft Fort Ord HCP is anticipated to be released for public review in January 2015;

WHEREAS, because UCP intends to construct the East Garrison Project in reliance on the project approvals obtained prior to agency approval of the Fort Ord HCP and USFWS issuance of the associated Section 10(a)(1)(B) incidental take permit and CDFW issuance of the associated Section 2081 incidental take permit (collectively, the "Fort Ord HCP ITPs"), CDFW recommended that UCP obtain a separate Section 2081 incidental take permit to cover the possibility of take of CTS in the interim, with the understanding that such Section 2081 incidental take permit also would require a conservation easement and, until the Fort Ord HCP is adopted and USFWS and CDFW issue the Fort Ord HCP ITPs, a fund for the interim habitat management of the CTS Preservation and Habitat Restoration Area (the "Interim Habitat Management Fund");

WHEREAS, subject to the terms and conditions set forth below, FORA and County intend to allow the CTS Preservation and Habitat Restoration Area to be preserved and managed for its value as habitat for the CTS in accordance with this Agreement and the policies set forth in the Reuse Plan, and the HMP, until the Fort Ord HCP is adopted and USFWS and CDFW issue the Fort Ord HCP ITPs;

WHEREAS, FORA and County intend to record a conservation easement over the CTS Preservation and Habitat Restoration Area to ensure the preservation and management of the property for the purposes set forth in the Reuse Plan and the HMP (the "Conservation Easement") until such time as the HCP is adopted and USFWS and CDFW issue the Fort Ord HCP ITPs;

WHEREAS, the Reuse Plan (Program C-1.2) requires local jurisdictions to preserve sufficient right-of-way for anticipated future travel demands which includes a conceptual roadway improvement, known as the "Eastside Road," to accommodate vehicular traffic resulting from base-wide implementation of land development under the policies of the Reuse Plan. (Reuse Plan, Section 4.2.2.3; Program B-1.1.) The project is identified as a "Basewide Mitigation" in the Circulation Element of the Reuse Plan, its associated Final EIR/S, and the *FORA Capital Improvement Program (CIP)*;

WHEREAS, the currently-proposed alignment of the proposed Eastside Road is adjacent to the southern portion of the approximately 333-acre Parcel S.1.3.2 (APN 031-101-023), which is presently owned by FORA, and which is designated for future conveyance to California State University, Monterey Bay ("CSUMB") for use under its 2007 *Master Plan* as "Open Space," and which is proximate and adjacent to the CTS Preservation and Habitat Restoration Area;

WHEREAS, the alignment and location of the proposed Eastside Road has not been finalized and may change;

WHEREAS, subject to the terms and conditions set forth below and until USFWS and CDFW issue the Fort Ord HCP ITPs, County does not object to the CTS Preservation and Habitat Restoration Area being restored and managed for its CTS habitat value in accordance with the terms set forth in this Agreement and consistent with the Reuse Plan and the HMP in conjunction with the restoration and management of other preservation and habitat restoration areas in the East Garrison portion of the Former Fort Ord;

WHEREAS, habitat management requirements and funding for the CTS Preservation and Habitat Restoration Area are set forth in the Incidental Take Permit No. 2081-_____ (dated, _____, 2014, as it may be amended pursuant to the terms of this Agreement) issued by the CDFW to UCP for the incidental take of the CTS at the East Garrison Project site (the "UCP Incidental Take Permit") and the *East Garrison CTS Interim Mitigation Monitoring Plan, Monterey County*, Live Oak Associates, Inc., December 19, 2013, created thereunder and attached hereto as **Exhibit "B"** (the "Interim Mitigation Plan") as it may be amended pursuant to the terms of this Agreement;

WHEREAS, UCP has paid development impact fees in the amount of more than Two Million Five Hundred Thousand Dollars (\$2,500,000) of which a substantial portion are fees for the funding and long-term management of the habitat management areas identified in the Fort Ord HCP when it is approved and USFWS and CDFW issue the Fort Ord HCP ITPs, which is anticipated to include the Parker Flats Reserve habitat management area, identified in the draft Fort Ord HCP; and

WHEREAS, nothing in the UCP Incidental Take Permit or the Interim Mitigation Plan makes the County legally or financially responsible for implementation of the Interim Mitigation Plan or adherence to the UCP Incidental Take Permit requirements, which responsibility remains with UCP; provided, however, that upon UCP's deposit of the Interim Habitat Management

Fund into escrow as provided in this Agreement, County shall allow the implementation of the Interim Mitigation Plan for the CTS Preservation and Habitat Restoration Area.

NOW, THEREFORE, based on the foregoing and in consideration of the mutual terms, covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. AGREEMENT

A. LONG-TERM HABITAT MANAGEMENT

1. Management of CTS Preservation and Habitat Restoration Area. FORA and County agree that the CTS Preservation and Habitat Restoration Area described and depicted in Exhibit A shall be protected and managed for its CTS habitat value in accordance with the terms of this Agreement and the policies set forth in the Reuse Plan, and the HMP until the Fort Ord HCP is adopted and CDFW and USFWS issue the Fort Ord HCP ITPs.

2. Eastside Road. Notwithstanding the foregoing, this Agreement does not preclude any alignment of the proposed Eastside Road provided such proposed Eastside Road alignment does not extend into the CTS Preservation and Habitat Area.

3. Management and Maintenance Responsibilities. Subject to the provisions of Section 1.A.4 of this Agreement, FORA shall assume the long-term habitat management and maintenance responsibilities for the CTS Preservation and Habitat Restoration Area when USFWS and CDFW issue the Fort Ord HCP ITPs, subject to the terms of the adopted Fort Ord HCP. County's obligations to perform interim habitat management and UCP's obligation to fund the interim habitat management shall cease when FORA assumes the long-term habitat management and maintenance responsibilities for the CTS Preservation and Habitat Restoration Area. FORA's obligation may be transferred by FORA to a suitable land manager, such as a future HCP Joint Powers Authority that will ensure implementation of the Fort Ord HCP. This obligation shall not commence until such time as FORA receives a factually correct written notice that USFWS and CDFW have issued the Fort Ord HCP ITPs.

4. Limitations. FORA's duty (or that of the approved land manager designee) to implement the long-term habitat management and maintenance responsibilities for the CTS Preservation and Habitat Restoration Area as outlined in this Agreement is limited by the amount of the Fort Ord HCP fees collected

B. INTERIM HABITAT MANAGEMENT

1. Interim Management Obligation. Commencing as soon as practicable, but in all events, within six (6) months after the later of (i) County's acceptance and recordation of the grant deed conveying the property containing the CTS Preservation and Habitat Restoration Area to County and (ii) CDFW's issuance of the UCP Incidental Take Permit, and subject at all times to UCP's compliance with the funding requirements described in Sections I.B.4 and I.B.5 of this

Agreement, County (or its designee) shall manage the CTS Preservation and Habitat Restoration Area in accordance with the Interim Mitigation Plan and this Agreement, on an interim basis until the Fort Ord HCP is adopted and the USFWS and CDFW issue the Fort Ord HCP ITPs, but in no event exceeding five (5) years from the date of recordation of the Conservation Easement, unless otherwise extended in accordance with Section I.C.1.c. below.

2. UCP Responsibility. Attainment of the Interim Mitigation Plan success criteria is solely the responsibility of UCP in accordance with this Section I.B of this Agreement.

3. Intentionally omitted.

4. Deposit of Funds. Pursuant to its obligations as the permittee under the UCP Incidental Take Permit, UCP shall deposit funds into the Interim Habitat Management Fund, in accordance with Section I.B.5 of this Agreement for the implementation of the Interim Mitigation Plan. As provided for under the UCP Incidental Take Permit, County shall hold and manage this Interim Habitat Management Fund in a separate account unless another entity is designated by CDFW for this purpose.

5. Escrow. Within five (5) business days of CDFW's issuance of the UCP Incidental Take Permit, UCP shall deposit into First American Title Company Escrow No. 2015131-08 (the "Escrow") the total Interim Habitat Management Fund amount of One Hundred Four Thousand, One Hundred Fifty Five Dollars (\$104,155) to be paid to County as a fund sufficient to implement the Interim Mitigation Plan for the CTS Preservation and Habitat Restoration Area for a period not to exceed five (5) years subject to the terms and conditions set forth in this Agreement and subject to augmentation of funds and/or extension of the five year period under the terms set forth below, and all Parties shall deliver signed escrow instructions consistent with the terms of this Agreement. The amount of the Interim Habitat Management Fund is based upon the cost estimates contained in the Interim Mitigation Plan and may be subject to revision pending CDFW's final approval of the Interim Mitigation Plan.

- a. Escrow shall transfer the Interim Habitat Management Fund to County for deposit into a separate interest-bearing account solely for purposes of the interim habitat management for the CTS Preservation and Habitat Restoration Area.
- b. In the event that County notifies UCP that the cost to implement the Interim Mitigation Plan exceeds the Interim Habitat Management Fund, UCP shall deposit into Escrow additional funds to pay for such additional costs within ten (10) days receipt of such notice. If there are any inconsistencies between the escrow instructions and this Agreement, this Agreement shall control.
- c. In the event that USFWS or CDFW has not issued all of the Fort Ord HCP ITPs on or before five (5) years from the effective date of this Agreement (as defined in the final paragraph Section I.C.1(a) of this Agreement), UCP shall deposit into Escrow such additional amount necessary to cover the costs of implementation of the Mitigation Plan for the Extended Term (as defined

below in Section 1.C.1(c) until the USFWS and CDFW issue the Fort Ord HCP ITPs.

6. Conservation Easement. Within five (5) business days of CDFW's issuance of the UCP Incidental Tax Permit and upon UCP's deposit of the Interim Habitat Management Fund into Escrow, as the then current owner of the CTS Preservation and Habitat Restoration Area, County shall convey and submit for recordation a Conservation Easement over the CTS Preservation and Habitat Restoration Area for the sole purpose of allowing UCP to fulfill the UCP Incidental Take Permit and Interim Mitigation Plan obligations. Recording fees, if any, shall be paid out of the Interim Habitat Management Fund. The Conservation Easement shall substantially be in the form attached hereto as **Exhibit "C."** Payment of the Interim Habitat Management Fund and conveyance of the Conservation Easement is contingent upon issuance by CDFW of the UCP Incidental Take Permit and CDFW written approval of the Interim Mitigation Plan reflecting the size and location of the Conservation Easement as described in the Recitals and **Exhibit A** and otherwise consistent with this Agreement. UCP shall deposit the Interim Habitat Management Fund, and County shall submit for recordation the Conservation Easement, within five (5) business days of CDFW's issuance of the UCP Incidental Take Permit and approval of the Interim Mitigation Plan. UCP shall use its best efforts to obtain such approval as quickly as feasible.

7. County Use of Interim Habitat Management Funds. County shall periodically withdraw sufficient funds from the Interim Habitat Management Fund as expenses are incurred for that fiscal year in accordance with the Interim Mitigation Plan.

8. Return of Funds. County shall return and release to UCP any unused funds in the Interim Habitat Management Fund remaining for the Interim Mitigation Plan within thirty (30) days of the later of the following events: USFWS and CDFW issuance of the Fort Ord HCP ITPs or the final disposition of any litigation challenging the Fort Ord HCP and/or Fort Ord HCP ITPs.

C. MISCELLANEOUS TERMS

1. Effective Date and Term.

- a. This Agreement shall not be effective until it has been signed on behalf of each of the Parties by their respective authorized representatives ("Effective Date").
- b. The term of this Agreement (the "Term") shall commence upon the Effective date and continue for a period of five (5) years, unless (and then only to the extent) such date is extended pursuant to Section 1.C.1.c.
- c. In the event that USFWS or CDFW has not issued all of the Fort Ord HCP ITPs on or before five (5) years from the Effective Date, the Term may be extended until such time as the USFWS or CDFW issues all of the Fort Ord HCP ITPs or until such period as the parties mutually agree (the "Extended

Term"). Upon receipt of information from FORA that the Fort Ord HCP ITPs will not be issued prior to the expiration of the Agreement, UCP shall provide notice to the County and FORA of the request for an extension within sixty (60) days prior to the expiration of the Agreement.

2. Modification or Termination. This Agreement may be modified or terminated only as mutually agreed in writing by the Parties. In no event shall UCP agree to any modification or termination without first securing the approval of, or a statement in writing of "no objection" from, CDFW.

3. Assignment. Any or all obligations created by this Agreement for any individual Party may, as the law permits, be transferred or assigned by that Party to a third party; provided, however, any such transfer or assignment must be approved in writing by the other Parties, which approval shall not be unreasonably withheld, conditioned or delayed.

4. Counterparts. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original; and counterpart signature pages may be detached and assembled to form a single original agreement. This Agreement may be executed and delivered by the exchange of electronic facsimile or portable document format (.pdf) copies or counterparts of the signature page which shall be considered the equivalent of ink signature pages for all purposes.

5. Mutual Cooperation. Each of the Parties agrees to use reasonable and good faith efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with any and all other Parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement including signing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to carry out the intent and purpose of this Agreement. Each Party agrees to exercise good faith and fair dealing in the performance of its obligations under this Agreement.

6. Parties' Understandings. This Agreement is a full and complete statement of the Parties' understanding with respect to the matters set forth in this Agreement. This Agreement supersedes and replaces any and all prior or contemporaneous agreements, discussions, representations, or understandings between the Parties relating to the subject matter of this Agreement, whether oral or written.

7. Construction. This Agreement shall be construed as a whole and in accordance with its fair meaning. The organization and format of this Agreement (including the numbering of, or the captions, headings, or titles to, any sections or paragraphs of this Agreement) are intended solely for convenience of reference and shall not be used to construe the scope, meaning, intent, or interpretation of any part of this Agreement. Whenever used in this Agreement, the word "including" shall be deemed to be followed by the words "but not limited to." Each number, tense, and gender used in this Agreement shall include any other tense, number, or gender where the context and references so require. Any pronoun used in this Agreement shall be read in the singular or plural number and in such gender as the context may

require. It is understood and agreed by the Parties that this Agreement has been arrived at through negotiation and deliberation by the Parties, with each Party having had the opportunity to review and revise this Agreement and to discuss the terms and effect of this Agreement with counsel of its choice. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. Any provision of this Agreement held to be void or unenforceable under applicable law shall be deemed stricken and all remaining provisions of this Agreement shall continue to be valid and binding upon the Parties.

8. Legal Action. In the event of any action or proceeding in law or in equity arising out of or in connection with this Agreement or to enforce or interpret any of the terms of this Agreement, the prevailing Party or Parties in such action shall be entitled to have and recover from the non-prevailing Party or Parties reasonable attorneys' fees, including fees on appeal, in addition to such other relief as may be granted. Each Party shall bear its own attorneys' fees and costs incurred in the negotiation and implementation of this Agreement.

9. Authority. Each person signing this Agreement on behalf of a Party expressly represents and warrants that he or she has received full and complete authority to sign this Agreement on behalf of that Party, whether the Party is an individual or an entity, by the exercise of any necessary powers governing the execution of contracts by that Party and that no further approval of any kind is necessary to bind that Party to this Agreement.

II. INDEMNITY

UCP shall indemnify and hold County and FORA, and their officers, directors, partners, affiliates, principals, employees, agents, successors and permitted assigns (each an "Indemnified Party"), harmless from and against all claims, demands, losses, damages, liabilities, penalties, fines, assessments and actions and all related attorneys' fees and expenses and costs of litigation (collectively "Claims") for injury or death of any person or loss of or damage to tangible real or tangible personal property or the environment and from and against any Claims arising from or related to the approval of this Agreement. UCP shall also defend, indemnify and hold the County and its officers, directors, partners, affiliates, principals, employees, agents, successors and permitted assigns (each an "Indemnified Party") from and against any Claims brought under the Conservation Easement. The County or FORA shall notify UCP in writing promptly upon learning of any Claim for which indemnification may be sought, provided that the failure to do so shall not affect the indemnity except to the extent UCP is prejudiced thereby. UCP shall have control of the defense or settlement provided that no settlement that materially affects the obligations under this Agreement of the County or FORA shall be entered into without the affected Party's prior written approval, which shall not be unreasonably withheld or delayed, and provided further that the Indemnified Party shall have the right to participate in the defense or settlement with counsel of its own selection and at its sole expense. The Indemnified Party shall reasonably cooperate with the defense and at UCP's expense. Nothing in this Section II shall be understood or construed to mean that UCP shall indemnify the County or FORA or any of their respective officers, directors, employees or agents for any wrongful acts, willful misconduct,

active negligence or omission of the County, FORA or their officers, employees, agents, or their consultants or contractors or solely as a result of County's or FORA's ownership of the County North Property.

III. NOTICES

Formal notices, demands, and communications among the Parties shall not be deemed given unless sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt or facsimile, to the principal office of the Parties as follows:

Fort Ord Reuse Authority:

ATTN: Michael A. Houlemard, Jr.,
Executive Officer
920 2nd Avenue, Suite A
Marina, CA 93933

County:

ATTN: Carl Holm, Acting Director
Monterey County Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

UCP East Garrison, LLC

James W. Fletcher
Chief Operating Officer
UCP East Garrison, LLC
Benchmark Communities
99 Almaden Blvd, Suite 400, San Jose, CA 95113

With a copy to:

UCP East Garrison, LLC

Allen Bennett, Esq.
Vice President and General Counsel
548 W. Cromwell, Suite 104
Fresno, CA 93711

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

In addition, a copy of all notices under this Agreement shall be contemporaneously provided to CDFW at the following address:

California Department of Fish and Wildlife
ATTN: Habitat Conservation Manager
Central Region
1234 E. Shaw Avenue
Fresno, CA 93710

IV. LIST OF EXHIBITS

The following listed Exhibits are made a part of this Agreement:

- Exhibit A: Map entitled "East Garrison CTS Preservation and Habitat Restoration Area," Live Oak Associates, Inc. November 22, 2013 updated September 2, 2014
- Exhibit B: East Garrison CTS Interim Mitigation Monitoring Plan, Live Oak Associates, Inc., December 19, 2013 updated September 2, 2014
- Exhibit C: Form of Conservation Easement Deed (CTS Preservation and Habitat Restoration Area)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth beside the signature of each, the latest of which shall be deemed to be the effective date of this Agreement.

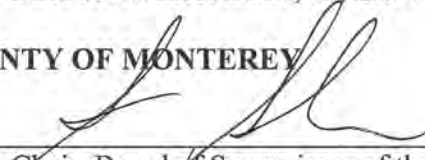
FORT ORD REUSE AUTHORITY

Date: _____

By: _____
Michael A. Houlemard, Jr., Executive Officer


COUNTY OF MONTEREY

Date: 1-27-15

By: 
Chair, Board of Supervisors of the County of Monterey

UCP EAST GARRISON, LLC,
a Delaware limited liability company

Date: 1-29-15

By: 
Title: Division President

Date: _____

By: _____
Title: _____

California Department of Fish and Wildlife
ATTN: Habitat Conservation Manager
Central Region
1234 E. Shaw Avenue
Fresno, CA 93710

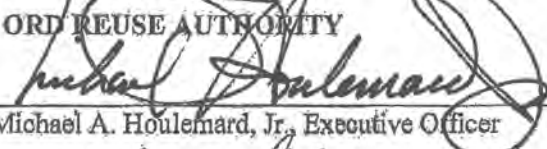
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IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth beside the signature of each, the latest of which shall be deemed to be the effective date of this Agreement.

Date: February 2, 2015

FORT ORD REUSE AUTHORITY
By: 
Michael A. Houlemard, Jr., Executive Officer

Date: 1-27-15

COUNTY OF MONTEREY
By: 
Chair, Board of Supervisors of the County of Monterey

UCP EAST GARRISON, LLC,
a Delaware limited liability company

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Title: _____




Exhibit A

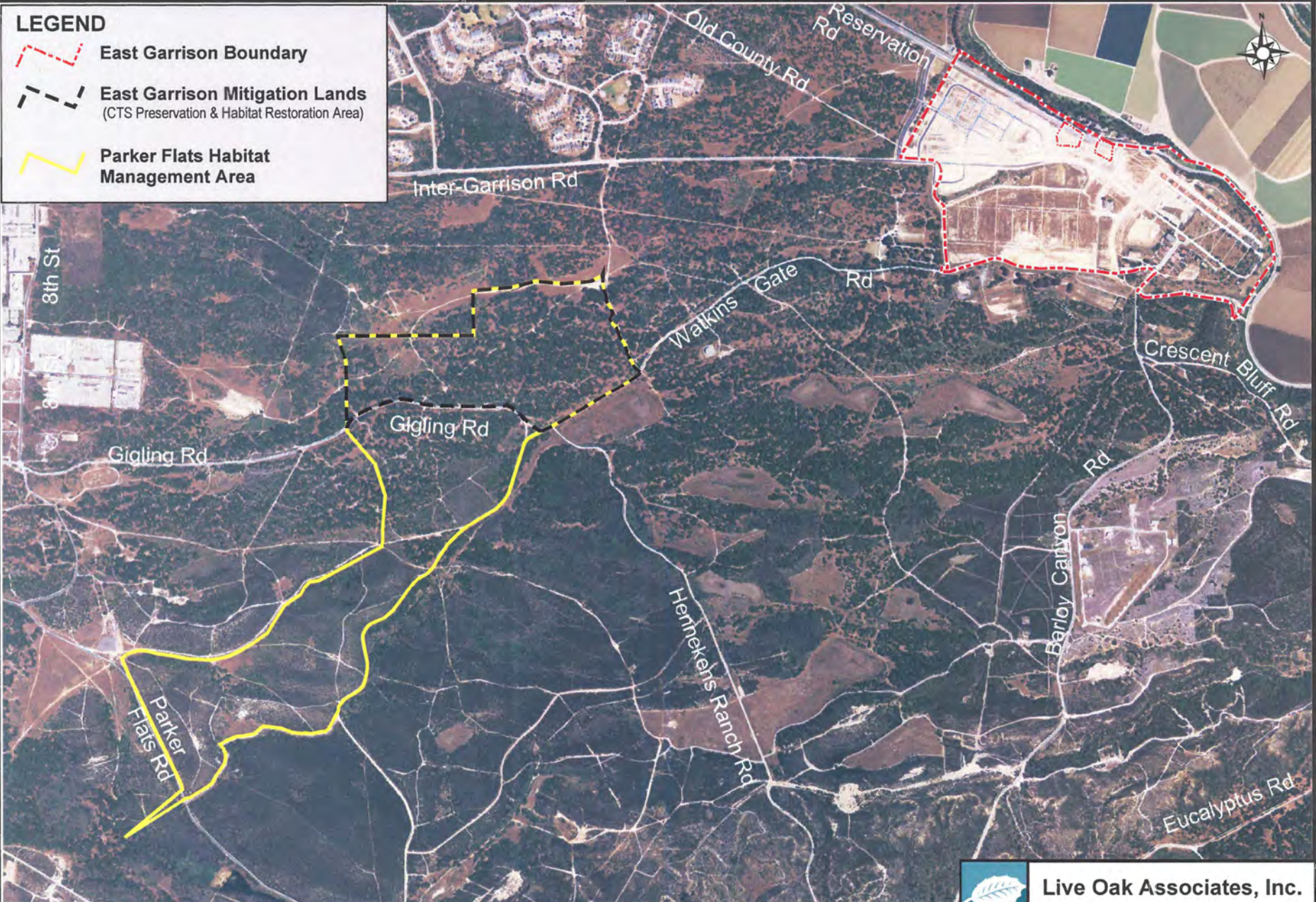
***“CTS Preservation and Habitat
Restoration Area”***

Live Oak Associates, Inc.

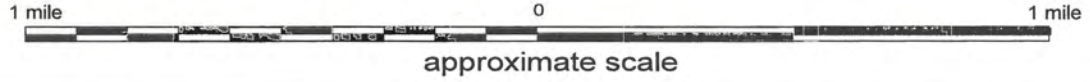
November 22, 2013 Updated September 2, 2014

LEGEND

-  East Garrison Boundary
-  East Garrison Mitigation Lands
(CTS Preservation & Habitat Restoration Area)
-  Parker Flats Habitat Management Area



Aerial photo courtesy of USDA-FSA Aerial Photography Field Office 2012




			
Live Oak Associates, Inc.			
East Garrison MMP			
CTS Preservation & Habitat Restoration Area			
Date	Updated	Project #	Exhibit
11/22/2013	9/2/2014	1576-02	A

Exhibit B

East Garrison CTS Interim Mitigation Monitoring Plan

Live Oak Associates, Inc.

December 19, 2013 Updated September 2, 2014



LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

EAST GARRISON

CTS INTERIM MITIGATION MONITORING PLAN MONTEREY COUNTY, CALIFORNIA

Prepared by

LIVE OAK ASSOCIATES, INC.

Rick Hopkins, Ph.D., Principal and Senior Wildlife Ecologist
Katrina Krakow, M.S., Project Manager and Staff Ecologist

Prepared for

UCP, LLC

6489 Camden Avenue, Suite 204
San Jose, CA 95120

December 19, 2013 updated September 2, 2014

PN 1576-02

San Jose: 6840 Via Del Oro, Suite 220 • San Jose, CA 95119 • Phone: (408) 224-8300 • Fax: (408) 224-1411
Oakhurst: P.O. Box 2697 • 33930 Sierra Way, Suite B • Oakhurst, CA 93644 • Phone: (559) 642-4880 • (559) 642-4883
Bakersfield: 8200 Stockdale Highway, M10-293 • Bakersfield, CA 93311 • (661) 889-2084
Truckee: 11050 Pioneer Trail, Suite 203 • Truckee, CA 96161 • Phone: (530) 214-8947

www.loainc.com

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1 INTRODUCTION

The Applicant, UCP East Garrison, LLC and any subsidiaries and affiliates or assignees, intends to construct up to 1,470 residences to be built on 244 gross acres (125 net acres), in unincorporated Monterey County, California. The site is approximately 2 miles east of the City of Marina and 5.5 miles southwest of the City of Salinas and is adjacent to the former Fort Ord (FFO) in an area known as East Garrison (Figure 1). The construction and operation of the Project may result in the incidental take of species listed as threatened or endangered under the Endangered Species Act (ESA) and the California Endangered Species Act (CESA).

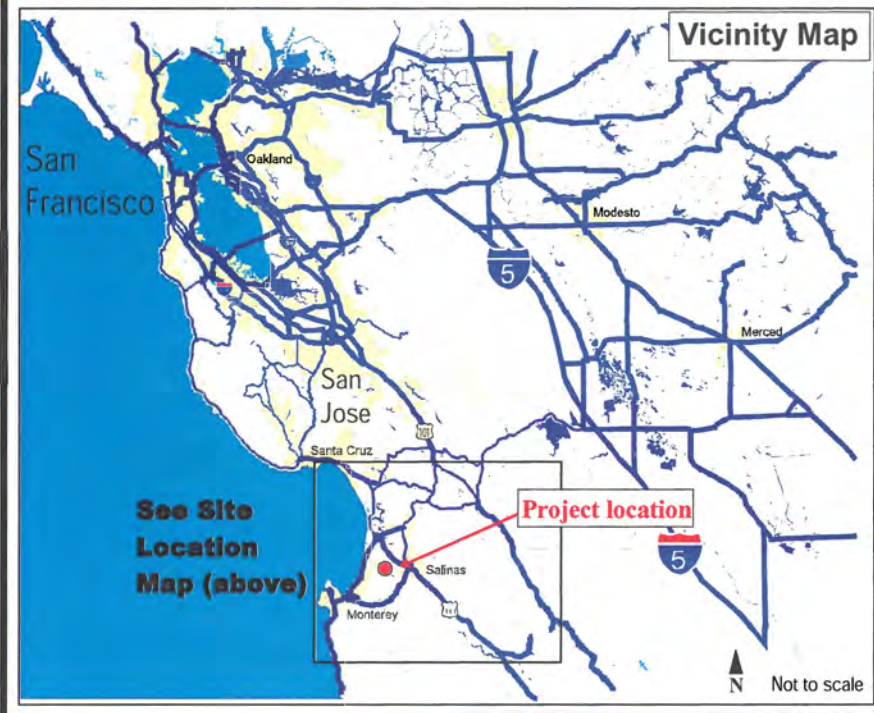
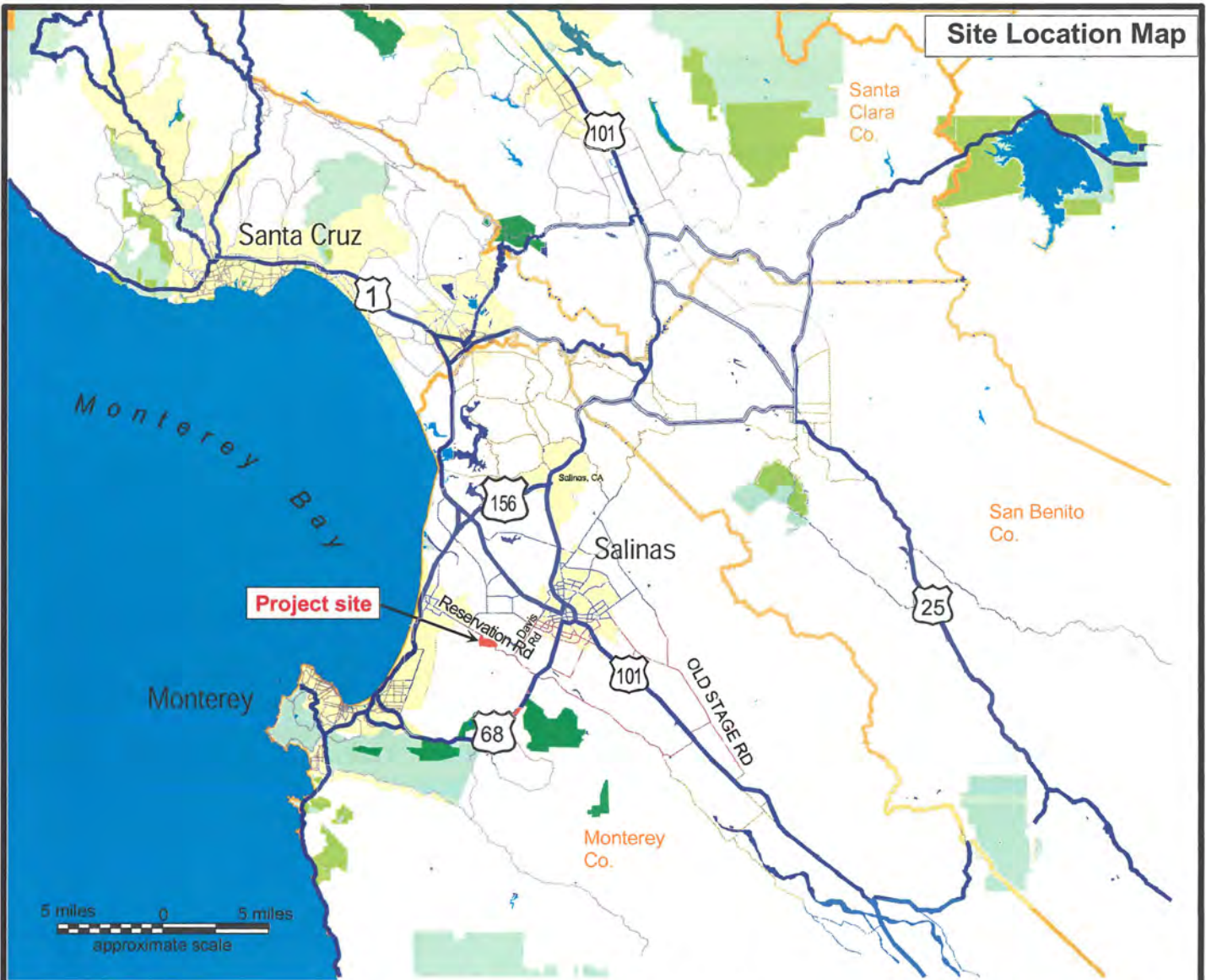
Live Oak Associates, Inc. (LOA) has prepared the following CTS interim mitigation monitoring plan (MMP) for a 134-acre portion of Parker Flats Reserve proposed as mitigation land, hereafter East Garrison Mitigation Lands, to compensate for impacts to the California tiger salamander (*Ambystoma californiense*) habitat on the East Garrison Specific Plan project site, including a history of conservation actions to date on Parker Flats Reserve.

This plan accounts for up to five years of interim management and monitoring of the East Garrison Mitigation Lands. In order to make this MMP both consistent and seamless with the Draft HCP in preparation, UCP East Garrison, LLC communicated with both the County of Monterey and the preparers of the Draft HCP (Denise Duffy & Associates, Inc.). Therefore, proposed management and monitoring actions have been designed to be consistent and seamless with the Draft HCP.

1.1 HISTORY OF PARKER FLATS RESERVE, EAST GARRISON MITIGATION LANDS, AND CONSERVATION ACTIONS

Much of the former Fort Ord lands have been cleared of ordnance and transferred to various agencies. The mitigation lands for the East Garrison Specific Plan project includes a subset of approximately 134 acres of the northern parcel of Parker Flats Habitat Management Area (otherwise referenced as Parker Flats Reserve) and is referred to as East Garrison Mitigation Lands. Parker Flats Habitat Management Area and the East Garrison Mitigation Lands are former Fort Ord lands that were designated as mitigation land under the Fort Ord Habitat

Conservation Plan; the East Garrison Mitigation Lands portion are proposed as mitigation lands for the East Garrison Specific Plan project site as shown in




 Live Oak Associates, Inc.		
East Garrison MMP Site / Vicinity Map		
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Figure 2. The Army, County of Monterey, and FORA have been implementing habitat mitigation and preservation measures on former Fort Ord under a Habitat Management Plan since 1997, and these measures will continue to be implemented until the Fort Ord HCP is adopted. In the meantime, this MMP is designed to fill the gap between the HMP and the HCP and provide for the implementation of avoidance and minimization measures on the East Garrison Mitigation Lands portion of the Parker Flats Habitat Management Area as further discussed below.




A number of documents pertaining to Parker Flats Reserve and former Fort Ord were consulted to prepare an appropriate CTS interim mitigation monitoring plan for the preservation of the East Garrison Mitigation Lands. In order to make this MMP consistent with the Draft HCP in preparation, UCP East Garrison, LLC communicated with both the County of Monterey and the preparers of the Draft HCP (Denise Duffy & Associates, Inc.). Therefore, proposed management and monitoring actions have been designed to be consistent and seamless with the Draft HCP. The following describes the avoidance and mitigation measures and other applicable restrictions set forth in the documents applicable to the East Garrison Mitigation Lands: USFWS Biological Opinion 2005, Deed Restriction 2012, Fort Ord Base Reuse Plan 1997, Installation-wide Multispecies Habitat Management Plan 1997, Assessment East Garrison-Parker Flats Land Use Modifications; Fort Ord, California 2002, Biological Evaluation of Army Actions that May Affect California Tiger Salamander and Contra Costa Goldfields Critical Habitat; Former Fort Ord, Monterey County, California 2004, and East Garrison Subsequent EIR. These documents primarily discuss “Parker Flats” as mitigation area within Fort Ord. A portion of Parker Flats Reserve has been designated as mitigation land for the Fort Ord HCP, and East Garrison Mitigation Lands are sited within that designated land. Consequently, discussions pertaining to “Parker Flats” also pertain to East Garrison Mitigation Lands, as these lands are a subset of Parker Flats Reserve.

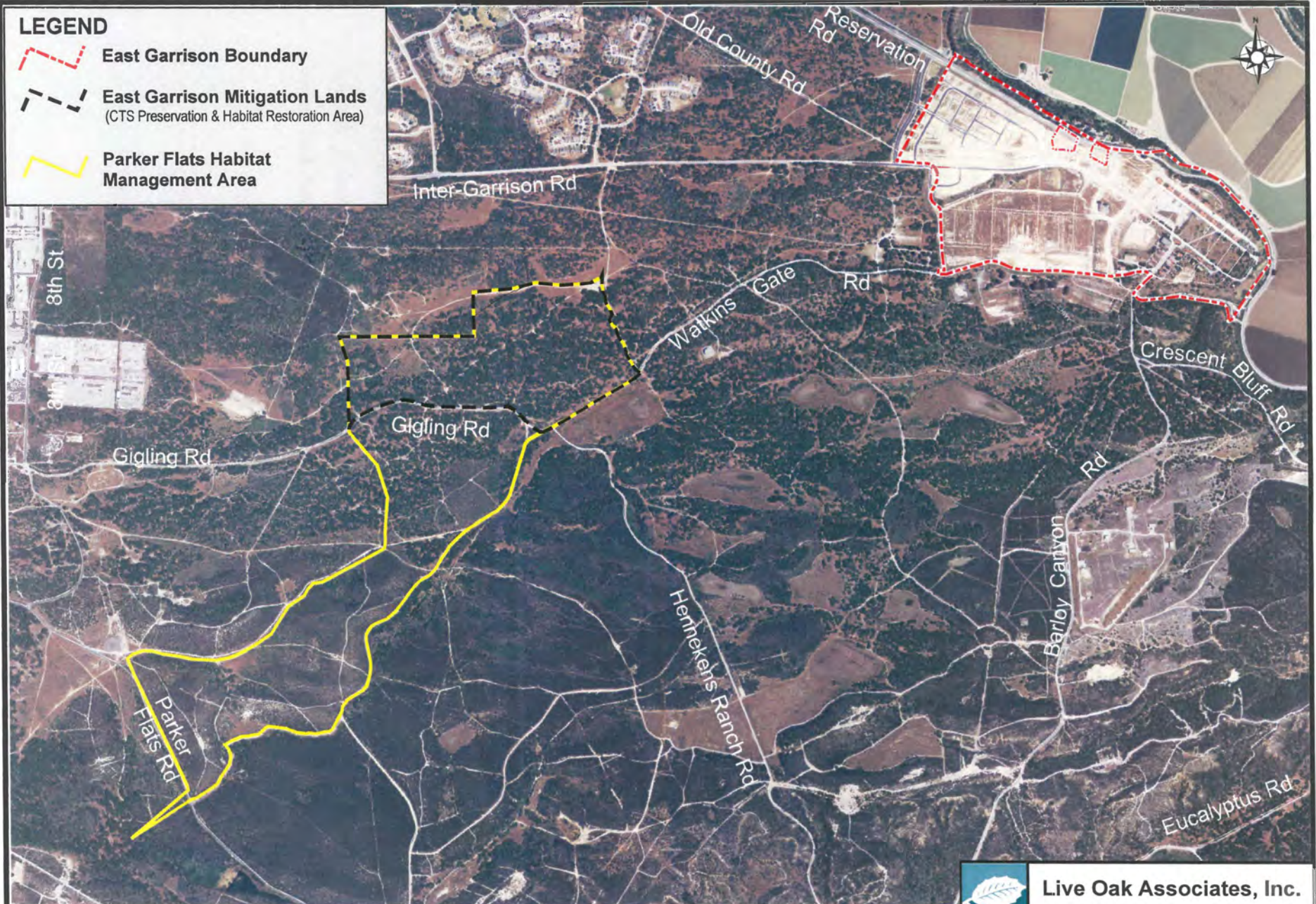
1.1.1 Biological Opinion 2005

According to the Biological Opinion (BO) issued by the USFWS (1-8-04-F-25R; 2005), Parker Flats Reserve is in the “pre-disposal actions” category (as opposed to being in the “disposal and reuse actions” category). This category includes actions such as remedial actions necessary to prepare lands for property transfer. The County recorded a deed restriction on May 24, 2012

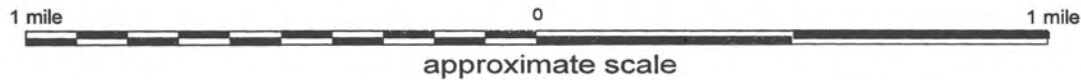
declaring the Owner to be Fort Ord Reuse Authority (FORA). However, the status of active munitions


LEGEND

-  **East Garrison Boundary**
-  **East Garrison Mitigation Lands**
(CTS Preservation & Habitat Restoration Area)
-  **Parker Flats Habitat Management Area**



Aerial photo courtesy of USDA-FSA Aerial Photography Field Office 2012



	Live Oak Associates, Inc.			
	East Garrison MMP CTS Preservation & Habitat Restoration Area			
Date	Updated	Project #	Figure #	
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clean-up on the East Garrison Mitigation Lands property is unknown, as signs on the edges of the property warn of the possibility of explosives past the point of the sign. Therefore, for purposes of this MMP, it is assumed that Parker Flats Reserve (and East Garrison Mitigation Lands) is currently in the “disposal and reuse actions” category with unknown status of munitions clean-up. On page 7 of the BO, the USFWS outline conservation measures for munitions response actions that the Army proposed. This MMP assumes that the Army is currently following these measures. The BO also outlines wetland restoration plan and mitigations (page 8), proposed conservation measures for contaminated soil remediation (page 11), proposed conservation measures for weed and erosion control (page 15), and proposed conservation measures for Parker Flats Habitat Reserve Interim Use (of which the East Garrison Mitigation Lands are a subset) (pages 16-17). The conservation measures for Parker Flats Habitat Reserve Interim Use appear to be limited to maintenance of the fuel breaks and access roads; these maintenance activities are limited to the summer months to avoid impacts to CTS. Maintenance may also occur when necessary to support a prescribed burn or to contain a potential wildfire to Army property. The BO states that all recipients of parcels from the Army have signed the HMP (see Section 1.1.3 below). Page 19 of the BO (USFWS 2005) states that this type of transfer ensures that “entities acquiring parcels designated as Habitat Reserves, Habitat Corridors, or Development with Reserve Areas or Restrictions manage the land in a manner consistent with the HMP”. Page 42 of the BO (USFWS 2005) also describes caretaker actions for interim uses of Parker Flats Habitat Reserve, which includes prescribed burning with no pre-vegetation treatments applied and conducted prior to the rainy season, and road and fuel break maintenance limited to summer months. Other portions of Parker Flats Reserve appears to be in the category of “Borderlands”, and the BO (page 49, USFWS 2005) identifies HMP requirements of Borderlands including “barriers to unauthorized vehicles, measures to prevent erosion, measures to prevent spread of invasive nonnative plant species, and fuel break construction on the development side of the boundary”.

1.1.2 Deed Restriction 2012

A deed restriction was completed on May 24, 2012 declaring the Owner to be FORA, thereby documenting that the conveyance of Parker Flats Reserve (including the area currently defined as

East Garrison Mitigation Lands) from the Army to Fort Ord Reuse Authority has been completed. This deed restriction is governed by the Fort Ord Base Reuse Plan (FORA 2012).

1.1.3 Fort Ord Base Reuse Plan 1997 and Installation-wide Multispecies Habitat Management Plan 1997

The Fort Ord Base Reuse Plan (Reuse Plan; FORA 1997) identifies the Installation-wide Multispecies Habitat Management Plan (HMP; USACE 1997) as providing guidelines for former Fort Ord land; this Plan was developed with input from federal, state, local, and private agencies and organizations. The Reuse Plan (page 1-14; FORA 1997) states that “All recipients of the former Fort Ord lands will be required to abide by the resource conservation and habitat management guidelines and procedures specified in the HMP.” Under the 1997 HMP, Parker Flats was proposed to be managed according to guidelines in the HMP. According to Figure 4-1 (dated 2006) on page 4-2 of the HMP (USACE 1997), Parker Flats was not designated as a habitat reserve under the 1997 HMP, and was designated as an area for development. Subsequently, the Army and FORA approved a land swap agreement as further discussed below which anticipated that Parker Flats would be preserved as a habitat reserve in exchange for the development of East Garrison. Preservation of the East Garrison Mitigation Lands portion of Parker Flats Reserve under this MMP will assure that this area will not be developed and will continue to provide habitat and retain the value of the surrounding contiguous habitat.

Figure 4-1 of the HMP, identifies 5 parcels that comprise a portion of Parker Flats Reserve (E19a.1, E19a.2, E21b.1, E21b.2, and E21b.3). Although species-specific surveys were not conducted for CTS for the HMP, no CTS were observed incidentally within these parcels. Although CTS were observed on adjacent parcels (F1.2, F1.4, and F1.9) and the adjacent Habitat Corridor (parcels L20.2.1 and L20.2.2), the land between East Garrison and Parker Flats Reserve is identified as supporting habitat for CTS (page 4-17 and Appendix B; USACE 1997). More recently, CDFW requested that the HCP Team (i.e., Denise Duffy & Associates, Inc.) estimate the relative value of the upland habitat on the potential conservation lands, including Parker Flat, relying on principles derived from Trenham and Shaffer (2005). The relative value of upland habitat is inversely proportional with distance from a breeding pond. A more recent study (Searcy and Shaffer 2011) has confirmed this inverse relationship with distance from a breeding pond, but its findings suggests a shallower shape of the curve, with more CTS estimating further

from a breeding pond then was detected by Trenham and Shaffer (2005). Subsequently, Denise Duffy & Associates, Inc., based on direction from CDFW, generated a map with four Zones. These Zones relied not only on the shallower curve of the Searcy and Shaffer (2011) work, but on those from Trenham and Shaffer (2005), and effectively provided a more conservative estimate as to the habitat value of conservation lands for CTS. In other words, this approach reduces the potential of overvalue conservation lands. Based on the zonal estimates from Denise Duffy & Associates, Inc., the entire East Garrison Mitigation Lands fall within Zones 1 through 4 for upland habitat for CTS. A total of 104 acres of upland habitat are within 1 kilometer of breeding ponds just south of the East Garrison Mitigation Lands, including 49 acres in Zone 1 (within 380 meters of a breeding pond), 51.75 acres in Zone 2 (between 380 and 630 meters of a breeding pond), and 30.76 acres in Zone 3 (between 630 meters and 1 kilometer of a breeding pond). An additional 0.46 acres of the East Garrison Mitigation Lands are in Zone 4 (between 1 and 2.2 kilometers of a breeding pond) (Denise Duffy & Associates, Inc. pers. comm. 2013).

Pages 4-56 and 4-57 of the HMP (USACE 1997) identify parcels in the Borderland Development Areas Along NRMA Interface, some of which are within Parker Flats Reserve (parcels E19a.1, E19a.2, E21b.1, E21b.2, and E21b.3); the remaining parcels of Parker Flats Reserve are not identified in this document, although they are within the plan area. The identified parcels do not have defined resource conservation requirements because the 1997 HMP identified the parcels as future development areas. The 1997 HMP however, identified FORA as the responsible party for implementing management of the parcels including “implementing the firebreak/vehicle barrier, invasive exotic plant control, and erosion control requirements...” in the interim before development.

For the East Garrison area (parcels E11b.1-E11b.12; collectively referred to as parcel E11b) including the Project site (E-1b.1, E11b.8, and E11b.11), page 4-50 of the HMP (USACE 1997) states:

“The habitat reserve areas in parcel E11b will be retained as natural habitat. Management will include special-status species monitoring, development and maintenance of fire breaks, controlled burning as appropriate, vehicle access controls, erosion control, and regular patrols to assure that passive public use

and/or unauthorized actions are not adversely affecting natural habitat. A management plan will be developed to execute this strategy. The management plan will be implemented by Monterey County or MPC [Monterey Peninsula College], and either may contract with an appropriate and qualified CRMP agency or other appropriate qualified agency, as approved the USFWS, to manage natural resources in parcel E11b.

If all or part of the 200-acre development area is transferred to an entity other than Monterey County, the recipient shall fund its pro-rated share of habitat management costs in parcel E11b to Monterey County or another designated habitat management agency.

Monterey County, or the designated habitat management agency, will also coordinate with California Department of Forestry and DFG to determine suitable habitat management practices to retain and potentially enhance habitat values within the oak woodlands in parcel E11b.”

The HMP also designates Monterey County or MPC as the responsible parties for this parcel.

The HMP (page 4-58; USACE 1997) states that the “BLM is using the CRMP [Coordinated Resource Management and Planning] process to develop management plans and prescriptions for BLM managed lands at former Fort Ord. The BLM has invited other public entities having natural resource management or habitat conservation responsibilities applicable to the former Fort Ord area to participate in this cooperative planning effort ...BLM and UC/NRS are willing to consider managing species and habitats on other public and private lands on a fee bases for those entities required to conserve habitat under this HMP.”

1.1.4 Assessment East Garrison-Parker Flats Land Use Modifications Fort Ord, California 2002

In May of 2002, Zander Associates evaluated the impacts of the Land-Use Modifications proposed by FORA and Monterey County for East Garrison and Parker Flats Reserve. The modification increased the development area at East Garrison by 241 acres and adjusted the boundaries of Parker Flats Reserve resulting in the designation of approximately 380 acres as

habitat reserve land, including the East Garrison Mitigation Lands, and approximately 70 additional acres within Monterey Horse Park as habitat reserve land. Together, the changes resulted in a total of approximately 447.1 acres (Table 3 of Zander Associates 2002) of habitat reserve on Parker Flats Reserve land in addition to the habitat reserve acres already designated in the HMP.

Zander Associates (2002) noted in its report that recent surveys (more recent than the 1997 HMP) identified CTS present in the large vernal pool to the south of the project site¹. In order to address the potential impacts of the proposed land use changes, Zander Associates (2002) proposed that FORA and the County conduct prescribed burning and monitoring of chaparral habitats in the short term (3-5 years) in areas that were mechanically disturbed. Although the status of the implementation of this management measure is unknown, prescribed burning of chaparral habitats is included as a possible approach to management on the East Garrison Mitigation Lands in this MMP. The Zander Associates report also recommended construction of a low wall or other suitable barrier to prevent migration of CTS between breeding areas and developed areas; construction of this barrier wall would occur on developed parcel property and not on mitigation/habitat management lands.

1.1.5 Biological Evaluation of Army Actions that May Affect California Tiger Salamander and Contra Costa Goldfields Critical Habitat Former Fort Ord, Monterey County, California 2004

The Parker Flats Habitat Reserve supports approximately 104 acres (of a total of 147 acres) of CTS upland habitat based on a 1-kilometer dispersal distance (Directorate of Environmental and Natural Resources Management Environmental Management Division, Presidio of Monterey, California (DENRM) 2004). Chaparral portions of Parker Flats Habitat Reserve have been managed through prescribed burning (DENRM 2004).

1.1.6 East Garrison Subsequent EIR 2006

The East Garrison Specific Plan Subsequent EIR (2006) covered the land use modifications to the Habitat Management Plan associated with the land swap between East Garrison and Parker Flats Reserve. These changes were reflected in the East Garrison Specific Plan and the Vesting

¹ The 2002 Zander Associates report did not identify the entity responsible for the survey or the time frame in which the survey was conducted.

Tentative Map. Zander Associates prepared a biological assessment in May 2002 for the East Garrison and Parker Flats Reserve land swap and that information was included in the Michael Brandman Associates Subsequent EIR for the land swap and the associated modifications to the East Garrison Specific Plan. The Zander Biological Assessment noted that there was no suitable breeding habitat for CTS in the study area which included East Garrison and Parker Flats Reserve (see e.g., Biological Resources Assessment January 2004 at p. 9). Additionally, the SEIR stated that the project (East Garrison Specific Plan with the land swap) would not substantially reduce the amount of aestivation habitat available on the former Fort Ord for CTS as further discussed on page 4.7-28 of the SEIR. The SEIR stated that if CTS is listed as threatened, the Service likely will assume that CTS are present in the project area in the absence of protocol level survey. Monitoring and compliance with the HCP/IT were identified as mitigation measures in the SEIR (see e.g., 4.7-D-4 and 4.7-D-5). The SEIR also evaluated other environmental topics associates with the land swap and development of East Garrison and identified mitigation measures for new significant impacts and for those impacts that increased in their severity. Thus, the CEQA document covered the land swap.

History Overview

Monterey County currently owns Parker Flats Reserve, and it has been adopted into the reserve system and is currently referred to as Parker Flats Habitat Management Area. The East Garrison Mitigation Lands are a subset of the Parker Flats Habitat Management Area, and although Monterey County owns the East Garrison Mitigation Lands property, which will be incorporated into the reserve system under the Fort Ord HCP once it is implemented, UCP East Garrison, LLC will fund management and monitoring on the East Garrison Mitigation Lands in the interim. Once the Fort Ord HCP is adopted, management and monitoring of these lands will be managed by FORA or other organization with management responsibilities for the reserve areas, and will be consistent with other Habitat Reserves of former Fort Ord. In the interim, UCP East Garrison, LLC will manage and monitor the East Garrison Mitigation Lands in a manner consistent and seamless with the Draft HCP including barriers to unauthorized vehicles, measures to prevent erosion, measures to prevent spread of invasive nonnative plant species, and fuel break maintenance, and trash pick-up. In addition, the East Garrison Mitigation Lands shall be retained as natural habitat and management shall include monitoring for change in conservation value for

special status species and management actions may include controlled burning, however, as the reserve system does not plan fencing at this time, management including grazing will not be covered under this MMP; should the reserve system be fenced once the HCP has been implemented, grazing may become a suitable management option.

2 EXISTING CONDITIONS

2.1 PROPERTY DESCRIPTION

Parker Flats is located slightly south and to the west of the East Garrison Specific Plan project site, a portion of Parker Flats has been designated as the Parker Flats Habitat Management Area, a part of the Reserve System (Parker Flats Reserve), in the draft HCP (Figure 2). The mitigation lands for the East Garrison Specific Plan project includes a subset of approximately 134 acres of the northern parcel of Parker Flats Habitat Management Area and is referred to as East Garrison Mitigation Lands (northern section of parcel E19a.4), which supports three natural habitats: oak woodland, maritime chaparral, and grassland habitats (Monterey County, 2005, East Garrison Specific Plan FEIR), and will preserve upland habitat for CTS (Figure 3). Additionally, three federally and/or state listed plant species occur in the Parker Flats Reserve area including Monterey spineflower, sand gilia, and seaside bird's beak.

2.2 BIOTIC HABITATS/LAND USES OF THE EAST GARRISON MITIGATION LANDS

Four habitat types: oak woodland, maritime chaparral, grassland, and developed exist on the East Garrison Mitigation Lands, all of which the USFWS BO identifies as suitable upland habitat for CTS (2005). On November 27, 2012, LOA visited the boundaries of the East Garrison Mitigation Lands only, as ordnance signs were posted. The boundary roads were walked and the East Garrison Mitigation Lands surveyed from those roads. This survey was adequate enough to confirm that habitats previously reported in Figure 5 of an assessment by Zander Associates (2002) still existed in the same areas of the East Garrison Mitigation Lands, and that no major changes had occurred since the time of the 2002 report. The only notable change between the 2002 report and the 2012 site visit by LOA was the re-growth of much of the maritime chaparral that had previously been mechanically cleared.

2.2.1 Oak Woodland

The East Garrison Mitigation Lands support approximately 112.32 acres of the overall oak woodland habitat within the greater Parker Flats Habitat Management Area (Figure 4). This woodland is dominated by coast live oaks (*Quercus agrifolia*) with poison-oak

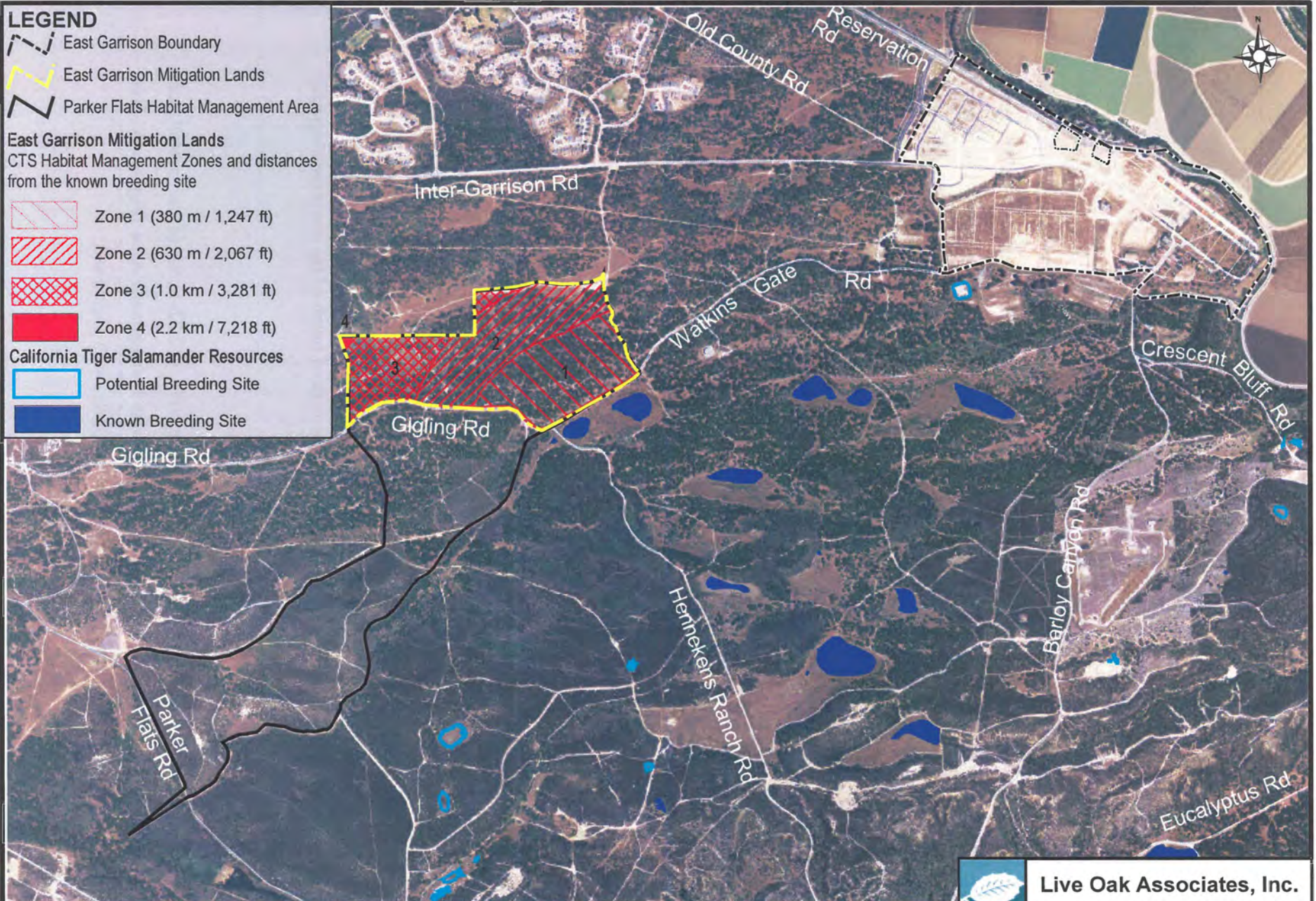
LEGEND

- East Garrison Boundary
- East Garrison Mitigation Lands
- Parker Flats Habitat Management Area

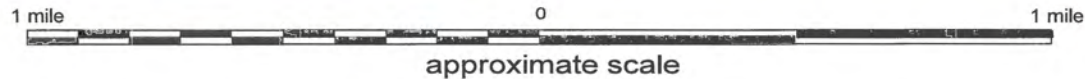
East Garrison Mitigation Lands
CTS Habitat Management Zones and distances
from the known breeding site

- Zone 1 (380 m / 1,247 ft)
- Zone 2 (630 m / 2,067 ft)
- Zone 3 (1.0 km / 3,281 ft)
- Zone 4 (2.2 km / 7,218 ft)

- California Tiger Salamander Resources
- Potential Breeding Site
 - Known Breeding Site



Aerial photo courtesy of USDA-FSA Aerial Photography Field Office 2012




	Live Oak Associates, Inc.	
	East Garrison MMP CTS Habitat	
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(*Toxicodendron diversilobum*) dominating the understory. Wildlife likely to occur in this habitat include the California tiger salamander (*Ambystoma californiense*), California newt (*Taricha torosa*), California slender salamander (*Batrachoseps attenuatus*), yellow-eyed ensatina (*Ensatina eschscholtzii*), arboreal salamander (*Aneides lugubris*), Pacific treefrog (*Hyla regalia*), western fence lizard (*Sceloporus occidentalis*), California kingsnake (*Lampropeltis getulus californiae*), Pacific gopher snake (*Pituophis catenifer catenifer*), terrestrial gartersnake (*Thamnophis elegans*), Northern Pacific rattlesnake (*Crotalus oreganus*), and an assortment of resident and migratory birds including the Cooper's hawk (*Accipiter cooperii*), red-tailed hawk (*Buteo jamaicensis*), California quail (*Callipepla californica*), great-horned owl (*Bubo virginianus*), barn owl (*Tyto alba*), Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), western scrub jay (*Aphelocoma californica*), Stellar's jay (*Cyanocitta stelleri*), tree swallow (*Tachycineta bicolor*), oak titmouse (*Baeolophus inornatus*), lesser goldfinch (*Carduelis psaltria*), American robin (*Turdus migratorius*), as well as mammal species including the opossum (*Didelphis virginiana*), Botta's pocket gopher (*Thomomys bottae*), ornate shrew (*Sorex ornatus*), western grey squirrel (*Sciurus griseus*), woodrat (*Neotoma fuscipes*), raccoon (*Procyon lotor*), coyote (*Canis latrans*), bobcat (*Lynx rufus*), cougar (*Puma concolor*), and black-tailed deer (*Odocoileus hemionus columbianus*), to name a few.


2.2.2 Maritime Chaparral


The East Garrison Mitigation Lands support approximately 0.82 acres of the overall maritime chaparral habitat within the greater Parker Flats Habitat Management Area (Figure 4). The maritime chaparral was largely dominated by manzanita (*Arctostaphylos sp.*) or coyote brush (*Baccharis pilularis*) with poison-oak and ceanothus (*Ceanothus sp.*) mixed in. Most of the maritime chaparral in the greater Parker Flats Habitat Management Area was mechanically cleared before 2002, but since that time, the land has largely returned to chaparral based on the findings of the 2012 LOA survey. Species in the adjacent habitats are likely to occur in the maritime chaparral, with the addition of the alligator lizard (*Elgaria coerulea*) and brush rabbit (*Sylvilagus bachmani*).


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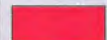
 East Garrison Mitigation Lands


Biotic Habitats

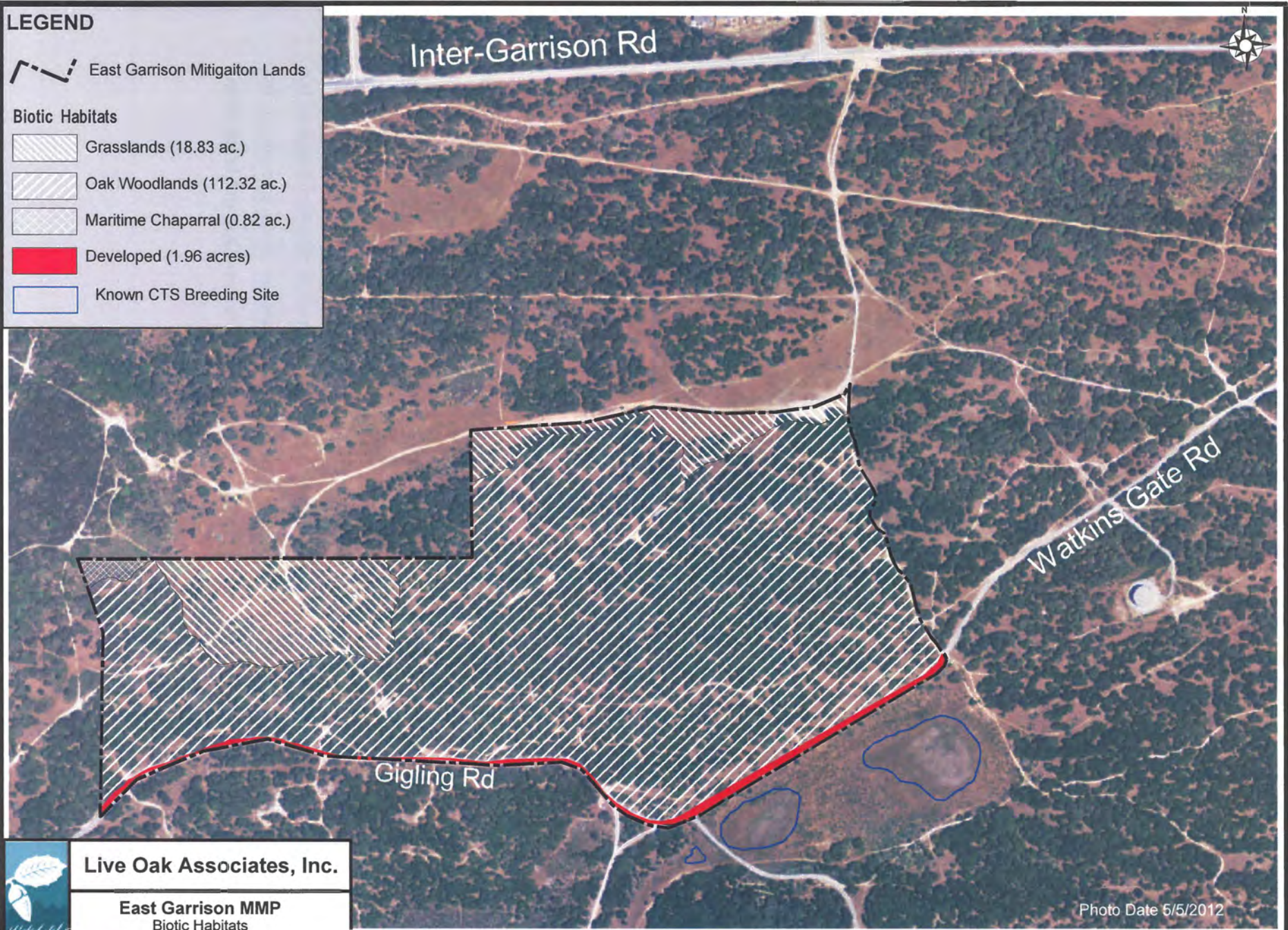
 Grasslands (18.83 ac.)

 Oak Woodlands (112.32 ac.)

 Maritime Chaparral (0.82 ac.)

 Developed (1.96 acres)

 Known CTS Breeding Site

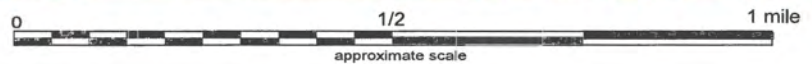


Live Oak Associates, Inc.

East Garrison MMP
Biotic Habitats

Photo Date 5/5/2012

Date	Project #	Figure #
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2.2.3 Grassland

The East Garrison Mitigation Lands support approximately 18.83 acres of the grassland habitat within the greater Parker Flats Habitat Management Area (Figure 4). The difference in acreage between 2002 and 2013 calculations is most likely due to the category to which land was assigned, including the addition of the Developed habitat category; additionally, as more than a decade passed between calculations, conditions may have changed on the ground. This is the smallest habitat in the greater Parker Flats Habitat Management Area, and consisted of both native and non-native grasses with some coyote brush mixed along the edges. Species in the adjacent habitats are likely to occur in the grassland habitats as well.

2.2.4 Developed

The East Garrison Mitigation Lands support approximately 1.96 acres of developed habitat (Figure 4). Areas classified as developed include pavement, existing structures, and highly disturbed areas. In general, these developed areas are small, and wildlife occurring adjacent to developed areas would be expected to occur within the developed habitat. In addition, any burrows under developed areas may serve as upland habitat for the California tiger salamander.

3 COVERED SPECIES

California Tiger Salamander (Ambystoma californiense)

Historical Local Distribution – Population centers for the Central California Distinct Population Segment identified by the USFWS include the Central Valley Region, Southern San Joaquin Region, East Bay Region, and Central Coast Region. Monterey County falls in Central Coast Region. The CNDDDB has 15 records of the CTS within 5 km of the site (Figure 5) occurring primarily south and southeast of the site. Although there are no CNDDDB records on Parker Flats Reserve or the East Garrison Mitigation Lands, they do exist adjacent to, just south of, the East Garrison Mitigation Lands. See Appendix A for CTS listing status and ecology.

Current Local Distribution – Eight CTS (one as a recapture) and one CTS hybrid were caught during a take-minimization monitoring program conducted by Zander Associates, in cooperation with Bryan M. Mori Biological Consulting Services, in the winter of 2005. The drift fences (salamander fence) with one-way ramps used for this study were left in place after the study was completed to prevent CTS from moving onto the site. On March 28, 2007, CTS were discovered breeding in an undisclosed location in an agricultural pond near the boundary of Former Fort Ord and Armstrong Ranch, northwest of Reservation Road (USFWS, 2007). All grading in Phases 1 and 2 was initiated in January 2007 and completed in early 2008 before CTS was listed under the California Endangered Species Act. Construction did not resume until 2011. In 2011, following the suggestion of LOA, the salamander fence with one-way ramps was extended so that the fencing along the entire southern border of the site became contiguous, as original the fencing from the 2005 study had large gaps at the location of trails and roads, and did not suffice as a contiguous barrier to CTS movement. In addition, the upper and lower detention basins were surrounded by silt fencing to prevent access to the site should a CTS make its way into the basin, and to prevent any CTS that may have been on the site from breeding in the detention basins.

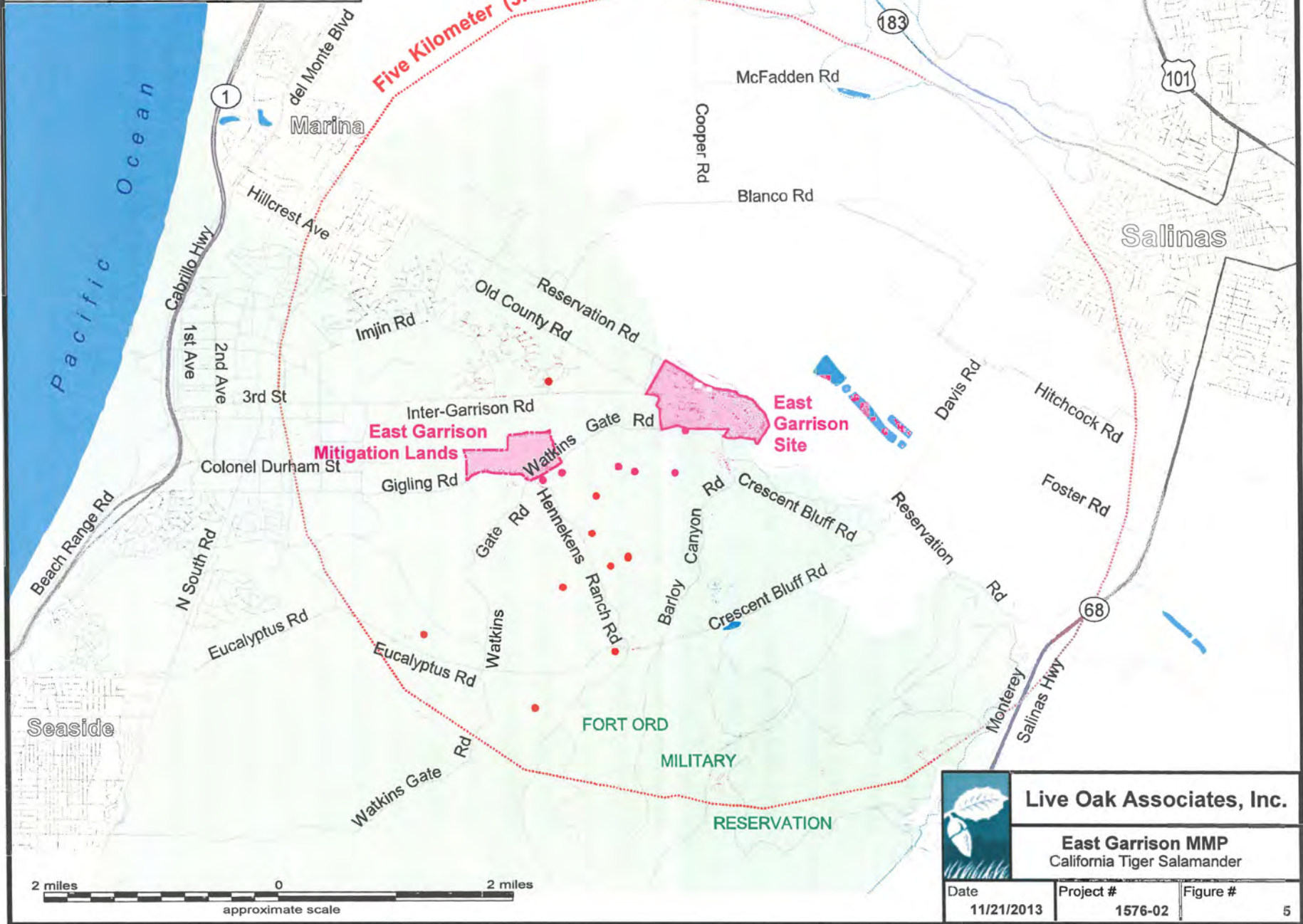
One CTS was observed within a storm drain on the East Garrison Project site on April 3, 2012 by one of the construction personnel while they were inspecting the storm drain. As a BO was issued for this project, the USFWS was contacted and a USFWS representative and LOA herpetologist Dr. Mark Jennings attempted to relocate the CTS off-site, however, as it had rained since the CTS was located, the blocked off storm drain in which the CTS was found was

LEGEND

● California Tiger Salamander CNDDDB observation

Sources:

California Dep. of Fish & Game Natural Diversity Database



Live Oak Associates, Inc.

East Garrison MMP
California Tiger Salamander

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compromised, and the CTS could not be located. It is not possible to infer with any certainty if the individual CTS moved onto the site from adjacent areas through gap in the fence or if the CTS had remained onsite after the trapping efforts in 2005. Therefore, because one possibility is that this individual CTS estivated in the natural area between Phases I and II just north of the upper basin, additional silt fencing was erected around that natural area to prevent future access to the site in case this was the point of access. A second CTS was observed on the East Garrison Project site within a fresh bore hole in Phase III on February 5, 2013 by LOA ecologists during a nesting bird survey. It is assumed that the pond just off-site served as the breeding pond for both individuals, as it is the closest known breeding pond to the East Garrison Project site. Chad Mitcham with the USFWS, LOA herpetologist Dr. Jennings, and LOA ecologist Katrina Krakow relocated the second CTS to the off-site pond on February 6, 2013.

Status on Conservation Lands – The Army conducted surveys of the former Fort Ord area, in which they reported observations of CTS, but were not specific about their locations (USFWS 2005). Table B-1 of the HMP (1997) shows presence of CTS on each parcel on which it was encountered, however, CTS was not a targeted species in this effort, and no CTS were incidentally observed within parcels of Parker Flats Reserve, including the East Garrison Mitigation Lands. Through the Draft HCP process, Denise Duffy & Associates, Inc. has not identified breeding ponds on the East Garrison Mitigation Lands, or the greater Parker Flats Habitat Management Area, however, per the request of CDFW, they calculated the amount of upland habitat for CTS in the area covered by the Draft HCP, which includes the East Garrison Mitigation Lands, based on a degrading function of distance from known breeding ponds derived from research by Trenham and Shaffer (2005). This calculation resulted in the entire East Garrison Mitigation Lands being within Zones 1 through 4 for upland habitat for CTS. A total of 131.5 acres of upland habitat are within 1 kilometer of breeding ponds just south of the East Garrison Mitigation Lands, including 49 acres in Zone 1 (within 380 meters of a breeding pond), 51.75 acres in Zone 2 (between 380 and 630 meters of a breeding pond), and 30.76 acres in Zone 3 (between 630 meters and 1 kilometer of a breeding pond). An additional 0.46 acres of the East Garrison Mitigation Lands are in Zone 4 (between 1 and 2.2 kilometers of a breeding pond) (Denise Duffy & Associates, Inc. pers. comm.). Therefore, as these lands are defined as suitable upland habitat for two known CTS breeding ponds in the Draft HCP, the East Garrison

Mitigation Lands offer suitable in-kind (upland habitat) mitigation habitat for the CTS. For legal status and species ecology, see Appendix A.

4 CONSERVATION STRATEGY FOR THE EAST GARRISON MITIGATION LANDS CONSERVATION EASEMENT

The County and FORA have designated Parker Flats Habitat Management Area as conservation land for the Fort Ord HCP pursuant to the Land Swap Agreement, the 2006 East Garrison Project Specific Plan, and the prior deed restrictions. The East Garrison Mitigation Lands portion of the Parker Flats Habitat Management Area has been set aside as mitigation for the East Garrison Specific Plan Project. Moreover, the East Garrison Mitigation Lands support suitable upland habitat for CTS (Denise Duffy & Associates, inc., Draft Fort Ord HCP, in prep.). Although there are no CNDDDB records for CTS on the East Garrison Mitigation Lands, records are reported adjacent to the East Garrison Mitigation Lands; therefore, as the East Garrison Mitigation Lands support suitable upland habitat, and CTS have been reported in the immediate vicinity, the East Garrison Mitigation Lands are expected to support estivating CTS.

4.1 CONSERVATION GOALS AND OBJECTIVES

The conservation goal for the East Garrison Mitigation Lands is to maintain suitable upland habitat for CTS through implementation of a monitoring program that informs how the site can be adaptively managed (e.g., modifications to management activities that are informed by findings from the monitoring component).

4.2 LANDS MANAGEMENT

A biological baseline for the East Garrison Mitigation Lands will be established by conducting onsite surveys prior to implementation of any land management measures. This baseline will guide future monitoring of the East Garrison Mitigation Lands. Management of the East Garrison Mitigation Lands will be consistent with requirements set forth by the USFWS and the HMP (1997) and Draft Fort Ord HCP (Denise Duffy & Associates, Inc., in prep) including both maintenance activities and timing requirement of those activities. Maintenance activities may include maintenance of fuel breaks and access roads in summer months, the possibility of prescribed burning conducted prior to the rainy season with no pre-vegetation treatments applied, erosion prevention activities, invasive nonnative plant removal, trash pick-up, and maintenance of barriers and signs to restrict access by off-road vehicles and pedestrians. These management activates are discussed in further detail below.

- a) Barriers and signs intended to restrict access by off-road vehicles and pedestrians will be installed at all road and illegal trail entrances into the East Garrison Mitigation Lands. These barriers and signs will be assessed twice per year for conditions and replaced and/or repaired if necessary. Fencing is not being proposed under this MMP, as fencing is not currently being considered under the Draft HCP (Denise Duffy & Associates, Inc., pers. comm., 2013).
- b) Conditions of fuel-breaks and access roads will be assessed annually and repairs and maintenance will be conducted as appropriate in summer months only. To the extent possible, earth movement within the dripline of oaks and excavation in the root zone of oaks will be avoided.
- c) Need for erosion control along firebreaks and other bare-earth areas will be assessed biannually (in summer and winter months) and erosion control including earthen berms, mulch, waddle with biodegradable netting, or biodegradable erosion blankets may be installed to prevent erosion of these bare areas resulting in erosion of these features and/or siltation of off-site CTS breeding ponds. To the extent possible, earth movement within the dripline of oaks and excavation in the root zone of oaks will be avoided.
- d) As a part of the baseline survey, the East Garrison Mitigation Lands will be assessed for areas in need of invasive non-native plant removal. Invasive non-native plant management shall be limited to the areas along firebreaks and any existing pedestrian trails within the East Garrison Mitigation Area. These plants shall be removed via hand-pull or hand tools only.
- e) Trash pick-up (if necessary) will occur twice per year and may be conducted concurrently with another management task.
- f) Additional management activities such as controlled burns conducted prior to the rainy season with no pre-vegetation treatments applied may be recommended depending on the results of the baseline survey. A second management strategy, grazing, may be employed after the Fort Ord HCP has been implemented should the HCP choose to install fencing

around the Reserve System. Until the HCP chooses to install fencing around the Reserve System, grazing shall be prohibited.

4.3 CONSERVATION EASEMENT MONITORING PLAN

Biannual monitoring will occur on the East Garrison Mitigation Lands for five years after the baseline has been established, and every five years thereafter. It is assumed that the Fort Ord HCP will be implemented within the first five years of this management and monitoring plan, at which point, the County of Monterey would become responsible for funding and conducting management and monitoring activities on the East Garrison Mitigation Lands under their Reserve System. As the East Garrison Mitigation Lands do not support breeding habitat, surveys for breeding CTS individuals would not be necessary, however nighttime surveys of upland habitat for CTS will occur during the rainy season. Any change in conservation value of the CTS upland habitat on the East Garrison Mitigation Lands would be noted. A habitat assessment will be conducted once a year in the active season for CTS for five years, and every five years thereafter. A qualified biologist will conduct these surveys to evaluate changes to both habitat and wildlife for the explicit purpose of noting any changes to the conservation value of the East Garrison Mitigation Lands for CTS:

Vegetation/Habitat

- plant species diversity (species list of dominant species)
- soil erosion (extent and location)
- nonnative invasive plant species (and locations)
- natural disturbances such as fire or significant soil shifts

Wildlife

- wildlife species diversity (species list)
- distribution status (if any) of listed species
- approximate distribution of small mammal burrows

Any measurable change that is due to abnormal variation in small mammal populations (e.g., unexplained or usual crash of the population) or changes in habitat composition and structure that reduces the conservation value of the East Garrison Mitigation Lands for the CTS will be noted and recommendations for modifying any future management activities will be made to the County.

4.4 ANNUAL MONITORING REPORT

The annual report will be prepared along with any other additional documentation and circulated to the Permitting Agencies by December 31 of each year.

Included will be (1) a list of management activities with dates of tasks including management of firebreaks, invasive weed removal, prescribed burns, installation of erosion barriers, etc. (2) recommendations with regard to any habitat enhancement measures deemed to be warranted, (3) recommendations with regard to any problems that need near, short, and/or long-term attention, and (4) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date. Any recommended weed abatement will be consistent with the USFWS 4(d) rule as to avoid harm to CTS. The annual report will be submitted no later than December 31 of each year to the CDFW and USFWS with the monitoring results from the prior calendar year. Five year summary reports will be prepared to compare data from multiple years. The findings from the five-year reports will be used to inform any adaptive management recommendations or changes to current management practices. In addition, these findings will be used to identify the need for any additional monitoring or data gathering that augments information regarding the status of CTS on the East Garrison Mitigation Lands.

At the discretion of CDFW, the land manager will meet with one or both agencies each year, after the annual report is issued, to review implementation issues.

4.5 FUNDING

The UCP East Garrison, LLC as part of its development agreement has paid fees to fund the HCP to the County of Monterey. These funds are intended to fulfill the applicant's obligations as it relates to the HCP. The applicant will fund the Conservation Easement and MMP until such time that the HCP Joint Powers Authority (also known as the "Fort Ord Regional Habitat Cooperative" or the "Cooperative") is formed following adoption of the Installation-wide Multi-species Habitat Conservation Plan for Former Fort Ord, CA. The Cooperative will then become the responsible party for monitoring and managing the East Garrison Mitigation Lands. Therefore, UCP East Garrison, LLC, will provide adequate bridge funding for up to five years so this MMP can be fully implemented prior to the adoption of the HCP.

Following adoption of the HCP, the Cooperative will be responsible for the implementation of the HCP on the East Garrison Mitigation Lands and the Habitat Management Areas. In the interim, UCP East Garrison, LLC will provide the funding for the following tasks in Table 1. These costs include a baseline biological survey, baseline biological report, baseline assessment of management needs, and installation of barriers and signs to prevent off-road vehicles and pedestrians from entering the East Garrison Mitigation Lands. Baseline costs are estimated to be \$21,034. First year cost for biological monitoring, biological survey, and maintenance activities is estimated to be \$15,043, and a 5% increase has been accounted for the following 4 years resulting in a final budget of \$104,155 for the baseline year and five years following the baseline year. UCP East Garrison, LLC assumes that the Fort Ord HCP will be implemented within these five years, and at that time, the HCP would become responsible for funding management and monitoring on the East Garrison Mitigation Lands. Therefore, as the Fort Ord HCP may be implemented during the lifetime of the MMP, UCP East Garrison, LLC proposes paying in two payments; the first payment will include funding for the baseline funding and years 1 and 2 of management and monitoring (\$51,871) and the second payment will include funding for years 3 through 5 of management and monitoring (\$52,284). Funds will be paid prior to the work to be conducted (i.e. first payment will be paid in full prior to baseline assessments and second payment will be paid in full prior to year 3 of management and monitoring).

Table 1. Funding.

Table 1. Funding Continued

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APPENDIX A

Legal Status – The Central California distinct population segment of California tiger salamander that may occur within the East Garrison Specific Plan area is listed as threatened under the ESA and the California Endangered Species Act (Fish and Game Code §§2050 *et seq.*). Two other distinct population segments in Sonoma County and Santa Barbara County are listed as endangered under the ESA. The Santa Barbara County Distinct Population Segment was listed as endangered in 2000. The Sonoma County Distinct Population Segment was listed as endangered in 2002. The remaining population occurs throughout Central California, including the East Garrison Specific Plan area. The Central California Distinct Population Segment was listed as threatened in 2004. No Recovery Plan has been prepared for the CTS to date.

Species Ecology – The CTS was formerly classified as a subspecies of tiger salamander (*Ambystoma tigrinum*) but has since been identified as an individual species (Kraus 1988; Shaffer et al. 1991). A broad head, small eyes, and tubercles on the side of the feet characterize CTS. Coloration is a black back with yellow, cream, or white oval spots or bars. Some individuals may have a prominent cream band on the undersides. Snout-vent length ranges from 7.6 – 12.7 cm, and total length ranges from 15 – 22 cm (Stebbins 2003).

The CTS originally inhabited most of central California, and remains in remnant populations throughout much of its original range. CNDDDB records for CTS show its distribution encompasses portions on Alameda, Amador, Calaveras, Contra Costa, Fresno, Kern, Kings, Madera, Mariposa, Merced, Monterey, Sacramento, San Benito, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tulare, Tuolumne, and Yolo Counties (NatureServe 2009). About 80% of all extant occurrences are in Alameda, Contra Costa, Madera, Merced, Monterey, San Benito, and Santa Clara counties, with 30% of all occurrences in Alameda County (*ibid.*). The use of vernal pools and other temporary bodies of water for breeding limits the CTS to areas of low elevation and low topographic relief throughout their range (Stokes et al. 2008). Ephemeral vernal pools which refill with water on a yearly basis, are 40 – 80 cm in depth, and have a surface area of approximately 0.49 acres (0.2 hectares) or more are optimal for breeding CTS, although small, shallower pools will also house breeding CTS (Stokes et al. 2008). Depth of the breeding pool was highly correlated with

breeding CTS. Stokes et al. (2008) found no CTS larvae in pools with an average depth of less than 22 cm. Deep pools with permanent water may not be optimal for breeding populations of CTS because they often house predatory fish, crayfish, or bullfrogs that prey upon larval CTS. This creates a narrow window of pool depth where the pool will not completely dry out before CTS have metamorphosed, but also not contain water year round and house predators. Metamorphosed CTS move out of the vernal pools and into upland habitats. Small mammal burrows are important features of upland habitat. Adult CTS occupy small mammal burrows in grassland, savanna, or open woodland habitats (Trenham and Shaffer 2005).

Activity patterns of adult CTS are not well understood. Adult CTS live their entire lives in the burrows of small mammals such as the California ground squirrel. Adults begin moving toward breeding pools when the first fall rains begin to inundate pools. Breeding adults will continue moving to pools through the winter and spring. Adults can generally be found at breeding pools from October through May, although breeding is highly dependent on the amount of precipitation (Trenham et al. 2001; Trenham and Shaffer 2005). Adult CTS leave the breeding pools in late spring and return to upland habitats. Trenham and Shaffer (2005) used pitfall traps at various intervals away from a pool to determine the extent of upland use. They found that the numbers of adult CTS declined as distance from the pool increased out to approximately 2,034 feet (620 meters). Subadults also moved up to approximately 1,969 feet (600 meters) away from the pools, but most were concentrated between approximately 656 and 1,969 feet (200 and 600 meters) from the pool. This has led managers to suggest preserving upland habitats with suitable small mammal burrows out to approximately 1,969 feet (600 meters) from breeding pools (Trenham and Shaffer 2005).

CTS may take upward of four to five years to reach sexual maturity (Trenham et al. 2000). Although individuals can live upward of ten years, less than 50% of individuals breed more than once (Trenham et al. 2000). Rainfall can significantly alter adult breeding pool attendance, and production of metamorphs tends to be a boom-or-bust scenario (Loredo and Van Vuren 1996). Typically, greater numbers of breeding adults return to pools during years with greater rainfall (Trenham et al. 2000; 2001; Cook et al. 2006; Stokes et al. 2008). Males are often the first to arrive at breeding pools and remain in the pool longer than females (Trenham et al. 2000). Larvae remain in the pools approximately four months and emigrate from the pools as they dry.

Metamorph emigration typically occurs throughout May and is directly related to the pool drying date (Trenham et al. 2000).

Often amphibian populations are used as an example for the metapopulation/source-sink models. The CTS populations at different breeding pools often act in a metapopulation fashion (Trenham et al. 2001). Mark – recapture studies found that while most breeding adults return to their natal pool, 22% dispersed to different ponds (Trenham et al. 2001). It should be noted that Trenham and Shaffer (2005) did not capture any CTS, adult or subadult, more than approximately 2,034 feet (620 meters) from the pool. Thus, pools more than approximately 4,068 feet (1,240 meters) from one another may limit dispersal. Breeding CTS have been known to use artificially created pools, and the creation of pools in a stepping-stone fashion has been suggested to aid dispersal between populations (Stokes et al. 2008).

The diet of larval and metamorphosed CTS is not well studied. Studies on the diet of other larval *Ambystomids* have found that less developed larvae prey mainly on zooplankton, and larger, more developed larvae prey on amphipods, mollusks, and insect larvae as well as zooplankton (Dodson and Dodson 1971; Hoff et al. 1985; McWilliams and Bachmann 1989). Adult diet consists of terrestrial invertebrates such as earthworms, snails, and other insects. Vertebrates, such as small mammals and fish, may be taken as well (Stebbins 1959; NatureServe 2009).

Predatory fish and amphibian populations negatively affect CTS populations. Mosquitofish (*Gambusia* sp.), smallmouth bass (*Micropterus dolomieu*), green sunfish (*Lepomis cyanellus*), and bullfrogs (*Rana catesbiana*) are common predators of CTS larvae and adults (NatureServe 2009). Yearly drying of vernal pools used for breeding greatly reduces the numbers of these potential predators, however heavy spring and winter rains can connect pools to other permanent water sources and introduce CTS predators.

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Exhibit C

**Form of Conservation Easement Deed
(CTS Preservation and Habitat Restoration Area)**

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**State of California
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95811**

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED
PARKER FLATS NORTH PARCEL**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by the County of Monterey ("Grantor"), in favor of the State of California ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor, the County of Monterey, a political subdivision of the State of California, is the sole owner in fee simple of certain real property consisting of approximately 134 acres, located within the former Fort Ord in the County of Monterey, State of California ("Property"). The Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference. The Property is a portion of Parcel E19.a.4 conveyed by the United States Government to the Fort Ord Reuse Authority (FORA) and from FORA to the County of Monterey. The County of Monterey accepted the Property by Quitclaim Deed recorded on September 11, 2014 at the Office of the Monterey County Recorder at Document No. 2014042926, which deed contains certain conditions, restrictions, and covenants that run with the land and are binding on Grantor.

B. The Property is in an unimproved natural condition and possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Property provides high quality natural upland habitat for California tiger salamander (*Ambystoma californiense*) and contains other species and habitats of conservation importance. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property.

C. FORA is in the process of preparing an *Installation-Wide Multispecies Habitat Conservation Plan* ("Fort Ord HCP") and preparing a Joint Exercise of Powers Agreement to establish a Joint Powers Authority to manage implementation of the Fort Ord HCP. The Fort Ord HCP would provide a comprehensive species and habitat conservation program as part of the closure, disposal, and reuse of the former Fort Ord. The Fort Ord HCP would also form the basis for the California Department of Fish and Wildlife ("CDFW") to issue a Fort Ord Base-wide California Endangered Species Act Section 2081 Incidental Take Permit ("Fort Ord ITP") to FORA and other permittees, including the Grantor. The Fort Ord HCP and Fort Ord ITP are collectively referred to as the Fort Ord HCP ITPs. The Property, as conserved, is expected to be

part of the Fort Ord HCP's conservation strategy and also contribute to the mitigation strategy for the Fort Ord ITP.

D. The Fort Ord HCP is anticipated to incorporate all relevant information from the Installation-Wide Multispecies Habitat Management Plan for former Fort Ord issued by the U.S. Army Corps of engineers in 1997 ("HMP"). The Fort Ord HCP is also anticipated to supersede the HMP as the primary conservation planning document for non-federal recipients of Fort Ord lands.

E. Because the Fort Ord HCP ITPs are still in progress, UCP, LLC sought its own CESA take authorization for the East Garrison Project, a development project that would have been covered by the Fort Ord HCP ITPs. This Conservation Easement provides mitigation for impacts of the East Garrison Project, as detailed in Incidental Take Permit No. _____, issued to UCP, LLC, dated _____, and its Attachments (the "ITP"), including the Management Plan which provides for habitat management of the Conservation Easement area in accordance with the Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California ("Habitat Management MOA"). The ITP and Management Plan are intended to govern management of the Property until the Fort Ord HCP ITPs are finalized. At that time the Fort Ord HCP ITPs would govern management of the Property and this Conservation Easement would be amended as appropriate (see Recital G below).

F. Grantee, CDFW, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFW is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

G. It is anticipated that this Conservation Easement will be transferred to a different easement holder upon approval/issuance of the Fort Ord HCP ITPs. Any subsequent easement holder shall be authorized to hold a Conservation Easement pursuant to California Civil Code Section 815.3 and Government Code Sections 65965 *et seq.* (and any successor or other provision(s) then applicable), and CDFW shall be a third party beneficiary. It is also anticipated that FORA, the Joint Powers Authority, or other entity will assume responsibility for management of the Property in accordance with the Fort Ord HCP after it is adopted. Grantor and Grantee acknowledge this Conservation Easement may need to be amended to conform to the HCP, executed implementation agreement, issued Fort Ord HCP ITPs, and the terms or conditions of any template conservation easement that would be used to implement the Fort Ord HCP, implementing agreement, or Fort Ord HCP ITPs. Grantor and Grantee intend to cooperate in adopting any such amendment.

I. Grantor is authorized to grant this easement pursuant to California Government Code section 25526.6 provided that the Board of Supervisors of Grantor finds that the conveyance of the easement is in the public interest and that the interest in land conveyed will not substantially conflict or interfere with the use of the property by the County.

J. A final, approved copy of the ITP and the Management Plan, and any amendments thereto are on file at the offices of CDFW. If Grantor, or any successor or assign, requires an official copy of the ITP or the Management Plan, it should request a copy from CDFW at its address for notices listed in Section 11 of this Conservation Easement.

The Habitat Management MOA, ITP and the Management Plan, and any amendments are incorporated by this reference into this Conservation Easement as if fully set forth herein.

All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the ITP, and the Management Plan, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the ITP and the Management Plan, as amended and/or superseded. Grantor and Grantee acknowledge that the Property is subject to the HMP and is anticipated to be subject to the Fort Ord HCP ITPs if and when they are adopted/issued. Nothing in this Conservation Easement is intended to supersede the Fort Ord HCP. If the Conservation Easement and the Fort Ord HCP ITPs are inconsistent with each other, Grantor and CDFW, as Grantee or as third party beneficiary, agree to amend the Conservation Easement to make it consistent with the Fort Ord HCP ITPs.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the Conservation Values of the Property subject to the terms and conditions set forth in the following documents: .
- i. The Quitclaim Deed referenced in Recital A above recorded on September 11, 2014 at the Office of the Monterey County Recorder at Document No. 2014042926 and the conditions, restrictions, and covenants set forth in the Quitclaim Deed ("Quitclaim Deed");
 - ii. The *Installation-Wide Multispecies Habitat Management Plan for the Former Fort Ord*, U.S. Army Corps of Engineers, April 1997, as amended by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker

Flats Land Use Modification (Agreement #A-09555, approved by the County Board of Supervisors September 23, 2003) ("HMP") To enter the Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Management Plan, as amended and/or superseded, and to implement at Grantee's sole discretion Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property and provided that Grantee shall obtain Grantor's written consent, which consent shall not be unreasonably withheld, prior to undertaking any activity for which Grantee will seek monetary reimbursement from Grantor.

(b) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement, the Management Plan, as amended and/or superseded, Habitat Management MOA, and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement, the Management Plan, as amended and/or superseded, and Habitat Management MOA.

(c) To require that all mineral, air and water rights held by Grantor as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.

(d) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise

3. Prohibited Uses.

Unless otherwise set forth in this Conservation Easement, any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Conservation Values of the Property or otherwise impair or interfere with the purposes of this Conservation Easement, except the use of agricultural chemicals, weed abatement and fire protection activities as specifically provided in the Management Plan or as allowed under the HMP.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, designated roadways, and fuel breaks as specifically provided in the ITP and Management Plan, as amended and/or superseded, or as allowed under the HMP.

(c) Agricultural activity of any kind except grazing for vegetation management as specifically provided in the ITP and Management Plan, as amended and/or superseded, or as allowed under the HMP.

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, except such activities as are consistent with the purposes of this Conservation Easement and carried out in accordance with the ITP or Management Plan, as amended and/or superseded, and HMP. For example, this Conservation Easement does not prohibit using trails on the Property for hiking, biking, and horseback riding.

(e) Commercial, industrial, residential, or institutional structures or uses.

(f) Any legal or de facto division, subdivision or partitioning of the Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act (Gov. Code Section 66499.35) (collectively "Subdivision") without the prior written approval of Grantee. Such approval may be withheld if Grantee reasonably determines that the proposed Subdivision is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except as allowed under the HMP.

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for those activities authorized in this Conservation Easement, the Habitat Management MOA, any habitat management activities specified in the ITP and Management Plan as amended and/or superseded, or as allowed by the HMP.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in conformance with a CDFW-approved management plan or the HMP for (i) fire breaks, (ii) maintenance of existing trails or roads, or (iii) prevention or treatment of disease.

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

4. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the ITP and the Management Plan as amended and/or superseded. Grantor anticipates that the Property will be included within the Fort Ord HCP's designated Habitat Management Areas (HMAs) following issuance of state and federal ITPs to FORA, its members and successors, and other permittees including the Grantor, by USFWS and CDFW, at which time this Conservation Easement may be transferred and responsibility for management of the Property may be transferred from the County to such Joint Powers Authority or other entity designated to implement the Fort Ord HCP. The County of Monterey and CDFW agree that upon request by either the County of Monterey or CDFW they shall amend any of this Conservation Easement's terms or conditions to be consistent with any final Fort Ord HCP, executed Implementation Agreement, or issued Fort Ord ITP, as well as the terms or conditions of any template conservation easement that would be used to implement the Fort Ord HCP, Implementing Agreement, or Fort Ord ITP.

5. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement, the Habitat Management MOA, the ITP and Management Plan, as amended and/or superseded.

6. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Notice shall be provided in accordance with Section 11 of this Conservation Easement. If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property. Notwithstanding the above, prior to initiating litigation against Grantor, Grantee shall make a good faith effort to meet and confer with Grantor with the goal of resolving alleged violations of the Conservation Easement without resort to litigation.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, despite the provisions of Civil Code section 815.7, the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to,

costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and remain enforceable by CDFW if this Conservation Easement is transferred as contemplated by the parties in the Recitals above (see also section 13(m) below). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the ITP or the Management Plan, as amended and/or superseded. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee. In order to be valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

7. Access.

This Conservation Easement does not convey a general right of access to the public.

8. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, subject to the Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord and the Fort Ord HCP and any Joint Exercise of Powers Agreement or other agreement to implement the Fort Ord HCP should those documents take effect. Grantor may transfer said responsibility, cost and liability to FORA or other suitable land manager, such as a future Joint Powers Authority with responsibility to implement the Fort Ord HCP. Grantor agrees that Grantee and any third party beneficiary shall have no duty or responsibility for the ownership, operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor or such other entity as is responsible for managing the Property pursuant to the Fort Ord HCP and Joint Exercise of Powers Agreement or other agreement remain solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement including permits and approvals required from Grantee acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

To the extent applicable to Grantor as a political subdivision of the State, Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim to the extent due to the negligence of Grantee

or any of its employees; (ii) the obligations specified in Sections 4, 8 and 8(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(2) Grantor shall hold harmless, protect and indemnify any third party beneficiary and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third Party Beneficiary Indemnified Party") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim to the extent due to the negligence of that Third Party Beneficiary Indemnified Party or any of its employees; (ii) the obligations specified in Sections 4, 8 and 8(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Third Party Beneficiary Indemnified Party by reason of any such Claim to which the indemnification in this Section 8(b)(2) applies, then at the election of and upon written notice from the Third Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third Party Beneficiary Indemnified Party or reimburse Third Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(3) As indicated in the Recitals above, it is anticipated that this Conservation Easement will be transferred to a different easement holder upon approval of the Fort Ord HCP, USFWS issuance of the Section 10(a)(1)(B) incidental take permit, and CDFW issuance of a Fort Ord Base-wide California Endangered Species Act Section 2081 Incidental Take Permit to FORA, its members and other permittees, including the Grantor. The County of Monterey and CDFW agree that upon request by either the County of Monterey or CDFW they shall amend any of this Conservation Easement's terms or conditions, including but not limited to this section 8(b) Hold Harmless, to be consistent with any final Fort Ord HCP, executed Implementation Agreement, or issued Fort Ord ITP, as well as the terms or conditions of any template conservation easement that would be used to implement the Fort Ord HCP, Implementing Agreement, or Fort Ord ITP.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

This Conservation Easement is a "wildlife conservation easement"

acquired by a public agency, the condemnation of which is prohibited except as provided in California Fish and Game Code Section 1348.3. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j).

9. Transfer of Conservation Easement or Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Sections 65965 *et seq.* (and any successor or other provision(s) then applicable), or the laws of the United States, including but not limited to the Fort Ord HCP Joint Powers Authority. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 10. Upon transfer of this Conservation Easement by CDFW, it shall become a third-party beneficiary to this Conservation Easement but retain the same ability to enforce this Conservation Easement as if it continued to be the Grantee.

(b) Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the ITP, the Management Plan, as superseded and/or amended. Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it), the ITP and the Management Plan, as amended and/or superseded. The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 10.

10. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor and Grantee otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

11. Notices.

Any notice, demand, request, consent, approval, or other communication that

Grantor or Grantee desires or is required to give to the other shall be in writing, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: County of Monterey
168 West Alisal Street, 2d Floor
Salinas, CA 93901
Attn: Director of County Resource Management Agency

To Grantee: Department of Fish and Wildlife
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
Attn: Regional Manager

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

or to such other address a party shall designate by written notice to Grantor and Grantee. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

12. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor.

13. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this

Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the ITP and the Management Plan, as amended and/or superseded, incorporated by reference in this document) sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 12.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Other than as mentioned in the next sentence, Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Grantor and Grantee are aware that the deed conveying the Property from FORA to the County indicates the presence of Hazardous Materials and other potential environmental

contaminants on the Property and as a result Grantor's representation and warranty is qualified to reflect the information in the deed.

(2) Without limiting the obligations of Grantor under Section 8 (b), and as between Grantor and Grantee only so as to not undo or in any way limit any other agreement or arrangement Grantor may have with another entity pertaining to Hazardous Materials liability, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 8 (b) (1)) from and against any and all Claims (defined in Section 8 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 8(b), and as between Grantor and any Third Party Beneficiary only so as to not undo or in any way limit any other agreement or arrangement Grantor may have with another entity pertaining to Hazardous Materials liability, Grantor hereby releases and agrees to indemnify, protect and hold harmless any Third Party Beneficiary Indemnified Party (defined in Section 8(b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to a Third Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against the Third Party Beneficiary Indemnified Party by reason of any such Claim, Grantor shall, at the election or upon written notice form the Third Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third Party Beneficiary any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without

limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right or duty to investigate and remediate any Hazardous Materials associated with the Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and any third party beneficiary that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(7) As indicated in the Recitals above, it is anticipated that this Conservation Easement will be transferred to a different easement holder upon approval of the Fort Ord HCP, USFWS issuance of the Section 10(a)(1)(B) incidental take permit, and CDFW issuance of a Fort Ord Base-wide California Endangered Species Act Section 2081 Incidental Take Permit (ITP) (collectively, the "Fort Ord HCP ITPs) to FORA, its members and other permittees, including the Grantor. The County of Monterey and CDFW agree that upon request by either the County of Monterey or CDFW they shall amend any of this Conservation Easement's terms or conditions, including but not limited to this section 13(i) No Hazardous Materials Liability, to be consistent with any final HCP, executed Implementation Agreement, or issued ITP, as well as the terms or conditions of any template conservation easement that would be used to implement the HCP, Implementing Agreement, or ITP.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Property and that the Property is not subject to any other conservation easement, except Grantor and Grantee acknowledge that the Property is subject to the conditions, restrictions, and covenants set forth in the Quitclaim Deed including but not limited to the reversionary interest held by the United States Government with respect to implementation of the HMP. The interests specified in the Quitclaim Deed with respect to this Property, which is a part of parcel E19.a.4 as specified in the Quitclaim Deed, run with the land and are not subordinate to this Conservation Easement.

(k) Additional Interests.

Grantee acknowledges that this Property is subject to conditions, restrictions, and covenants specified in the Quitclaim Deed with respect to Parcel E.19a.4, which predate this Conservation Easement and are not modified by this Conservation Easement. Subject to that qualification, Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Property, without first obtaining the written consent of Grantee. Such consent may be withheld if Grantee reasonably determines that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 13(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 9. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third Party Beneficiary.

Grantor and Grantee acknowledge that upon transfer of this Conservation Easement by the California Department of Fish and Wildlife as contemplated in the Recitals above, the California Department of Fish and Wildlife will be a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 13, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Exhibits.

The following Exhibit(s) referenced in this Conservation Easement are attached to and incorporated by reference in this Conservation Easement:

EXHIBIT A – Legal Description of Property

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [*Notarization Required*]

COUNTY OF MONTEREY

By: _____

Name: _____

Title: Chair, Board of Supervisors of the County of Monterey

Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) _____

County of) _____

On _____, before me, _____ (here insert name and title of officer), personally appeared _____

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 20____, to the State of California, Grantee, acting by and through its Department of Fish and Wildlife, a governmental agency (under Government Code § 27281), is hereby accepted by the undersigned officer on behalf of the Grantee pursuant to the Fish and Game Code.

GRANTEE:

STATE OF CALIFORNIA, by and through its
DEPARTMENT OF FISH AND WILDLIFE

By: _____

Title: _____
Authorized Representative

Date: _____

EXHIBIT 'A'
LEGAL DESCRIPTION
CONSERVATION EASEMENT

Certain real property situate in the City Lands of Monterey, Tract No. 1, County of Monterey, State of California, described as follows:

Being a portion of the land shown as Parcel U on the map recorded May 30, 2013 in Volume 32 of Surveys at Page 60, particularly described as follows:

Beginning at a point that is distant North 87° 27' 00" East, 37.96 feet from the southwest corner of Parcel One as shown on the map filed in Volume 21 of Surveys at Page 64; thence from said **Point of Beginning** along the southerly line of said Parcel One

- 1) North 87° 27' 00" East, 539.04 feet; thence
- 2) North 79° 00' 00" East, 351.00 feet; thence
- 3) South 82° 51' 00" East, 359.00 feet; thence
- 4) South 89° 38' 00" East, 244.00 feet; thence
- 5) North 84° 00' 00" East, 199.00 feet; thence
- 6) North 68° 44' 00" East, 163.00 feet to a point on the westerly boundary of Parcel I Travel Camp, as shown on the map filed in Volume 21 of Surveys at Page 89; thence along said westerly boundary
- 7) South 7° 51' 00" East, 198.34 feet; thence
- 8) South 13° 25' 00" East, 206.15 feet; thence
- 9) South 26° 14' 00" East, 145.60 feet; thence
- 10) South 24° 41' 00" West, 96.00 feet; thence
- 11) South 30° 56' 00" East, 170.50 feet; thence
- 12) South 14° 47' 00" East, 137.30 feet; thence
- 13) South 38° 48' 00" East, 112.50 feet; thence
- 14) South 13° 07' 00" East, 170.90 feet; thence
- 15) South 28° 52' 00" East, 253.18 feet (253.20 feet per map filed in Volume 21 of Surveys at Page 89); thence
- 16) South 34° 13' 00" West, 24.50 feet; thence

- 17) South 55° 46' 46" East (South 55° 47' 00" East per map filed in Volume 21 of Surveys at Page 89), 60.00 feet; thence departing said westerly line and following the southerly line of Parcel D shown on the map filed in Volume 30 of Surveys at Page 41, Official Records of said County
- 18) South 52° 42' 40" West, 85.69 feet; thence
- 19) South 57° 36' 32" West, 133.91 feet; thence
- 20) South 62° 57' 50" West, 427.70 feet; thence
- 21) South 61° 05' 51" West, 584.54 feet; thence
- 22) South 63° 53' 31" West, 221.98 feet; thence
- 23) South 65° 18' 13" West, 217.58 feet; thence departing said southerly line of Parcel D
- 24) North 58° 53' 59" West, 268.46 feet; thence
- 25) North 43° 16' 36" West, 105.23 feet; thence
- 26) North 38° 53' 29" West, 112.31 feet; thence
- 27) Along the arc of a tangent circular curve, the center of which bears South 51° 06' 31" West, 195.00 feet distant, through a central angle of 51° 42' 44", for an arc distance of 176.00 feet; thence
- 28) South 89° 23' 47" West, 288.18 feet; thence
- 29) Along the arc of a tangent circular curve, the center of which bears North 0° 36' 14" West, 1285.00 feet distant, through a central angle of 8° 33' 54", for an arc distance of 192.09 feet; thence
- 30) Along the arc of a reverse circular curve, the center of which bears South 7° 57' 41" West, 2725.00 feet distant, through a central angle of 5° 38' 25", for an arc distance of 268.25 feet; thence
- 31) North 87° 40' 44" West, 227.94 feet; thence
- 32) North 86° 03' 30" West, 71.42 feet; thence
- 33) Along the arc of a tangent circular curve, the center of which bears North 3° 56' 30" East, 335.00 feet distant, through a central angle of 15° 45' 21", for an arc distance of 92.12 feet; thence
- 34) North 70° 18' 09" West, 111.40 feet; thence
- 35) North 73° 54' 29" West, 160.47 feet; thence

- 36) Along the arc of a tangent circular curve, the center of which bears South $16^{\circ} 5' 31''$ West, 335.00 feet distant, through a central angle of $22^{\circ} 48' 26''$, for an arc distance of 133.35 feet; thence
- 37) Along the arc of a compound circular curve, the center of which bears South $6^{\circ} 42' 56''$ East, 1475.00 feet distant, through a central angle of $12^{\circ} 08' 15''$, for an arc distance of 312.46 feet; thence
- 38) South $71^{\circ} 08' 50''$ West, 171.86 feet; thence
- 39) Along the arc of a tangent circular curve, the center of which bears South $18^{\circ} 51' 10''$ East, 465.00 feet distant, through a central angle of $22^{\circ} 11' 48''$, for an arc distance of 180.14 feet; thence
- 40) South $48^{\circ} 57' 01''$ West, 65.49 feet; thence
- 41) South $46^{\circ} 04' 27''$ West, 113.37 feet; thence
- 42) Along the arc of a circular curve, the center of which bears North $43^{\circ} 55' 33''$ West, 785.00 feet distant, through a central angle of $0^{\circ} 36' 53''$, for an arc distance of 8.42 feet; thence
- 43) North $1^{\circ} 53' 52''$ East, 953.70 feet; thence
- 44) North $15^{\circ} 34' 46''$ West, 387.37 feet more or less to a point on the southerly line of Parcel 3 as shown on the map filed in Volume 19 of Surveys at Page 15, Official Records of said County; thence following said southerly line of said Parcel 3
- 45) South $87^{\circ} 45' 00''$ East, 1971.49 feet; thence along the easterly line of said Parcel 3
- 46) North $2^{\circ} 15' 00''$ East, 620.24 feet; thence departing said easterly line
- 47) North $55^{\circ} 40' 50''$ East, 47.11 feet, to the **Point of Beginning**.

Containing 134.92 acres of land, more or less.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof.

END OF DESCRIPTION

Prepared by:

WHITSON ENGINEERS

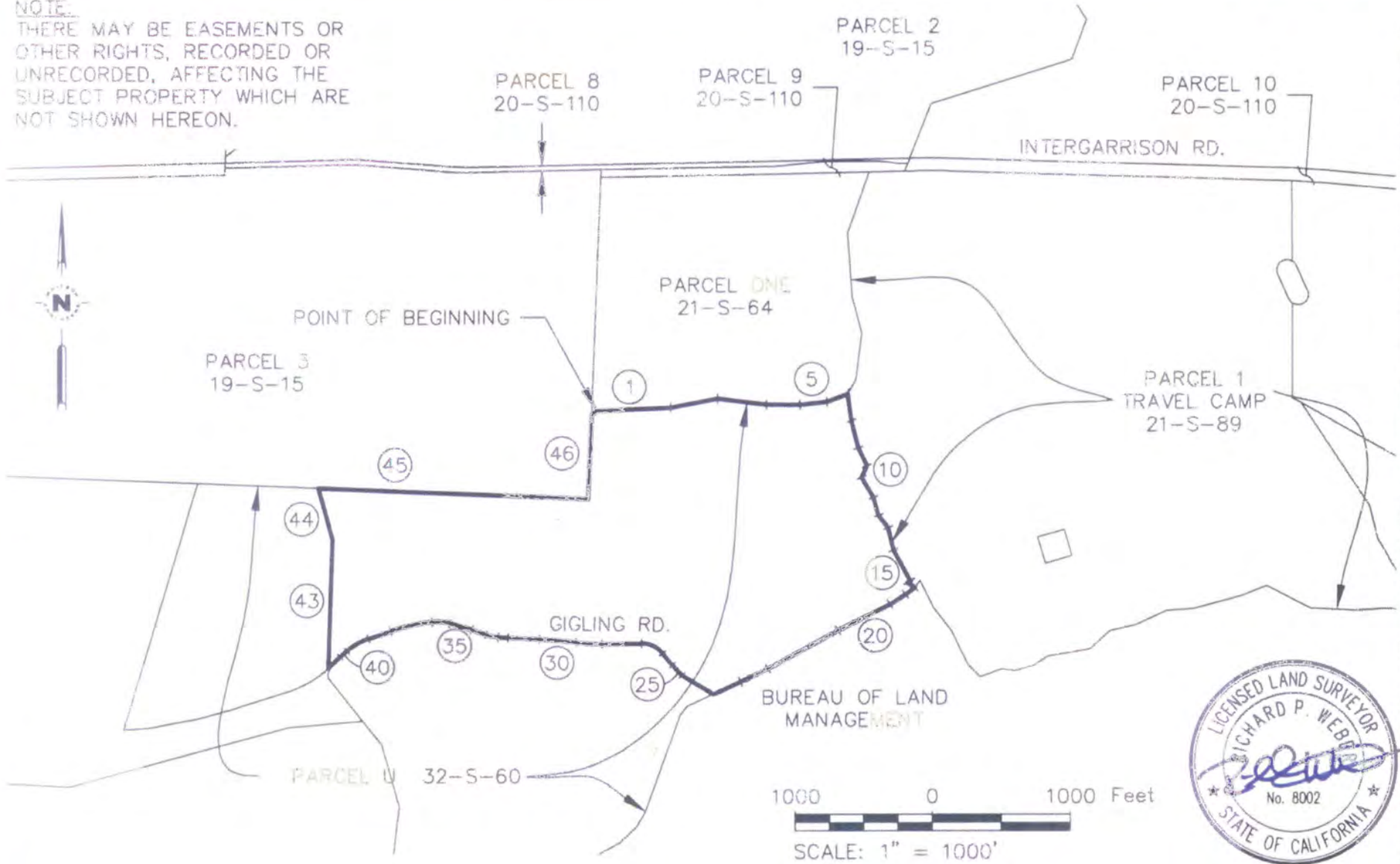


RICHARD P. WEBER P.L.S.
L.S. NO. 8002

Job No.: 2615.25



NOTE:
THERE MAY BE EASEMENTS OR
OTHER RIGHTS, RECORDED OR
UNRECORDED, AFFECTING THE
SUBJECT PROPERTY WHICH ARE
NOT SHOWN HEREON.



ATTACHMENT TO EXHIBIT A

CONSERVATION EASEMENT

MONTEREY COUNTY, CALIFORNIA

OCT 22, 2014

WE WHITSON ENGINEERS

9699 Blue Larkspur Lane • Suite 105 • Monterey, CA 93940

831 649-5225 • Fax 831 373-5065

CIVIL ENGINEERING • LAND SURVEYING • PROJECT MANAGEMENT