

June 15, 2023

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

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

Denise Duffy & Associates Team:

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

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

The Housing Element provides

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

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

The Housing Element should

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Additional programs are required.

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Delapa", with a stylized flourish at the end.

Michael Delapa
Executive Director

Attachments:

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