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12 Attorneys for Plaintiff  
13 Benjamin Kaatz

**FILED**

JUL 16 2003

SHERRI L. PEDERSEN  
CLERK OF THE SUPERIOR COURT  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

BENJAMIN KAATZ, in his capacity as a  
taxpayer resident of the City of Seaside,

Plaintiff,

v.

CITY OF SEASIDE, DANIEL E. KEEN, in  
his official capacity as City Manager for the  
City of Seaside, and DOES 1-20, inclusive,

Defendants.

CASE NO. M65043

NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY INJUNCTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF U.S.  
REP. SAM FARR; DEC. OF NADER  
AGHA; DECLARATION OF RICHARD  
VAN STEENKISTE, MAI, PHD.;  
DECLARATION OF TOM CRAVENS;  
PROPOSED ORDER GRANTING  
PRELIMINARY INJUNCTION

DATE: August 7, 2003  
TIME: 10:30 a.m.  
DEPT.: 17

**TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD HEREIN, AND TO  
K&B BAKEWELL SEASIDE VENTURE, LLC:**

**PLEASE TAKE NOTICE THAT**, on August 7, 2003, at 10:30 a.m., or as soon as  
thereafter as the matter may be heard in Department 17 of the above entitled Court,  
located at 1200 Aguajito Rd. Monterey, CA 93940, plaintiff will and hereby does move  
for a preliminary injunction restraining and prohibiting defendants CITY OF SEASIDE  
and DANIEL E. KEEN, and their agents, servants, employees and representatives, and

1 all persons acting in concert or participating with them, from:

2 a. granting any permits or approvals for any construction or other  
3 activities on the Hayes Park Property; and

4 b. approving any final parcel maps subdividing the Hayes Park  
5 Property.

6 This motion is brought pursuant to CCP § 527(a) and upon a showing of good  
7 cause for the requested relief in the interests of justice, including good cause pursuant  
8 to CCP § 526 and pursuant to applicable case law, as evidenced in the attached  
9 supporting papers. This motion is based upon this Notice of Motion and Motion, the  
10 attached Memorandum of Points and Authorities, the attached declarations of Nader  
11 Agha, Tom Cravens, Richard Van Steenkiste, and United States Representative Sam  
12 Farr, and all attachments thereto, the Court's file in this matter, and upon such further  
13 oral and documentary evidence and matters as the Court may consider at the hearing  
14 on this motion.

15  
16 DATED: July 15, 2003

LAW OFFICES OF HEIDI K. WHILDEN

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19 By: 

20 HEIDI K. WHILDEN  
21 Attorneys for Plaintiff  
22 Benjamin Kaatz  
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Benjamin Kaatz

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY

BENJAMIN KAATZ, in his capacity as a )  
taxpayer resident of the City of Seaside, )  
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Plaintiff, )  
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v. )  
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CITY OF SEASIDE, DANIEL E. KEEN, in his )  
official capacity as City Manager for the City of )  
Seaside, and DOES 1-20, inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO. M65043  
**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION**  
[Code Civ. Proc. §557]  
DATE: August 7, 2003  
TIME: 10:30 a.m.  
DEPT: 17

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9 **California Constitution**

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11 **Cases**

12 Allied Architects' Assn. v. Payne (1923) 192 Cal. 431

13 Bank of Stockton v. Church of Soldiers (1996) 44 Cal.App.4th 1623

14 Cimpher v. City of Oakland (1912) 162 Cal. 87

15 City and County of San Francisco v. Collins (1932) 216 Cal. 187

16 City of Oakland v. Garrison (1924) 194 Cal. 298

17 County of Alameda v. Ross (1939) 32 Cal.App.2d 135

18 County of Los Angeles v. La Fuente (1942) 20 Cal.2d 870

19 County of San Diego v. Hammond (1936) 6 Cal.2d 709

20 Fountain v. City of Sacramento (1905) 1 Cal.App. 461

21 FSP v. City of Los Angeles (1998) 65 Cal.App.4th 650

22 Goodall v. Brite (1936) 11 Cal.App.2d 540

23 Harman v. City and County of San Francisco (1972) 7 Cal.3d 150

24 Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348

25 Lundeen Coatings Corp. v. Department of Water & Power (1991) 232 Cal.App.3d 816

- 1 MacMillan Co. v. Clarke (1920) 184 Cal. 491  
2 Miller v. McKinnon (1942) 20 Cal.2d 83  
3 Patrick v. Riley (1920) 209 Cal. 350  
4 People v. Zamora (1980) 28 Cal.3d 88  
5 Reams v. Cooley (1915) 171 Cal. 150  
6 Sacramento & San Joaquin Drainage Dist. v. Riley (1926) 199 Cal. 668  
7 San Francisco Internat. Yachting etc. Group v. City and County of San Francisco (1992) 9 Cal.App.4th  
8 672  
9 Santa Cruz Rock-pavement Co. v. Broderick (1896) 113 Cal. 628  
10 Seymour v. State of California (1984) 156 Cal.App.3d 200  
11 Sierra Club v. City of Hayward (1981) 28 Cal.3d 840  
12 South Bay Senior Housing Corp. v. City of Hawthorne (1997) 56 Cal.App.4th 1231  
13 State of California v. Haslett Co. (1975) 45 Cal.App.3d 252  
14 The Housing Authority of Los Angeles v. Dockweiler, (1939) 14 Cal.2d 437  
15 Veterans' Welfare Board v. Riley, 188 Cal. 607  
16 Winkelman v. City of Tiburon (1973) 32 Cal.App.3d 834  
17 Zottman v. San Francisco (1862) 20 Cal. 96

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19 **Statutes**

20 42 U.S.C. sec. 11301, et seq. (Stewart B. McKinney Homeless Assistance Act)

21 Public Law 101-510

22 Public Law 104-106, sec. 2859

23 Code of Civil Procedure sec. 527

24 Code of Civil Procedure sec. 526a

25 Government Code section 11011.1

26 Govt. Code secs. 37362-37364

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1 Govt. Code sec. 54220  
2 Govt. Code sec. 54221  
3 Govt. Code sec. 54222  
4 Govt. Code sec. 54230.5  
5 Govt. Code sec. 66499.30  
6 Govt. Code sec. 66499.31  
7 Govt. Code sec. 67650, et seq.  
8 Labor Code sec. 1720

9

10 **California Attorney General Opinion**

11 69 Cal. Atty. Gen. Op. 300

12

13 **Treatises**

14 Redevelopment in California, 1995, 2<sup>nd</sup> Ed., by David F. Beatty, Joseph E. Coomes, Jr., T. Brent  
15 Hawkins, Edward J. Quinn, Jr. & Iris P. Yang, with A. Jerry Keyser & Calvin E. Hollis

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1 **INTRODUCTION**

2  
3 On July 25, 2002, the City of Seaside, California became the record owner of title to 105 acres of  
4 prime residential real estate, a stone's throw from the beach, readily subdividable into 380 residential  
5 lots, all with valuable water rights, many with ocean views, some with golf course frontage, and  
6 cumulatively worth over \$100 million. Five minutes after coming into ownership of property worth  
7 more than any property the City of Seaside had ever acquired before, worth more than the past total  
8 annual city budgets of the last 10 years combined, and representing a huge economic opportunity for the  
9 poorest municipality on the Monterey Peninsula, the City of Seaside granted record title to a private  
10 developer for \$5.95 million, or \$15,000 per residential lot. The City netted, based on the \$5.1 million it  
11 paid for the property from the federal government on that July 25<sup>th</sup>, a paltry \$850,000, in the end  
12 amounting to less than one percent of the value of the land the City was rightfully entitled to realize.

13 What did the public receive in exchange for this giveaway of public property? Zero affordable  
14 housing. The developers, with average housing prices well over \$600,000 for the 380 houses, have  
15 provided zero affordable housing units. Unlike almost any other residential subdivision development in  
16 the County of Monterey or in the State of California, the Seaside Highlands developers are not providing  
17 any affordable housing. Not for low income families, not for moderate income families, not for anyone.  
18 After taking record title to the public's valuable real property, the developers are now backing up their  
19 trucks, loading them up with the \$250 million cash they will gross on the project, and attempting to get  
20 out of town, Grinch-like, without leaving behind so much as one unit of affordable housing.

21 This points and authorities in support of a preliminary injunction seeks to show (1) how this  
22 unlawful giveaway of public property came to be; (2) which laws were ignored and violated by the City  
23 and the developer; (3) why plaintiff is ultimately entitled to an injunction voiding the purported land  
24 conveyance to the developer and disgorging the developer's illicit windfall profits; and (4) why it is  
25 imperative that the preliminary injunction be granted to avoid permanent harm to the residents of  
26 Seaside.

1 **STATEMENT OF FACTS**

2  
3 **A. Surplus Fort Ord Residential Real Property Became Available to Local Governments in the**  
4 **1990's**

5 In the early 1990's, the U.S. Army ordered the closure of Fort Ord, which consisted of 28,000 acres  
6 of Central Coast real estate, stretching along the coast from Seaside to Marina, and inland to the  
7 outskirts of Salinas. (Defense Base Closure and Realignment Act of 1990, as amended (Public Law  
8 101-510). In or about 1993, the Fort Ord Reuse Authority ("FORA") was created to design, adopt,  
9 finance and execute a plan for the transition and use of the land. (Govt. Code §§ 67650, et seq.) FORA  
10 continues to retain jurisdiction over the entire 45 square miles of Fort Ord. Of this surplus land, 2,000  
11 acres was retained by the Army for its Presidio of Monterey Annex, 2,400 acres is designated for  
12 university purposes, 16,000 acres is committed for nature preserves and habitat resource management,  
13 and 3,000 acres is available for residential and commercial development.

14 Certain legislation drafted by Congressman Sam Farr permitted the Army to transfer the former  
15 Hayes Park Housing Area ("Hayes Park"), located on Fort Ord, directly to the City of Seaside, rather  
16 than through FORA. (National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106,  
17 §2859), H.R. 731, S. 891.) While the legislation was intended to jump-start the revitalization of the  
18 closed Army base and surrounding community, the City of Seaside instead used the opportunity to avoid  
19 implementing FORA's surplus property acquisition and disposal strategy, created and adopted by each  
20 member government of the Fort Ord Reuse Group.

21  
22 **B. Seaside And K&B/Bakewell Shut Out Any Competition From The Beginning.**

23 In 1996, developers Kaufman & Broad Monterey Bay, Inc. and The Bakewell Company of  
24 Monterey, LLC, the entities which formed, controlled and continue to control K&B/Bakewell Seaside  
25 Venture, LLC ("K&B/Bakewell"), submitted an unsolicited proposal to the City of Seaside, offering to  
26 assist the City in purchasing Hayes Park from the U.S. Army. (Ex. 2: LDA, sec. C; Ex. 3: Res. No. 98-  
27 32 Agenda; Ex. 8: ENRA, para. D.) The City quickly accepted the proposal without considering any  
28

1 other offers and within a matter of weeks, entered into an Exclusive Negotiating Rights Agreement  
2 (“ENRA”) with K&B/Bakewell. (Ex. 8: ENRA.) The terms of the ENRA provided that the exclusive  
3 negotiations would continue for an initial period of eight months, which could be extended by either  
4 party. (Ex. 8: ENRA, sec. 1.2.) The parties agreed that “the City shall not negotiate with any entity  
5 other than the Developer regarding the acquisition and/or development of Hayes Housing, nor solicit or  
6 entertain bids or proposals to do so. . . . City represents and warrants to Developer that there is no third  
7 party that has any right to acquire, or to be offered the opportunity to acquire, all or any part of Hayes  
8 Housing [sic] with the exception of any rights that may exist under Section 54222 of the Government  
9 Code (the “Surplus Land Act”), whose consent or waiver is required for Developer to be able to acquire  
10 Hayes Housing.” (Ex. 8: ENRA, sec. 1.3.)

11 The terms of the ENRA expired in or about March 1998. Rather than soliciting or entertaining  
12 proposals for the acquisition and development of Hayes Park from any other developers, the City of  
13 Seaside refused to invite or consider any other bids or proposals. In fact, the City did everything  
14 possible to ensure that there would be no competitive process for selling the property, that  
15 K&B/Bakewell alone would be permitted to bid on and acquire the land, and that the property would be  
16 obtained on terms most favorable to the developer. Within a matter of weeks, the City Council held a  
17 special meeting for the sole purpose of considering whether to enter into a further, binding agreement  
18 with K&B/Bakewell for the sale and development of Hayes Park. (Ex. 3 to Complaint: 5/4/98 LDA  
19 Approval Hearing Minutes, p. 10.)

20  
21 **C. The Monterey County Housing Authority Was Shut Out Of The Process.**

22 The Housing Authority of the County of Monterey (“Housing Authority”), a political subdivision  
23 of the County of Monterey, has priority over local non-profit agencies and private developers in  
24 acquiring and developing surplus land for affordable housing purposes. (Decl. of Tom Cravens, para. 2.)  
25 In 1998, the Housing Authority learned that the City of Seaside was attempting to acquire title to Hayes  
26 Park from the Army. (Decl. of Tom Cravens, para. 4.) As the designated affordable housing agency to  
27 receive the statutory offer to purchase or lease the land from the City under California’s Surplus Land  
28

1 Act (Govt. Code sec. 54220, et seq.), the Housing Authority was anxious to receive such an offer once  
2 the parcel was conveyed by the Army. (Decl. of Tom Cravens, para. 4.) However, the understanding at  
3 that time was that, even if the City eventually acquired the property, the Housing Authority would not  
4 have a chance to acquire Hayes Park, as this was a “done deal” with K&B/Bakewell. (Decl. of Tom  
5 Cravens, para. 5.)

6 The City of Seaside did not acquire the property from the Army until July, 2002. (Ex.1: Army  
7 Quitclaim Deed; Ex. 5: City Final Closing Statement.) No offer to sell or lease Hayes Park was ever  
8 made by the City of Seaside to the Housing Authority once the City became the owner of this parcel, nor  
9 could it be made during the 5-minute period the City owned the land (Defendants’ Answer to Complaint,  
10 p. 9, para. 33.), in that the Surplus Land Act provides affordable housing agencies a full 60 days to  
11 respond. Had the Housing Authority received the statutorily required notice from the City, it would  
12 have competitively bid on this property in order to develop affordable housing, so desperately needed in  
13 the County of Monterey. (Decl. Of Tom Cravens, para. 9; Decl. Of U.S. Rep. Sam Farr, para. 3.)

14  
15 **1. Despite Offering Substantially More Money To The City Of Seaside, Other Developers**  
16 **Were Shut Out Of The Process.**

17 In July 1994, just months after the Army closed Fort Ord, a Monterey County developer  
18 (“Monterey Developer”) with 30 years’ experience in the acquisition, development and construction of  
19 residential and commercial properties submitted a written offer to the Army for the purchase of Hayes  
20 Park, based on its valuation of \$21,040,000. (Decl. Of Nader Agha, para. 2-4.) The Army advised that  
21 the offer would be further evaluated once the schedule approached for transfer of surplus land through  
22 public sale. (Decl. Of Nader Agha, para. 5.)

23 In November 1998, the Monterey Developer renewed his offer to purchase Hayes Park and other  
24 housing developments from the Army, significantly increasing his earlier offer for the properties based on  
25 their increased fair market value. (Decl. Of Nader Agha, para. 6.) Four months later, the developer  
26  
27  
28



1 offered to purchase Hayes Park from the Army for the sum of \$25,000,000. (Decl. Of Nader Agha, para.  
2 7-9.)

3 Although the U.S. Army still retained title to the Hayes Park Property, in June 1999 the Monterey  
4 Developer presented a proposal to the City of Seaside for the purchase of Hayes Park, in the event  
5 Seaside eventually acquired the land. Determining that the lead-based paint and non-friable asbestos  
6 existing in the housing units could safely and affordably be sealed and encapsulated, with the units  
7 immediately sold as affordable housing, the Monterey Developer proposed that the existing units be  
8 remodeled, and offered the City \$50,000,000 and 50% of all profits. Alternatively, he offered  
9 \$31,500,000 for site clearance and new construction on the land, consistent with the City's desire for  
10 new homes. (Decl. Of Nader Agha, para. 10-12.) Both offers were rejected because, as City officials  
11 explained, this was a "done deal" with K&B/Bakewell.

12  
13 **E. The Public Was Shut Out Of The Process.**

14 Despite numerous requests from concerned citizens and members of the public to continue the  
15 May 4, 1998 City Council hearing for further consideration of the many issues raised, the City  
16 maintained that it was not legally obligated to do so. (Ex. 3 to Complaint: 5/4/98 LDA Approval  
17 Hearing Minutes, p. 10.) The public raised concerns that the City had not provided adequate time for  
18 review of the Land Disposition Agreement ("LDA"), and its last minute changes, available just hours  
19 before the hearing. (Id.) Residents asked why local developers were excluded from consideration, why  
20 K&B/Bakewell was given such a lengthy term of exclusive negotiating rights, and why the City had  
21 agreed to waive the standard assessment district routinely required of developers as mitigation for  
22 increased costs associated with traffic, public safety, sewers and schools. (Ex. 3 to Complaint: 5/4/98  
23 LDA Approval Hearing Minutes, pp. 5, 6, 8, 10.) Members of the public were alarmed and outraged  
24 that the hearing appeared to simply be pro-forma, and that clearly this was a "done-deal" between the  
25 City and K&B/Bakewell. Additional time was demanded for study and input regarding matters that  
26  
27  
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1 would affect those present at the hearing, and future generations of Seaside residents. The City refused.  
2 (Ex. 3 to Complaint: 5/4/98 LDA Approval Hearing Minutes, p. 10.)

3  
4 **F. On May 4, 1998, The City Of Seaside Approved And Executed The LDA With**  
5 **K&B/Bakewell**

6 As set forth above, the May 4, 1998 Seaside City Council Meeting was held for the sole purpose of  
7 considering the approval and execution of the LDA between the City of Seaside and K&B/Bakewell.  
8 (Ex. 3 to Complaint: 5/4/98 LDA Approval Hearing Minutes.) The LDA was unusual in that it was not  
9 a contract whereby the City of Seaside agreed to sell land it owned to a private, for-profit entity at an  
10 agreed-upon price. Rather, the LDA provided that whenever the City might obtain title to the Hayes  
11 Park property, it would be bound to convey the property to K&B/Bakewell at whatever price, if any, the  
12 City ultimately paid the Army for the land. (Ex. 2: LDA, para. B, I.1, sec. 2.4.)

13 The terms of the LDA purportedly bound the City indefinitely into the future to give away the  
14 Hayes Park property to a selected developer. The key players who arranged the sweetheart deal with  
15 K&B/Bakewell, ironically, were all long gone from Seaside before the City ever acquired Hayes Park  
16 from the Army. Then-Mayor Don Jordan was thrown out of office by voters within the year, and moved  
17 clear across the country; then-City Manager Tim Brown who shepherded the deal returned to his Los  
18 Angeles home, where he had been involved with prior Bakewell deals while working in City  
19 management; and special legal counsel Andrew Shagrin of Goldfarb & Lipkin, shortly thereafter,  
20 became an inactive member of the California Bar and moved to Europe.

21 Los Angeles-based civil rights activist and developer Danny Bakewell, Jr., present at the meeting,  
22 claimed that his plan called for new homes ranging in size from 1500 to 4,000 square feet, with selling  
23 prices starting below \$200,000, which conformed to the City's direction to provide mixed housing types  
24 for first-time and luxury home buyers. (Ex. 3 to Complaint: 5/4/98 LDA Approval Hearing Minutes, pp.  
25 4-5.) Special counsel Shagrin explained, upon inquiry, the City's position that it was not required to  
26 provide affordable housing. Counsel noted that redevelopment agencies are required to spend specified  
27

1 amounts of tax increment monies on affordable housing for low- and moderate-income households. The  
2 City of Seaside, however, was not acting as a redevelopment agency in its efforts to acquire and develop  
3 Hayes Park, and therefore didn't have to create any affordable housing under redevelopment law. Nor,  
4 as counsel opined, was the City bound by existing legislation or FORA directives to require construction  
5 of affordable housing on the property. (Ex. 3 to Complaint: 5/4/98 LDA Approval Hearing Minutes, pp.  
6 3-4.)

7 Several members of the public requested that the meeting be rescheduled to allow sufficient time  
8 for the Council and public to review the stack of complex pertinent documents made available only  
9 hours before the meeting, which included last minute changes to the LDA. Concern was expressed that  
10 the City had not provided residents sufficient time to respond to the serious and complex issues raised by  
11 the LDA that, once decided, would permanently impact all resident property owners. For example, the  
12 LDA did not require K&B/Bakewell to provide standard developer payments toward transportation,  
13 schools, law enforcement, fire safety, or utilities, and lacked any provision for affordable housing. (Ex. 3  
14 to Complaint: 5/4/98 LDA Approval Hearing Minutes, pp. 5, 6, 8, 10.)

15 In the end, the City of Seaside, through its special counsel, asserted that it was not legally  
16 obligated to continue the hearing, and refused to do so. (Ex. 3 to Complaint: 5/4/98 LDA Approval  
17 Hearing Minutes, p. 10.) The City then closed the hearing, adopted Resolution No. 98-32 authorizing  
18 the LDA's execution, and then quickly executed the LDA. (Ex. 2: LDA; Ex. 3: Res. No. 98-32.)

19  
20 **G. The Salvation Army's Homeless Housing Project Was Forced Off The Property**

21 Pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§ 11301, et seq.), the  
22 Salvation Army was entitled to 10 housing units right in the middle of Hayes Park, for the purpose of  
23 providing temporary housing for the homeless. (Decl. Of Sam Farr, para. 2.) Obviously, however, the  
24 presence of a homeless shelter in the midst of a high end residential development would not be desirable  
25 to the developers. The City and K&B/Bakewell thus worked together to kick the Salvation Army off  
26 Hayes Park and relocate them as far from the proposed development as possible. (Ex. 2: LDA, sec.  
27  
28

1 2.6.4.) After a period of negotiations and pursuant to a Real Estate Exchange Agreement, the Salvation  
2 Army waived its right to the land and housing units at Hayes Park in exchange for certain land and  
3 replacement units to be constructed in the City's lower-priced downtown area. Unfortunately for the  
4 Salvation Army, the exchange parcel provided by the City of Seaside was worth only a fraction of the  
5 fair market value of the Hayes Park land to which the Salvation Army was entitled. Moreover, the  
6 Salvation Army ended up paying \$300,000 out of its own pocket for the land and buildings. (Decl. Of  
7 Sam Farr, para. 2.)

8 What is most outrageous about the relocation of the Salvation Army homeless housing units,  
9 though, is the claim by the City of Seaside and K&B/Bakewell that building the 10 relocated  
10 replacements units amounts to any sort of contribution on their part to the affordable housing needs of  
11 the community. And K&B/Bakewell's claim that this was some sort of consideration they provided (Ex.  
12 2: LDA, para. I.4) is ridiculous when considering the substantial gain in the value of Hayes Park realized  
13 by removing a homeless shelter from its midst, and then claiming the Salvation Army's ten units for  
14 themselves. Removing the Salvation Army and replacing their ten homeless housing units, housing  
15 which was a right and priority dictated by federal law for the benefit of the homeless, was simply in no  
16 way a contribution of affordable housing or consideration given by the developers.

17  
18 **H. The City Of Seaside Took Title to Property Worth \$115 Million On July 25, 2002, And**  
19 **Conveyed It To K&B/Bakewell For \$5.95 Million Five Minutes Later.**

20 On July 25, 2002, the City of Seaside acquired by Quitclaim Deed from the Army the surplus land  
21 known as Hayes Park, for the purchase price of \$5.1 million. (Ex. 1: Army Quitclaim Deed; Ex. 4:  
22 Escrow Agreement; Ex. 5: City Final Closing Statement.)

23 On or about July 25, 2002, the City of Seaside, as admitted in its Answer filed herein, conveyed  
24 the entire parcel to K&B/Bakewell within five minutes for \$5.95 million, netting a profit of \$850,000,  
25 representing less than 1% of the property's fair market value. (Ex. 6: K&B/Bakewell Final Closing  
26 Statement.)

1 On July 25, 2002, the appraised fair market value of Hayes Park was no less than \$94,195,000, and  
2 up to \$115,000,000. (Decl. Of Richard Van Steenkiste, Ph.D., MAI, para. 2.)  
3

4 **I. K&B Bulldozed The Property And Prepared Residential Lots For Sale In A Matter Of**  
5 **Months.**

6 The demolition and cleanup of Hayes Park required no more than several months of effort. The  
7 property had been assigned Department of Defense Category 1, defined as an area where no release or  
8 disposal of hazardous substances or petroleum products of any kind had ever occurred. Ex. 1: Army  
9 Quitclaim Deed, secs. VII(B), XII. Hayes Park had been used for military housing purposes only; no  
10 costly modifications to the infrastructure were required if the property continued to be used for housing.  
11 The Monterey Developer had previously determined that it was economically feasible, and profitable to  
12 the City, to repair and upgrade existing housing units, making them available and affordable to local  
13 safety personnel, teachers, nurses, the service industry, and other members of our community. (Decl. of  
14 Nader Agha, para. 10.) All that was required was sealing and incapsulating existing lead-based paint  
15 and non-friable asbestos, a common practice with older homes, and the method implemented by C.S.U.  
16 Monterey Bay with the surplus Fort Ord land it acquired and will use for residence halls.  
17

18 **J. In April 2003, K&B/Bakewell Confirmed No Affordable Housing Would Be Built On The**  
19 **Property, And Set A May 17, 2003 Target Date For Commencing Sales Of Lots With Houses.**

20 On or about April 14, 2003, K&B/Bakewell first announced starting prices for the homes to be  
21 built on Hayes Park. The base prices for the least expensive models and lots ranged from \$457,000 to  
22 \$550,000, with no upper limit on higher prices for higher end models and lots. A multitude of options  
23 could be had for additional amounts. On or about May 11, 2003, it was announced that prices had been  
24 increased , with the base starting prices ranging from \$495,000 to \$734,990, and on May 26, 2003 it was  
25 announced the prices had again risen, with base starting prices beginning at \$505,990. On June 23, 2003  
26 it was announced that base prices had skyrocketed, then ranging from \$522,990 to \$741,990, but  
27  
28

1 increasing by approximately \$5,000 each week. By choosing common upgrades to the basic house, a  
2 purchaser could easily incur an additional \$30,000 or more in additional expenses. The average price of  
3 homes, including options, is expected to be \$660,990. (Decl. Of Richard Van Steenkiste, Ph.D, MAI.,  
4 Ex. A, pp. 14-15.)

5  
6 **LEGAL ARGUMENT**

7  
8 Code of Civil Procedure section 527 permits the court to order a preliminary injunction any time  
9 prior to judgment in a civil action. In order to obtain a preliminary injunction, the plaintiff must show,  
10 “(1) a reasonable probability [plaintiff] will prevail on the merits and (2) that the harm to the plaintiff  
11 resulting from a refusal to grant the preliminary injunction outweighs the harm to the defendant from  
12 imposing the injunction.” (Bank of Stockton v. Church of Soldiers (1996) 44 Cal.App.4th 1623, 1626.)  
13 As set forth below, there is a reasonable probability in this case of plaintiff prevailing at trial, and the  
14 harm to the City of Seaside taxpayers and residents from refusing an injunction would outweigh any  
15 harm to the City of Seaside from granting an injunction pending trial.

16  
17 **I. PLAINTIFF IS LIKELY TO PREVAIL ON THE MERITS OF HIS CCP §526a  
18 TAXPAYER ACTION**

19 Plaintiff’s action for injunctive relief is based upon Code of Civil Procedure section 526a, which is  
20 the general statute for a taxpayer suit against a local government entity. Section 526a provides, in  
21 relevant part:

22 An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or  
23 injury to, the estate, funds, or other property of a county, town city or city and county of the state,  
24 may be maintained against any officer thereof, or any agent, or other person, acting in its behalf,  
either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or,  
within one year before the commencement of the action, has paid, a tax therein.

25 (Code of Civ. Proc. §526a.)

26 In Harman v. City and County of San Francisco (1972) 7 Cal.3d 150, with facts similar to the  
27

1 instant case, the California Supreme Court held that a Code of Civil Procedure section 526a taxpayer  
2 action was proper to challenge a city for selling land at below fair market value in violation of its  
3 governing charter. Based upon the city charter's specific requirements for the sale of public streets land  
4 to private individuals, the Harmon court held that the city owed a statutory duty to its taxpayers to obtain  
5 at least 90% of a rationally determined market value of vacated street conveyed to abutting landowners.  
6 (Id. at 161.) The taxpayer complaint alleged that the property was being sold at 50% of its value, rather  
7 than at least 90%, which was sufficient to state the cause of action under Section 526a. (Id. at 165.)  
8 Additionally, the plaintiff in Harman, in naming as defendants both the city and private individuals  
9 which had purchased the land at 50% of its fair market value, was seeking both injunctive relief as well  
10 as disgorgement by the recipients of the public property the difference between the discounted sales  
11 price and actual fair market value. (Id. at 156.)

12 Plaintiff's case is strikingly similar in that it is a Section 526a taxpayer suit alleging that the City  
13 of Seaside (which is not a charter city) violated state statutes by selling surplus residential real property  
14 to a private for-profit developer at a fraction of its fair market value. In the instant case, of course, the  
15 facts are even more egregious than in Harman: K&B/Bakewell got record title to \$115 million worth of  
16 public property for only \$5.95 million, only one-twentieth of the land's fair market value. Seaside's  
17 attempt to convey the 105 acres of valuable real property to K&B/Bakewell for a fraction of its value  
18 was void and of no legal effect due to the violation of laws governing affordable housing and preventing  
19 the giveaway of public property at less than fair market value.

20 The facts and argument set forth below document multiple laws violated by the attempted  
21 conveyance, each constituting separate and independent grounds for an order confirming the attempted  
22 sale as void, and an injunction being issued under Section 526a. The violations of law include:

- 23 ▶ Failure to offer land to Monterey County Housing Authority in violation of the Surplus  
24 Land Act (Govt. Code §§ 54222);
- 25 ▶ Sale of residential real property below fair market value without requiring affordable  
26 housing (Govt. Code §§ 37362-37364);

- 1 ▶ Violation of the California Constitution’s prohibition against gifts of public funds  
2 (Cal.Const. Art. 16, Sec. 6);
- 3 ▶ Violation of the City’s own Resolution approving the LDA, which required consideration  
4 be fair market value; and
- 5 ▶ To the extent the city building constructed pursuant to the LDA can be considered public  
6 works project, violation of the public bidding statutes.

7

8 **A. The City Of Seaside Violated California’s Surplus Land Act By Not Making the Property**  
9 **Available For the Development of Affordable Housing Once It Owned The Land In July**  
10 **2002**

11 As set forth in the Declaration of Jim Nakashima, the Director of the Monterey County Housing  
12 Authority (“Housing Authority”), the City of Seaside never offered to sell or lease the Hayes Park  
13 Property to the Housing Authority once Seaside owned the property in July 2002. If it had received the  
14 required notice, the Housing Authority would have been prepared to offer a competitive bid for the  
15 property at a price representing its fair market value rather than the price of \$15,000 per residential lot  
16 with water rights paid by K&B/Bakewell.

17 **1. The Plain Language Of The Surplus Land Act Requires That Real Property First Be**  
18 **“Owned” By A City Before Being Offered For The Development Of Affordable**  
19 **Housing.**

20 In determining whether or not the City of Seaside complied with the Surplus Land Act, the starting  
21 point is recognizing the intent of the law. “It is a well-established legal principle that the purpose of a  
22 statute is a guiding star in defining the language it employs”. (Sierra Club v. City of Hayward (1981) 28  
23 Cal.3d 840, 860, fn 12.) The first paragraph of the first statute of the Surplus Land Act sets forth the  
24 purpose of the law:

25 “The Legislature reaffirms its declaration that housing is of vital statewide importance to the health,  
26 safety, and welfare of the residents of this state and that provision of a decent home and a suitable  
27 living environment for every Californian is a priority of the highest order. The Legislature further  
28 declares that there is a shortage of sites available for housing for persons and families of low and  
moderate income and that surplus government land, prior to disposition, should be made



1 available for that purpose.”

2  
3 (Govt. Code § 54220.)

4 Government Code section 54221 defines the key terms used in the Surplus Land Act, squarely  
5 placing the City of Seaside under its coverage:

6 (a) As used in this article, the term "local agency" means every city, whether organized under  
7 general law or by charter, county, city and county, and district, including school districts of any  
8 kind or class, empowered to acquire and hold real property.

9 (Govt. Code § 54221.)

10 Furthermore, the Surplus Land Act clearly defines the property subject to the Act as property  
11 “owned” by the local agency, rather than property which might be owned some day:

12 “(b) As used in this article, the term "surplus land" means land owned by any agency of the state,  
13 or any local agency, that is determined to be no longer necessary for the agency's use, except  
14 property being held by the agency for the purpose of exchange.”

15 (Govt. Code § 54221.)

16 Thus, the City’s obligation to make the property available for potential affordable housing use,  
17 which is the overriding purpose of the Act, did not arise until July 25, 2002, when the City became the  
18 owner of Hayes Park. Once it owned the land on July 25, 2002, the City’s duty was clear:

19 “Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of  
20 that property, send a written offer to sell or lease the property as follows:

21 (a) A written offer to sell or lease for the purpose of developing low-and moderate-income housing  
22 shall be sent to any local public entity as defined in Section 50079 of the Health and Safety Code,  
23 within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section  
24 50074 of the Health and Safety Code, shall, upon written request, be sent a written offer to sell or  
25 lease surplus land for the purpose of developing low- and moderate-income housing. All notices  
26 shall be sent by first-class mail and shall include the location and a description of the property.  
27 With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given  
28 to development of the land to provide affordable housing for lower income elderly or disabled  
persons or households, and other lower income households.

29 ...”  
30 (Govt. Code § 54222.)

31 To allow a local agency to meet this statutory obligation prior to actually owning the property  
32 would create a loophole which would swallow the rule. If this were the rule, for example, the City of  
33 Seaside could give notice to affordable housing providers today regarding any and all land that if it

1 might ever acquire at Fort Ord in the future. Affordable housing entities would then have 60 days to  
2 negotiate for property the City might never own, and for a purchase price that could range anywhere  
3 from \$1 to \$100 million. That is exactly the circumstance the City created by purportedly issuing  
4 notices in 1998 regarding land it didn't own until over four years later, and for which it had no idea what  
5 price it would pay. By use of such an artifice, cities could wholly flaunt the purposes of the Surplus  
6 Land Act and sell or giveaway public property at will, without consideration for affordable housing,  
7 legislatively declared to be a priority of "vital statewide importance".

8  
9 **2. Plaintiff Is Entitled To Legal And Equitable Remedies Apart From A Remedy Invalidating**  
10 **The Conveyance To K&B/Bakewell.**

11 Plaintiff's remedies for a violation of the Surplus Land Act do not extend to invalidating the  
12 transfer of real property to a purchaser for value:

13 "The failure by the state or a local agency to comply with the provisions of this article shall not  
14 invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value."

15 (Govt. Code § 54230.5.)

16 This does not, of course, mean that there is no remedy for a violation of the Surplus Land Act.  
17 The entire statutory scheme would be rendered meaningless if section 54230.5 was interpreted to mean  
18 that failing to comply with the law shall have no adverse consequences. Further, it is not a law readily  
19 enforceable through mandate by forcing a local agency to comply with the law prior to selling surplus  
20 property. By its own language, the Act cannot be violated until a sale of property has been completed,  
21 and the proper notices to affordable housing agencies not given. At that point the land will have already  
22 been conveyed, with the conveyance thus being protected from invalidation by section 54230.5.

23 Surplus Land Act remedies are consistent with other statutory schemes which exist to ensure that  
24 local public entities make residential property available for affordable housing. Government Code  
25 section 11011.1 is similar in purpose and effect as the Surplus Land Act, created to promote  
26 opportunities for the development of affordable housing when government agencies dispose of surplus  
27

1 real property. Subdivision (d) of Section 11011.1 allows the State of California to sell surplus real  
2 property to a local public agency at below fair market value, so long as the property is used for  
3 affordable housing. Like the Surplus Land Act, failure to comply with Section 11011.1 does not  
4 invalidate the conveyance, as would otherwise be the case under the common law. (See, *infra*, Cimpher  
5 v. City of Oakland (1912) 162 Cal. 87) If local agencies do not meet their obligations to use the land for  
6 affordable housing purposes, the State may require the local agency to pay the State the difference  
7 between the discounted purchase price and the fair market value of the property, plus a six percent per  
8 year surcharge covering the period of the local agencies ownership of the property. (Govt. Code  
9 §11011.1(d)(4).)

10 In this case, the most equitable remedy for violation of the Surplus Land Act would be an order  
11 requiring K&B to disgorge profits derived from unlawfully preventing the property from use for  
12 affordable housing. The measure of K&B's profit from unlawfully acquiring the Hayes Park Property is  
13 the difference between the fair market value of the Property and the \$5.95 million price paid for it.

14  
15 **B. A City May Not Sell Land For Residential Housing Purposes At Below-Fair Market Value**  
16 **Unless Construction Of Affordable Housing Is Required Of The Developer.**

17 **1. Sales Of Real Property Suitable For Residential Housing At Below-Fair Market**  
18 **Value By California Cities Are Only Permitted for Affordable Housing Purposes.**

19 The State of California has long recognized that, with limited land and an ever-increasing  
20 population, it is vitally important to ensure that when land suitable for residential purposes comes into  
21 the ownership of the State or the political subdivisions thereof, that land is made available for affordable  
22 housing. To promote this public policy, the State has placed residential real property in a special  
23 protected class when the State or local entities seek to dispose of property. While the statutory scheme  
24 for the sale of other property by cities and other local agencies varies and does not always expressly  
25 impose the requirement that property be sold for fair market value, when it comes to real property  
26 suitable for residential purposes the State's position is clear: such property may not be sold for less than  
27

1 fair market value unless it is used for affordable housing purposes.

2 For cities, the Legislature sets forth its purpose and intent regarding the sale of residential property  
3 in Government Code sections 37362, 37363 and 37364. These statutes expressly permit the sale of  
4 residential property by cities for less than fair market value. By expressly permitting the sale of  
5 residential real property in the manner set forth below, the Legislature has excluded any sales by cities of  
6 residential property at below market value unless for affordable housing purposes.

7 Government Code section 37362 first addresses sales of individual residential properties below  
8 fair market value where the homes require substantial rehabilitation prior to occupancy as a residence.  
9 Although Seaside chose not to rehabilitate the existing housing on the property, the intent of section  
10 37362 is still relevant to this matter, and states:

11 The Legislature hereby finds that many persons and families of low or moderate income, as  
12 defined by Section 50093 of the Health and Safety Code, cannot afford to purchase housing in the  
13 conventional housing market. The Legislature also recognizes that cities occasionally acquire  
14 residential property requiring substantial rehabilitation prior to being deemed habitable. Since  
15 maintenance of existing housing stock and the extension of opportunities for homeownership are  
16 desirable objectives, the Legislature declares that the public interest would be well served if cities  
17 were empowered to sell such residential property at less than market value to such persons and  
18 families of low or moderate income, on condition that the purchaser rehabilitate the home and  
19 reside therein for a specified length of time. The provisions of this section shall apply to a  
20 chartered city.

17 (Govt. Code § 37362.)

18 Government Code section 37363 provides the specific mechanism whereby a city can ensure, after  
19 the sale of the residential property below-fair market value, that the residences are actually rehabilitated  
20 and remain part of the affordable housing stock for a specified period of time. (Govt. Code §. 37363.)

21 Government Code section 37364 directly addresses the facts and issues of the instant case, clearly  
22 stating the affordable housing requirements for sales of residential real property by cities at below-fair  
23 market value:

24 (a) The Legislature reaffirms its finding that the provision of housing for all Californians is a  
25 concern of vital statewide importance. The Legislature recognizes that real property of cities can  
26 be utilized, in accordance with a city's best interests, to provide housing affordable to persons and  
27 families of low or moderate income. Therefore, notwithstanding any provision of a city's charter,  
28 or any other provision of law, whenever the legislative body of a city determines that any real  
property or interest therein owned or to be purchased by the city can be used to provide housing

1 affordable to persons and families of low or moderate income, as defined by Section 50093 of the  
2 Health and Safety Code or as defined by the United States Department of Housing and Urban  
3 Development or its successors, and that this use is in the city's best interests, the city may sell,  
4 lease, exchange, quitclaim, convey, or otherwise dispose of the real property or interest therein at  
less than fair market value, or purchase an interest in the real property, to provide that affordable  
housing under whatever terms and conditions the city deems best suited to the provision of such  
housing.

5 (b) Not less than 80 percent of the area of any parcel of property disposed of pursuant to this  
6 section shall be used for development of housing.

7 (c) Not less than 40 percent of the total number of those housing units developed on any parcel  
8 pursuant to this section shall be affordable to households whose incomes are equal to, or less than,  
75 percent of the maximum income of lower income households, and at least half of which shall  
be affordable to very low income households.

9 (d) Dwelling units produced for persons and families of low or moderate income under this section  
10 shall be restricted by regulatory agreement to remain continually affordable to those persons and  
11 families for the longest feasible time, but not less than 30 years, pursuant to a method prescribed  
12 by the city. The regulatory agreement shall contain a provision making the covenants and  
13 conditions of the agreement binding upon successors in interest of the housing sponsor. The  
regulatory agreement shall be recorded in the office of the county recorder of the county in which  
the housing development is located. The regulatory agreement shall be recorded in the grantor-  
grantee index to the name of the property owner as grantor and to the name of the city as grantee.

14 (e) The provisions of this section shall apply to all cities, including charter cities.

15 (f) The definitions of "persons and families of low and moderate income," "lower income  
16 households," and "very low income households" set forth in Sections 50079, 50093, and 50105 of  
the Health and Safety Code shall apply to this section.

17 (Govt. Code § 37364.)

18 Despite selling 105 acres of prime real property ideal for residential use to a private for-profit  
19 developer at one-twentieth of its fair market value, the City of Seaside completely failed to comply with  
20 the Legislature's requirement that the property be made available for affordable housing purposes. Such  
21 failure to comply with Government Code section 37364 renders the attempted transfer of the public  
22 property to K&B/Bakewell void and of no legal force, for, unlike the Surplus Land Act, this statutory  
23 scheme does not protect purchasers for value. Thus the common law rule, as set forth infra in Cimpher  
24 v. City of Oakland (1912) 162 Cal. 87, et al., applies and the attempted conveyance is void for failure to  
25 comply with the applicable law restricting a city's ability to convey property. (Id.)

26 ///

27 ///

1           **2.     The City Of Seaside Did Not Act As A Redevelopment Agency, And Therefore Did**  
2           **Not Have Any Special Power to Dispose of Property Below-Fair Market Value**  
3           **Without Requiring Construction Of Affordable Housing On The Land.**

3           The City of Seaside attempted to dispose of Hayes Park Property as a California general law city  
4 and not as a redevelopment agency, and thus did not have the broad authority granted to redevelopment  
5 agencies. The leading legal treatise on California’s Redevelopment Law, prepared by the leading  
6 redevelopment law firm in the state, devotes a chapter to the disposition of real property by  
7 redevelopment agencies, and in doing so clearly contrasts the broad powers of redevelopment agencies  
8 to the limitations imposed on cities. The introduction to the chapter describing the power of a  
9 redevelopment agency, as opposed to any other public entity, including cities, to dispose of real property  
10 begins as follows:

11           The corollary function to the acquisition of property by a redevelopment agency is its disposition  
12 of property for redevelopment purposes. The Community Redevelopment Law has provided  
13 redevelopment agencies with broad powers concerning the disposition of real property.

13           Section 33430 provides that a redevelopment agency “may, within the survey area or for purposes  
14 of redevelopment, sell, lease, for a period not to exceed 99 years, exchange, subdivide, transfer,  
15 assign, pledge, encumber by mortgage, deed of trust, or otherwise, or otherwise dispose of any real  
16 or personal property or any interest in property.” No particular method or procedure is prescribed  
17 for the disposition of property, except that Section 33431 requires a public hearing prior to the sale  
18 or lease of land made without public bidding. By this means, redevelopment agencies have been  
19 granted a unique power for a public agency—they can negotiate directly with prospective  
20 developers for the disposition of property without undertaking any bidding or other competitive  
21 process. As discussed below, agencies may from time to time conclude that sole source developer  
22 selection will best serve their purposes, but for the most part agencies use a competitive process.

23           Redevelopment agencies are also permitted to dispose of property for less than its acquisition cost.  
24 ...

25 (Redevelopment in California, 1995, 2<sup>nd</sup> Ed., by David F. Beatty, Joseph E. Coomes, Jr., T. Brent  
26 Hawkins, Edward J. Quinn, Jr. & Iris P. Yang, with A. Jerry Keyser & Calvin E. Hollis, Ch. 7, p. 125.)

27           But the City of Seaside could not avail itself of the special procedures described above. The City  
28 did not act as a redevelopment agency – it attempted to convey the property to K&B/Bakewell as a city,  
and thus did not have any unique power to dispose of property below-fair market value and disregard the  
standard laws applicable to cities.

1 **C. The Attempted Transfer Of Public Property From The City Of Seaside To K&B/Bakewell**  
2 **Does Not Serve A Recognized Public Purpose, And Therefore Constitutes An**  
3 **Unconstitutional Gift Of Public Funds.**

4 Article 16, Sec. 6, of the California Constitution prohibits cities of the State of California from  
5 making a gift of public funds:

6 The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the  
7 credit of the State, or of any county, city and county, city, township or other political corporation  
8 or subdivision of the State now existing, or that may be hereafter established, in aid of or to any  
9 person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof,  
10 in any manner whatever, for the payment of the liabilities of any individual, association, municipal  
11 or other corporation whatever; nor shall it have power to make any gift or authorize the making of  
12 any gift, of any public money or thing of value to any individual, municipal or other corporation  
13 whatever; . . .

14 (Cal. Const. Art. 16, Sec. 6.)

15 In determining whether an appropriation of public funds is to be considered a gift within the  
16 constitutional prohibition, the primary question is whether the funds are to be used for a public or a  
17 private purpose. (County of Los Angeles v. La Fuente (1942) 20 Cal.2d 870, 876-877.) If the money is  
18 for a public purpose, the appropriation is not a gift even though private persons are benefitted by the  
19 expenditure. (County of San Diego v. Hammond (1936) 6 Cal.2d 709 [use of county funds to pay  
20 delinquent assessments on over-burdened property]; City of Oakland v. Garrison (1924) 194 Cal. 298  
21 [street improvements]; Allied Architects' Assn. v. Payne (1923) 192 Cal. 431 [erection of memorial hall  
22 for war veterans]; Veterans' Welfare Board v. Riley (1922) 188 Cal. 607 [transportation, tuition and  
23 living expenses for education of veterans]; MacMillan Co. v. Clarke (1920) 184 Cal. 491 [free school  
24 text books]; Patrick v. Riley (1930) 209 Cal. 350 [payments for destruction of diseased cattle];  
25 Sacramento & San Joaquin Drainage Dist. v. Riley (1926) 199 Cal. 668 [flood control]; City and County  
26 of San Francisco v. Collins (1932) 216 Cal. 187 [bond issue for relief of indigent sick and poor]; The  
27 Housing Authority of Los Angeles v. Dockweiler (1939) 14 Cal.2d 437 [slum clearance]; Goodall v.  
28 Brite, (1936) 11 Cal.App.2d 540 [free treatment in county hospital only for those unable to pay]; County  
of Alameda v. Ross (1939) 32 Cal.App.2d 135 [county repair of private railroad bridge constitutes  
unlawful gift of public funds]; Winkelman v. City of Tiburon (1973) 32 Cal.App.3d 834 [because low-

1 income housing serves public purpose, sale of land to nonprofit association at below-fair market value  
2 was constitutional].

3 In the instant matter, the City gave to K&B/Bakewell approximately \$100 million worth of public  
4 property, representing the difference between the purchase price and the actual fair market value of the  
5 land. No recognized public purpose exists, however, to support such a large giveaway of public  
6 resources. While the development of affordable housing would qualify as a recognized public purpose,  
7 the developer deftly avoided any affordable housing requirements. When K&B/Bakewell finally  
8 revealed their resale prices in April 2003 the charade was over: every one of the 380 residential lots,  
9 with developer-built houses would be sold at the highest price attainable, anywhere from \$515,000 to  
10 \$800,000, with zero affordable housing units. No public purpose was provided for in gifting the \$100  
11 million in property to K&B/Bakewell at one-twentieth its value, and no public purpose was achieved.  
12 Accordingly, the purported conveyance is void as an unlawful gift of public property in violation of  
13 Article 16, section 6 of the California Constitution.

14  
15 **D. The LDA Is Void Due To Its Uncertainty Regarding Price and Time of Sale, Or Must Be**  
16 **Interpreted So As To Require The Property Be Sold For Fair Market Value.**

17 The LDA is fatally defective on its face in that neither a definite purchase price nor a time for  
18 performance are sufficiently specified in the document. If this were a contract between private parties,  
19 of course, the price and time terms might be considered sufficiently specific: the price is whatever the  
20 buyer ultimately pays; the date of purchase is whenever the buyer acquires the property. For a public  
21 entity, however, such ambiguity is fatal. Neither the relevant statutes nor the California Constitution  
22 permit a public entity to sell public property for “whatever” price. Further, no public policy supports  
23 permitting the governing body of a city to obligate the city indefinitely into the future to sell property “if  
24 and when” it is ever acquired, as the LDA attempts to do.

25 Although the LDA should properly be considered void and of no legal force for this and other  
26 reasons set forth in this brief, if the Court were to uphold the validity of the LDA, it could only do so by  
27



1 interpreting the language of the document so as to require that the property be sold by the City at fair  
2 market value. Such an interpretation would be independently justifiable, given the language of the City  
3 of Seaside's approving resolution, which states at Paragraph 3: "The City Council hereby finds that the  
4 consideration to be given by the Developer under the LDA is not less than the value of the property that  
5 the City will convey to the Developer under the LDA. This finding is based on the facts and analysis set  
6 forth in the Staff Report."

7 The Staff Report is set forth in the City Council Agenda Item dated April 30, 1998 for the May 4,  
8 1998 hearing, and includes, under the title "Explanation of Item", the following: "The City is currently  
9 negotiating to obtain the former Hayes Housing property from the United States Army at the fair market  
10 value, as determined by the Secretary of the Army. Upon successful acquisition, staff is proposing that  
11 the property be sold to Kaufman & Broad (K&B) Bakewell Seaside Venture at the property's 'fair  
12 market value'".

13 The City's official action approving the LDA strongly suggests that the objective intent was for the  
14 property to ultimately be sold to K&B/Bakewell for fair market value. Further, this interpretation would  
15 be the only possible one to save the LDA from otherwise being not specific enough with respect to price.  
16 Given the indefiniteness of time of performance in the LDA, the most reasonable interpretation of the  
17 appropriate date of valuation would be the date the City took title to the property and then conveyed it to  
18 K&B/Bakewell. Without such an interpretation, the LDA would again be unlawfully vague due to the  
19 unlimited time within which to perform. For example, under the terms of the LDA, if the City did not  
20 obtain title to the land for 30 years, the LDA could still be in effect. Conveying the property that far off  
21 in the future based upon the fair market value at the time the LDA was entered into would be  
22 unreasonable and unfair to the City's taxpayers.

23 Given the interpretation of the LDA as requiring the property to be conveyed for fair market value,  
24 the July 25, 2002 attempted conveyance at one-twentieth of fair market was void in that the City of  
25 Seaside was only authorized to sell the property at its fair market value. Representatives and officials of  
26 a public entity have no more authority than that vested in them through lawful delegation by the  
27

1 governing body of the public entity. “The mode prescribed is the measure of power.” (People v. Zamora  
2 (1980) 28 Cal.3d 88, 98.) Because City officials were only authorized by the LDA to sell the property  
3 for fair market value, their signatures on the deed purporting to sell the property to the developers at one-  
4 twentieth its value are of no legal force and effect, and do not in any way bind the City or constitute an  
5 actual conveyance of the City’s real property.

6  
7 **E. The LDA’s Required Construction Of A City Building By K&B/Bakewell On City Land**  
8 **And For City Use Constitutes A Public Works Project Which Was Not Open To Other**  
9 **Bidders, Was Not Awarded To The Lowest Bidder, And Therefore Renders The LDA Void.**

10 Developers routinely agree to provide mitigation to cities and other local public agencies for  
11 impacts on traffic, sewers, police, fire, schools and related matters resulting from the proposed  
12 development. Such mitigation can include the construction of a building for ownership and use by the  
13 city. When a private developer is constructing a building to be owned by the city, however, the  
14 construction of the building is considered a “public work” under Labor Code section 1720, and the  
15 developer is required to pay prevailing wages to the workers on the project. This prevailing wage  
16 requirement for public works projects even includes situations where the developer hands over a  
17 “turnkey” facility to the public entity, built on private land, and then deeded to the city upon completion  
18 of the construction. (See, 69 Cal.Atty.Gen.Op. 300 [construction of fire station and library on private  
19 land, then deeded to city, is public works project].)

20 While developer-built turnkey public facilities are thus considered public works projects, subject  
21 to prevailing wage laws, most are not subject to public bidding requirements because they do not involve  
22 the expenditure of public funds. Generally, developers provide benefits to cities in exchange for  
23 permission to develop property that the developers already own. The instant LDA between the City and  
24 K&B/Bakewell is unusual in that it requires the City, in addition to approving the development of 380  
25 single residences, to convey a valuable 105-acre ocean view property to the developer on which the  
26 houses are to be built.

27 This LDA provision requiring the transfer of public property from the City of Seaside to  
28

1 K&B/Bakewell is unusual as a development contract in that the City would be transferring value to the  
2 developer as part of the deal. This transfer of value constitutes payment of public funds to  
3 K&B/Bakewell. The LDA, by requiring construction of a public works project, while at the same time  
4 requiring the City to transfer public property to K&B/Bakewell, thereby subjects itself to the public  
5 bidding requirement for all public works projects in excess of \$5,000. Of course, this deal was expressly  
6 made through exclusive negotiating arrangements in an extraordinary effort to ensure that nobody other  
7 than K&B/Bakewell would have an opportunity to enter into an agreement with the City. By not  
8 opening the process to public bidding, however, the LDA violates the public bidding laws and is  
9 therefore void, null and of no legal force.

10  
11 **F. Plaintiff Is Entitled To Legal And Equitable Remedies.**

12  
13 **1. A Contract With A Public Entity Is Void If Not Entered Into In Compliance With**  
14 **Applicable Laws.**

15 A contract, including a purported sale of real property, cannot be enforced against a public entity  
16 where the statutory manner prescribed for entering the contract or granting the land has not been  
17 complied with. (Cimpher v. City of Oakland (1912) 162 Cal. 87; Zottman v. San Francisco (1862) 20  
18 Cal. 96.) Such a contract of deed is considered void, not merely voidable, and requires public entities to  
19 treat the unlawful contract or deed as if it has no legal force and never existed.

20 In Cimpher, the State of California granted legal title for certain real property consisting of tidal  
21 lands to the City of Oakland in 1852. In 1874, the Oakland city council purported to grant title to a  
22 portion of the land to Samuel Merritt, upon which he built a boat house. Over 35 years later, a legal  
23 action was brought challenging the purported transfer of property back in 1874. The Court addressed the  
24 primary issue regarding whether the City had complied with the governing statutory requirements when  
25 it purported to convey the land 38 years earlier. The Court, in affirming the judgment for the city held:

26 “If it be conceded that the city had the power to grant or sell the tide lands for what appears to have  
27  
28

1 been a private use, or to dispose of them at all, except in aid of the public rights of navigation and  
2 fishery, it could do so only in the manner prescribed by its charter. As an attempted disposition of  
3 such land, the resolution was a wide departure from the prescribed mode and was wholly  
4 ineffectual.”

5 (Id. at 89-90.)

6 The legal principle set forth by the Supreme Court in Cimpher had been established well before  
7 that 1912 decision, and has been repeatedly restated and upheld throughout over one hundred and forty  
8 years of California jurisprudence. Zottman v. San Francisco (1862) 20 Cal. 96; Santa Cruz Rock-  
9 pavement Co. v. Broderick (1896) 113 Cal. 628; Fountain v. City of Sacramento (1905) 1 Cal.App. 461;  
10 Reams v. Cooley (1915) 171 Cal. 150; Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348;  
11 Miller v. McKinnon (1942) 20 Cal.2d 83; State of California v. Haslett Co. (1975) 45 Cal.App.3d 252;  
12 Seymour v. State of California (1984) 156 Cal.App.3d 200; Lundeen Coatings Corp. v. Department of  
13 Water & Power (1991) 232 Cal.App.3d 816; San Francisco Internat. Yachting etc. Group v. City and  
14 County of San Francisco (1992) 9 Cal.App.4th 672; South Bay Senior Housing Corp. v. City of  
15 Hawthorne (1997) 56 Cal.App.4th 1231; FSPF v. City of Los Angeles (1998) 65 Cal.App.4th 650.

16 In Zottman v. San Francisco, supra, 20 Cal. 96, the defendant city and Zottman entered into a  
17 contract to construct an iron fence with a wooden base around the city square. After the contract had  
18 been properly formed in accordance with the relevant city law, some city officials decided the fence  
19 ought to be painted and have a more expensive stone base. After completing the additional work, the  
20 contractor sought payment. The Zottman Court held that the contractor was not entitled to payment for  
21 the additional work as there was no properly formed contract. This was despite evidence that city  
22 officials and city council members, without voicing any objection and with some voicing  
23 encouragement, watched the contractor perform the extra work from their office windows overlooking  
24 the city square.

## 25 **2. Disgorgement Of Property Is Appropriate In Lieu Of Voiding The Property** 26 **Transfer.**

27 To the extent the Court finds that the Surplus Land Act was violated by the City’s failure to offer  
28

1 the property to the Housing Authority once it owned the land on July 25, 2002, voiding the deed on this  
2 ground alone would not be the appropriate remedy under Govt. Code § 54230.5. As discussed supra,  
3 however, there are other remedies available to the Court. As sought by the plaintiffs in Harman, supra,  
4 Plaintiff in the instant action is seeking the alternative remedy of requiring K&B/Bakewell to disgorge  
5 the difference between the fair market value of Hayes Park and the \$5.95 million it paid for the land.  
6 Disgorgement of the developer's illicit windfall would be a condition precedent to K&B/Bakewell  
7 receiving the necessary permits and approvals for development of the property, or, an equitable lien in  
8 favor of the City of Seaside could be placed on title to the property. In either case, disgorgement of the  
9 windfall profit would serve the purpose of enforcing the Surplus Land Act, while not voiding the deed  
10 for a violation thereof.

11  
12 **II THE HARM TO SEASIDE TAXPAYERS AND RESIDENTS RESULTING FROM A**  
13 **FAILURE TO ENJOIN THE CITY FROM ISSUING BUILDING PERMITS OR**  
14 **APPROVING PARCEL MAPS PENDING TRIAL WILL OUTWEIGH ANY RISK OF**  
**HARM TO THE CITY OF SEASIDE OR K&B/BAKEWELL**

15 **A. By Holding Record Title To Hayes Park Through A One-Deal Limited Liability**  
16 **Corporation, The Developers Of The Hayes Park Property Have Ensured That Without A**  
17 **Preliminary Injunction, The Developer's Profits On The Sale Of The Property Will**  
**Disappear Before Judgment Can Be Obtained.**

18 K&B/Bakewell, the purported holder of record-title to Hayes Park, elected to organize and do  
19 business as a California limited liability company ("LLC"). As the name implies, the LLC was created  
20 for one deal only, the development of Hayes Park, and for the purpose (as the legal term "limited  
21 liability" implies) of shielding the members and managers of the LLC from liability, while still allowing  
22 them to reap the profits of the development directly, or through contracts between themselves (or other  
23 subsidiaries or specially created entities) and the LLC (such as construction, consulting, etc. . .). This  
24 arrangement is not uncommon for large developments. The developers of Hayes Park have gone a step  
25 further, by adding a second layer of insulation, by having the two owners and managers of the LLC,  
26 themselves be one-deal corporations (The Bakewell Company of Monterey, LLC, and Kaufman and  
27

1 Broad Monterey Bay, Inc.). Again, there is nothing inherently illegal about this three-layer ownership of  
2 a development project. The undisputed purpose of “limited liability companies”, however, is to limit the  
3 liability of their owners. And when set up for one-deal developments, when the development is done  
4 and the property sold off, the remaining LLC is intended to be a disposable shell with no money left in it.

5 If the true persons and corporations benefitting from the development of Hayes Park, which is  
6 likely to gross over \$250 million total, including the \$115 million windfall from the gift of the City’s  
7 public property, accepted full legal responsibility for the actions of their subsidiary LLC’s, and  
8 guaranteed that they could and would satisfy any adverse judgment against them, there would be less of  
9 a need for a preliminary injunction. If the LLC demonstrated its ability and commitment to pay sums  
10 resulting from an order of disgorgement by the Court, K&B/Bakewell could then continue building  
11 homes pending trial in this action. Any concern by the Court regarding possible disruption to new  
12 homeowners in confirming the City’s ownership of the property would thus be dissipated. After finding  
13 for Plaintiff, the Court could then order the true persons and entities who profited from their wrongful  
14 actions to disgorge the difference between what was paid for the property, \$5.95 million, and its fair  
15 market value, \$115 million. The substantial fund created therefrom could be used to build affordable  
16 housing on Hayes Park or an alternative site.

17 As it now stands, if a preliminary injunction is not granted, the end results are foreseeable: (1) as  
18 each and every property is sold for anywhere from \$525,000 to \$800,000 that cash will disappear  
19 (through disbursements, construction contracts and every other type of contract) so that K&B/Bakewell  
20 ends up the assetless, defunct, one-deal limited liability company it was intended to be; and (2) the  
21 Court’s only remedy for Seaside taxpayers will be to uproot the new homeowners by returning the  
22 property to the City of Seaside, its rightful owner.

23  
24 **B. K&B/Bakewell Has Apparently Tricked The City of Seaside Into Consenting To The**  
25 **Developer’s Commission Of A Felony In Order To Speed Up Construction And Sales, And**  
26 **Therefore Should Not Be Trusted To Continue Development Of The Property Pending Trial.**

27 In what appears to be a truly brazen attempt by K&B/Bakewell to speed the project along, the  
28

1 developers submitted a signed three-page document requesting that the City of Seaside waive  
2 enforcement of an ordinance to allow the developers to begin construction of houses for sale, separate  
3 and apart from the already-completed model homes, prior to the recordation of the final subdivision  
4 map. (Ex. 7: K&B/Bakewell Request to Violate Subdivision Map Act.) The ordinance, however, is  
5 merely a verbatim restatement of a statute within the Government Code's Subdivision Map Act (Govt.  
6 Code §66499.30) applicable to every subdivision in the State regardless of local ordinances. What is  
7 especially egregious is that K&B/Bakewell attempted to have the City waive any violation of the state  
8 statute prohibiting construction of homes for sale prior to recordation of the final parcel map, a felony,  
9 punishable by up to one year imprisonment in the State Penitentiary. (Govt. Code §66499.31.)

10 K&B/Bakewell, a limited liability development venture of one of the largest subdividers in the  
11 State of California, is without doubt more knowledgeable than even most municipalities about what is  
12 and is legal under the State's Subdivision Map Act. The framing of its request as a simple, discretionary  
13 waiver of a municipal ordinance, employed to obtain the City's consent, was not only dishonest, but has  
14 undermined the past and future credibility of the City of Seaside in being able to investigate and  
15 prosecute any suspected felonies committed by the K&B/Bakewell, together with suspected  
16 misdemeanors, infractions and/or any of the basic non-criminal development conditions imposed on the  
17 project.

18  
19 **C. If K&B/Bakewell Is Permitted To Convey The 380 Lots To 380 Individuals, An Additional  
20 380 Parties May Be Added In This Lawsuit.**

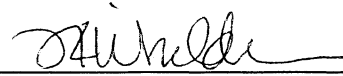
21 Although Plaintiff's action is a CCP §526a taxpayer action in which the City is the opposing party,  
22 anyone holding record title to the property could potentially be brought in as necessary parties by the  
23 Court. There is only one record title owner of Hayes Park at this time: K&B/Bakewell. If  
24 K&B/Bakewell were allowed to convey the 380 individual lots to 380 individuals, there would be 380  
25 persons asserting record title to Hayes Park, all of which could become parties to the lawsuit on that  
26 basis. Such a result would create substantial logistical burdens on the Court, as well as to the Plaintiff  
27  
28





1 Dated: July 15, 2003

LAW OFFICES OF HEIDI K. WHILDEN

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Attorneys for Plaintiff

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12 Attorneys for Plaintiff  
13 Benjamin Kaatz

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY

13 BENJAMIN KAATZ, in his capacity as a  
14 taxpayer resident of the City of Seaside,

15 Plaintiff,

16 v.

17 CITY OF SEASIDE, a California municipal  
18 corporation, DANIEL E. KEEN, in his official  
19 capacity as City Manager for the City of Seaside,  
20 and DOES 1-20, inclusive,

21 Defendants.

CASE NO. M65043

**DECLARATION OF U.S. REP. SAM FARR  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION  
[CCP §557]**

Date: August 7, 2003

Time: 10:30 a.m.

Dept.: 17

22 ///

23 ///



1 affordable housing units, thus serving no public benefit. The \$5.95 million paid by the developers to the  
2 City of Seaside, representing approximately \$15,000 per developable residential lot with water rights,  
3 ensures that the City of Seaside will receive next to nothing compared to the over two hundred million  
4 dollars to be reaped by the developers; again confirming that no public benefit was realized in the  
5 conversion of the 105 acres of prime public property of the former Fort Ord into Seaside Highlands.

6 I declare under penalty of perjury under the law of the State of California that the foregoing is  
7 true and correct, to the best of my knowledge and belief. Executed in Washington, D.C., this  
8 9 day of July, 2003.

9   
10 U.S. REP. SAM FARR

1 Jay P. Renneisen (Bar No. 173531)  
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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF MONTEREY

16 BENJAMIN KAATZ, in his capacity as a  
17 taxpayer resident of the City of Seaside,

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19 v.

20 CITY OF SEASIDE, a California municipal  
21 corporation, DANIEL E. KEEN, in his official  
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23 and DOES 1-20, inclusive,

24 Defendants.

CASE NO. M65043

**DECLARATION OF NADER AGHA IN  
SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**  
[CCP §557]

Date: August 7, 2003

Time: 10:30 a.m.

Dept.: 17

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1 as the schedule neared for the disposal of federal surplus property through public sale. A true and correct  
2 copy of correspondence dated August 3, 1994 from Chief Fisher is attached hereto as Ex. B.

3 6. On or about November 13, 1998, I renewed my offer to purchase Hayes Park from the  
4 Department of Defense. I increased my original offer to purchase the named parcels, including Hayes  
5 Park, from \$66,995,000 to a total of \$101,975,000. A true and correct copy of the purchase offer dated  
6 November 13, 1998 is attached hereto as Ex. C.

7 7. On or about March 9, 1999, I spoke by telephone to Ken Fox with the U.S. Army Corps  
8 of Engineers' Real Estate Division. Mr. Fox noted that the housing units on the former Hayes Park had  
9 been abandoned for several years, and might need further improvements than earlier determined when I  
10 submitted my previous bids. I immediately met onsite with my director of operations, engineer and  
11 offsite improvement contractor to evaluate the situation. Following the inspection, I increased my offer  
12 for the Hayes Park property to \$25,000,000, and confirmed that the project continued to fit well within  
13 the scope of work performed by my companies.

14 8. On or about March 10, 1999, I submitted the revised offer to the Department of Defense  
15 for the purchase of the former Hayes Park housing development for the sum of \$25,000,000, less credits  
16 in the amount of \$4,750,000. A true and correct copy of the March 10, 1999 revised bid is attached  
17 hereto as Ex. D.

18 9. On or about March 15, 1999, I provided additional information to Ken Fox with the Army  
19 Corps of Engineers' Real Estate Division concerning the terms of my offer, evidence of my considerable  
20 experience in construction and development, and of my intent to work closely with the City of Seaside to  
21 enhance both the community and the local economy. I estimated the value of Hayes Park (less credits)  
22 was \$25,000,000, and advised that only minor utility repairs or replacements would be required. A true  
23 and correct copy of correspondence dated March 15, 1999 is attached hereto as Ex. E.

24 10. In or about June, 1999, I became aware that the City of Seaside intended to negotiate with  
25 the Department of Defense for the purchase of Hayes Park. I then resolved to submit a bid to the City of  
26 Seaside for the purchase and development of Hayes Park. I believed that the highest and best use of the  
27 property was to seal and encapsulate the lead based paint and nonfriable asbestos found in the housing

1 units, paint and remodel, upgrade the infrastructure, and sell the units as affordable housing in the price  
2 range of \$35,000 to \$60,000 per unit. However, I was aware of the City's preference that the units be  
3 demolished and replaced by upscale single-family homes and/or high density townhouses.

4 11. On or about June 23, 1999, I submitted a written offer to the City of Seaside for the  
5 purchase of Hayes Park, based on the assumption that the structures would be demolished and the site  
6 cleared for construction of new homes. I offered the City \$31,500,000, which included site clearance and  
7 new construction of homes in the \$250,000 price range. A true and correct copy of the June 23, 1999  
8 purchase offer is attached hereto as Ex. F.

9 12. On or about June 24, 1999, I submitted a further offer to the City of Seaside, based on the  
10 assumption that the existing housing units be remodeled and made available for affordable housing  
11 purposes. I further offered to split the profits on a 50/50 basis, whereby the City of Seaside would  
12 receive in excess of \$59,000,000. A true and correct copy of the June 24, 1999 purchase offer is  
13 attached hereto as Ex. G.

14 13. Upon learning that the City of Seaside intended to sole-source the sale and development  
15 of Hayes Park and not make the property available for public bids, I determined that further attempts to  
16 negotiate for the property were futile, and did not make further attempts to acquire and develop the land.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
18 true and correct, to the best of my knowledge. Executed in Monterey County, California, this 27 day  
19 of June, 2003.

20  
21   
22 NADER T. AGHA



**EXHIBIT A**

PLEASANT OAKS DEVELOPMENT COMPANY BID

U. S. Army Engineer District, Sacramento  
Base Closure Branch ATTN: Robert Taylor  
1325 J Street  
Sacramento, CA 95814-2922

Dear Sir,

This is an unsolicited bid for all available housing within Hayes (4J) Stilwell (4F & G), Patton, Abrams and Preston Parks located at Fort Ord. The total bid for the 1172 buildings is \$66,995,000.

The planned use of this purchase is for resale of these properties to provide affordable housing. The benefits to the government are that they will only have to negotiate with one company and avoid some of the potential difficulties associated with the Fort Ord Reuse Authority.

Pleasant Oaks Development Company wants to enter escrow with 1st American Title Company on November 15, 1994. Our down payment will be one million dollars (\$1,000,000). Property will be accepted in as "as is, where is" basis and we will pay all closing costs, including surveys of the five housing parcels. An additional twenty million dollars (\$20,000,000) will be paid six months after completion of the final maps, surveying, required studies and agreements with governmental agencies. Another twenty million (\$20,000,000) will be paid six months later, with the balance paid within one year or sooner after this date. This company will use private funds and will provide up to 25 percent secondary financing at low rate amortized over a period of fifty years.

Pleasant Oaks Development Company will install all required utilities (water, gas, electrical, etc.) within the housing parcels. Water allocation rights will be no less than historical usage.

Modification of this bid can be adjusted using the attached family housing matrix schedule.

I have been involved as a subdivision developer in Monterey County for several years. Presently, I am developing 311 units in Phase IV City of Soledad.

If you have any questions or need additional information, please call me at (408) 646-9030.

Sincerely,

Nadar Agha  
471 Alvarado Street  
Monterey, CA 93942

A. ALL UNITS:

BLDG TYPE	COMPOSITION	#BLDGS	#UNITS	SQUARE FEET NET	FEET GROSS	MARKET VALUE PER UNIT	VALUE TOTAL	MONTHLY RENT PER UNIT	RENT TOTAL	REMARKS
A-5	2 BEDROOM, 1 BATH SINGLE	48	48	1048	1233	\$ 40,000	\$1,920,000	\$ 325	\$ 13,000	
B-5	2 BEDROOM, 1BATH SINGLE	42	42	988	1162	37,500	1,575,000	325	13,650	
B-5A	2 BEDROOM, 1BATH SINGLE	8	8	988	1244	45,000	360,000	425	3,400	REMODELLED
C-6	3 BEDROOM, 1BATH SINGLE	15	15	1294	1522	50,000	750,000	375	5,625	
D-6	3 BEDROOM, 1BATH SINGLE	46	46	1298	1547	50,000	2,300,000	375	17,250	
D-6A	3 BEDROOM, 1BATH SINGLE	5	5	1298	1547	55,000	275,000	550	2,750	REMODELLED
H-6	3 BEDROOM, 1BATH SINGLE	66	66	1103	1297	47,500	3,135,000	375	24,750	
DH-6	3 BEDROOM, 1BATH DUPLEX	14	28	1102	1297	45,000	1,260,000	350	9,800	
DH-6A	3 BEDROOM, 1BATH DUPLEX	8	16	1103	1297	60,000	960,000	500	8,000	REMODELLED
I-5	2 BEDROOM, 1BATH DUPLEX	46	92	880	1035	35,000	3,220,000	325	29,900	
I-5A	2 BEDROOM, 1BATH DUPLEX	11	22	880	1035	37,500	825,000	425	9,350	REMODELLED
J-5	2 BEDROOM, 1BATH DUPLEX	4	8	1050	1235	37,500	300,000	325	2,600	
J-5A	2 BEDROOM, 1BATH DUPLEX	52	104	1050	1473	40,000	4,160,000	400	41,600	REMODELLED
TOTAL		365	500				\$21,040,000		\$181,675	

B. MCKINNEY ACT PROVIDER ( 10 UNITS FOR SALVATION ARMY)

J-5A	2 BEDROOM, 1BATH DUPLEX	4	8	1050	1473	40,000	320,000	400	3,200	REMODELLED
DH-6A	3 BEDROOM, 1BATH DUPLEX	1	2	1408	1297	60,000	120,000	500	1,000	REMODELLED

C. ALL UNITS LESS MCKINNEY	360	490					\$20,560,000		\$177,475	
FAIR MARKET VALUE.....										
BEFORE DISCOUNTING										
GROSS INCOME=							12 X \$177,475		OR	
							\$2,129,700			

HAVES PARK(4J) OPINION OF VALUE

I. MARKET APPROACH ( Enc11).....		\$20,560,000
ESTIMATED MARKET VALUE WITH IMPROVEMENTS LESS:		
IMPROVEMENTS EXPENSES FOR 345 UNREMODELED UNITS AT \$4500 PER UNIT .....	\$1,552,500	
IMPROVEMENT EXPENSES FOR 165 UNITS @ \$2200/UNIT	363,000	
PUD REDEVELOPMENT FEES (2%).....	411,200	
SEASIDE REDEVELOPMENT IMPACT FEES ( 4%).....	822,400	
SELLING EXPENSES ( 6%).....	1,233,600	
ADMINISTRATIVE, PLANNING EXPENSES ( 2%).....	411,200	
DEVELOPER'S HOLDING COSTS ( 6%).....	1,233,600	
DEVELOPER'S PROFIT MARGIN ( 15%).....	<u>3,084,000</u>	<u>9,111,500</u>
	FAIR MARKET VALUE	<u>\$11,448,500</u>

II. INCOME APPROACH ( Enc1 1)

DIRECT CAPITALIZATION METHOD USING 8% RATE OF RETURN

GROSS INCOME.....		\$2,129,700
LESS VACANCT AND COLLECTION COSTS ( 12% ).....	-	<u>244,564</u>
EFFECTIVE GROSS INCOME.....		\$1,874,136
LESS ANNUAL EXPENSES ( 38% ).....	-	<u>809,286</u>
NET INCOME.....		<u>\$1,064,850</u>
DIVIDED BY 8% RATE OF RETURN,.....		<u>\$13,310,625</u>
GRM-USING A GROSS RENT MULTIPLIER OF 6.5.....		<u>\$13,843,050</u>
AVERAGE OF BOTH METHODS.....		\$13,576,837
LESS: IMPROVEMENT EXPENSES FOR 345 UNREMODELED		
UNITS @ \$4500/UNIT.....	\$1,552,500	
IMPROVEMENT EXPENSES FOR 165 UNITS AT \$2200 PER UNIT.....	363,000	
SEASIDE REDEVELOPMENT IMPACT FEES(4%)..	<u>543,073</u>	<u>2,458,573</u>
	FAIR MARKET VALUE	<u>\$11,118,264</u>

FAMILY USING MATRIX SCHEDULE TO B

<u>PARKS</u>	<u>TYPE</u>	<u># OF BUILDINGS</u>	<u>RATE PER BUILDING</u>	<u>TOTAL</u>	
HAYES (4J)	R-1	226	\$25,000	\$ 5,650,000	
	R-2	<u>134</u>	40,000	<u>5,360,000</u>	
		360		\$ 11,010,000	
*5 buildings excluded out of the 365 buildings due to McKinney Act					
STILWELL (4F&G)	R-1	100	\$40,000	\$ 4,000,000	
	R-2	<u>150</u>	50,000	<u>7,500,000</u>	
		250		\$ 11,500,000	
PRESTON	R-1	2	\$50,000	100,000	
	R-2	26	70,000	1,820,000	
	R-3	10	100,000	1,000,000	
	R-4	33	110,000	3,630,000	
	R-6	<u>23</u>	150,000	<u>3,450,000</u>	
		94		\$ 10,000,000	
*17 buildings excluded out of the 111 buildings for McKinney Act					
ABRAMS	R-2	63	\$ 60,000	\$ 3,780,000	
	R-3	18	80,000	1,440,000	
	R-4	85	105,000	8,925,000	
	R-6	1	120,000	120,000	
	R-7	9	140,000	1,260,000	
	R-8	<u>30</u>	160,000	<u>4,800,000</u>	
		206		\$ 20,325,000	
*24 buildings excluded out of 230 buildings for McKinney and road widening					
PATTON	LOWER	R-1	2	\$ 55,000	\$ 110,000
		R-2	193	55,000	10,615,000
	UPPER	R-2	10	30,000	300,000
		R-4	<u>57</u>	55,000	<u>3,135,000</u>
		262		\$ 14,160,000	
*61 buildings excluded out of the 323 buildings for Mckinney Act, rezoning, and new road corridors.					

THE GRAND TOTAL IS A BID OF \$66,995,000 FOR 1172 BUILDINGS

**EXHIBIT B**



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

August 3, 1994

Management and Disposal Branch

Mr. Nader Agha  
471 Alvarado Street  
Monterey, CA 93940

Dear Mr. Nader,

This letter acknowledges receipt of your unsolicited proposal, dated July 21, 1994, outlining a plan to purchase available properties within Hayes Park, Stilwell Kidney, Patton Park, Abrams Park, and Preston Park housing complexes, located at Fort Ord, California.

Your proposal for purchasing the subject property will be given fair and due consideration. As our schedule for disposing of surplus property through public sale approaches, we will send a letter informing you of the status of your proposal. We may also request additional information, at that time. Your interest in acquiring property at Fort Ord is appreciated.

The point of contact for this office is Mr. Robert Taylor, who may be reached at (916) 557-6873/6870.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin D. Fisher", is written over the typed name.

Marvin D. Fisher  
Chief, Real Estate Division



**EXHIBIT C**

**NADER AGHA**  
542 Lighthouse Avenue  
Pacific Grove, CA 93950

November 13, 1998

Dear Sir:

This is in reference and follow up to our recent conversation in regard to my offer of 1994 to purchase all of the remaining houses at Fort Ord situated in the Cities of Marina and Seaside. I am sending a copy of my original, unsolicited proposal (which I handed to Robert Taylor) and my updated proposal based on my clear understanding of the situation as of today.

I have spent hundreds of hours on this project and it fits the scope of work which I have been doing in the County of Monterey for the past thirty years.

At this time, I am in the process of developing 3,500 houses and 300 apartment units and 2 commercial sites in the City of Soledad which is the fastest growing city in California. That is in addition to 500 houses which were developed, with the last fifty houses being finished by Kaufman and Broad. (Belinda Espinosa, Manager of the City of Soledad - (831) 678-3963.) Also at this time, I am completing the renovation and renting of the largest commercial building on the Monterey Peninsula in downtown Pacific Grove. It is 118,000 sq.ft. I purchased it from the government (SBA) with twenty percent down and 8% interest on a First Deed of Trust, which I have reduced substantially recently.

My offer to purchase includes the remaining buildings in the five parks listed below:

1. Stillwell Kidney Park in the City of Seaside: 250 buildings on approximately 97 acres, consisting of 400 units (list is available);
2. Hayes Park in the City of Seaside: 365 buildings on approximately 82 acres with a total of 324 two bedrooms and 176 three bedrooms for a total of 500 units called Area 4J (list is available);
3. Preston Park in the City of Marina: 111 buildings less 17 buildings for McKinney Act and Monterey College of Law (Address: 523 Bailey Street) with a balance of 94 buildings with 354 units (list is available);
4. Patton Park in the City of Marina: 323 buildings, 780 units less 76 units for McKinney Act with remaining balance of 704 units (list is available);
5. Abrams Park in the City of Marina: 942 units less 78 units for McKinney Act with a balance of 864 units (list is available).

The number of buildings and units listed above are subject to modification and adjustment as the Seller deems necessary to satisfy the requirements of the McKinney Act and others. The offered price will be reflected by simple prorata adjustment of each unit deleted or added.

My offer to purchase all of the above is One Hundred Seven Million Seven Hundred Fifty Thousand Dollars (\$107,750,000) to be paid as follows:

1. Deposit of One Million Dollars (\$1,000,000) upon acceptance of this offer.


2. Ten percent (10%) of the purchase price, Five Million Seven Hundred Seventy Five Thousand Dollars (\$5,775,000), including the above deposit, upon close of escrow, which will occur upon completion of all the required applications and permits with the Cities of Seaside and Marina to meet the state and local codes and zoning for the necessary readying of the units for sale, approximately within twenty-four (24) to thirty-six (36) months.

3. One Hundred One Million Nine Hundred Seventy Five Thousand Dollars (\$101,975,000) in the form of a First Deed of Trust at seven percent (7%) interest secured by the buildings with release clauses to release each of the buildings upon full payment of the prorata balance on each building and interest with list of breakdown to be prepared and provided in conjunction with the title company. Water and utilities are in accordance with the historical usage and the Buyer is prepared to coordinate that issue with the utility companies. The Buyer is an experienced developer and general contractor licensed by the State of California and is offering to buy the above in "as is" condition with no obligation to the Seller in relation to the present condition of the structures.

I have indicated my interest and desire to purchase the property since 1994, and I hope my offer will receive the full interest and attention of the responsible persons. I am looking forward to working with you and the cities of Seaside and Marina.

Also, I am strongly interested in purchasing the remaining five thousand (5,000) acres designated for development.

Respectfully,

  
Nader Agha

**EXHIBIT D**

.....

Nader Agha \ c/o Holman Building Associate:  
542 Lighthouse Ave  
Pacific Grove, CA 93950  
831-646-1677  
Fax 646-0898

# Agha Development

March 10, 1999

Mr. Ken Fox  
Department of the Army  
U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 J Street  
Sacramento, CA 95814-2922

Dear Mr. Fox:

This letter is a result of our telephone conversation of March 9, 1999 and your request that I fax it to you today. This is a short "offer to purchase" in lieu of a normal, elaborate contract which could follow later if needed.

After my conversation with you yesterday, I visited the Hayes Park Site with my director of operations, my engineer and my offsite improvement contractor to evaluate the existing situation.

The houses are solidly built and they will meet the urgently needed affordable housing on the populous Monterey Peninsula. My intent is to bring them back to their condition of four (4) years ago when I last inspected them and sell them at affordable and moderate prices, with twenty (20%) percent of the profit to go to the City of Seaside's general fund for improving some of the neighborhoods and contributing to the creation of a downtown area.

Our inspection yesterday revealed that the lengthy abandonment has caused some damage which needs to be addressed. In the past, we have dealt with situations which were much worse. Necessary adjustments to the total purchase prices, a result of the new and existing conditions are reflected below.

A parcel map needs to be established to create separate parcels for each separate house and duplex, or to create a residential community development with a home owners' association.

My offer to purchase all of the Hayes Housing Park, a total of 500 units, with any and all accessory buildings is Twenty-five million(\$25,000,000.00)Dollars to be paid as follows, or as may be determined in final negotiations with you:

The purchase price and payment to be:

Full price: Twenty-five million(\$25,000,000.00) Dollars

.....

March 10, 1999

Page 2

Deposit: One hundred thousand (\$100,000.00) Dollars in the form of a cashier's check to be deposited in First American Title Company or Old Republic Title Company, to be released upon acceptance by Seller.

Twelve million, five hundred thousand (\$12,500,000.00) Dollars minus credits listed below, to be paid thirty (30) days after acceptance of the parcel map by the City of Seaside.

The remaining Twelve million, five hundred thousand (\$12,500,000.00) Dollars will be paid in escrow in increments of Forty thousand (\$40,000.00) Dollars or more from proceeds of sales of each house or duplex.

Amount of Credits to be extended and reasons:

1. Repairing paving, resurfacing the roads; removing dead trees, branches and limbs; removing trees and shrubbery growing in the roads and clearings; and cutting shrubbery grass : Two million (\$2,000,000.00) Dollars.
2. Repairing damages to vandalized houses, doors, windows, roofs and removal of boards on windows and doors : One million, five hundred thousand(\$1,500,000.00)Dollars.
3. Painting all houses, inside and out: One million(\$1,000,000.00)Dollars.
4. Credit for some houses, completely demolished or damaged by falling trees, and nature: Two hundred fifty thousand(\$250,000.00)Dollars

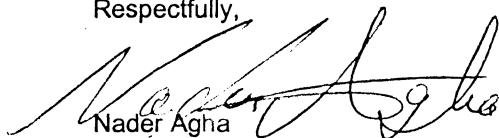
This offer is subject to and conditional upon:

1. Seller providing buyer with all plans, documents, and reports relating to the Hayes Residential Park, if available.
2. Seller transferring all of its rights in the utilities and services of water, sewer/septic system, gas, electricity, telephone and cable in accordance with the established historical use. Seller will cooperate with Buyer on protecting and retaining the water for these houses.
3. Seller will cooperate with Buyer on obtaining all of the necessary approvals from any and all governmental agencies to establish the legal entitlement for each house or duplex if necessary.

I hope this offer will meet your approval and acceptance. I am willing to meet with you or your representative to discuss any of the aforementioned. I would like you to know that I am flexible on the structure of the terms and conditions.

I sincerely hope to hear from you soon.

Respectfully,

  
Nader Agha

**EXHIBIT E**

.....

Nader Agha \ c/o Holman Building Associate:  
542 Lighthouse Ave  
Pacific Grove, CA 93950  
831-646-1677  
Fax 646-0898

# Agha Development

March 15, 1999

Mr. Ken Fox  
Department of the Army  
U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 J Street  
Sacramento, CA 95814-2922

Dear Mr. Fox:

This letter is a follow-up to my offer to purchase the Hayes Residential Park of Fort Ord. The purpose of it is to clarify and bring to your attention some of the points which will assist you in accepting my offer.

1. The One hundred thousand (\$100,000.00) Dollar deposit is a non-refundable deposit which could be released to the Seller upon acceptance of my offer.
2. I would like to offer you a list of references whom you are free to contact. You may wish to discuss with them my past and present performance with their establishments and/or cities:

- a. Monterey County Bank  
Chairman of the Board & President  
Charles T. Chrietzberg  
831-649-4600 (office)  
831-596-0504 (cellular)

- b. City of Soledad  
Belinda Espinosa, City Manager  
831-678-3963

In the City of Soledad, I have developed a 700-unit subdivision, from which I sold a portion of 243 lots to Kaufman & Broad. They are currently building their last segment. At this time, I am in the process of obtaining approval of 825 residential lots and 100 units of apartments and a shopping center in said city. Following that, will be 2500 residential units with apartments, a shopping center, schools, and parks.

- c. Recently, I committed to donating all school sites to the Soledad School District. The school superintendent is:  
Eugene Martin  
831-678-3987

.....



March 15, 1999

Page 2

- d. From the Federal Government, I purchased a large section of buildings in downtown Pacific Grove which were vacant and had been abandoned. I remodeled them and turned them into a bustling, lively business area. The mayor of this town is:  
Sandy Koffman  
831-646-3100 office  
831-375-0774 home

The above are only a few of the numerous projects I have completed in Monterey, Carmel Valley, Carmel, Pebble Beach, Salinas, Pacific Grove, Seaside and Hollister. Field tours of the above could be given at any time.

Our experience in development and construction in this area makes us the most qualified to purchase and handle this project. We are local and work well with our local governments and participate in the enhancement of our local community and its economy.

3. We are ready to commence our work with the City of Seaside. All we are awaiting is your blessing. This is something you will be very proud of as was the staff at HUD, reference, Robert Teffeteller, Esq. 415-627-0387.

My subcontractors are poised and ready to:

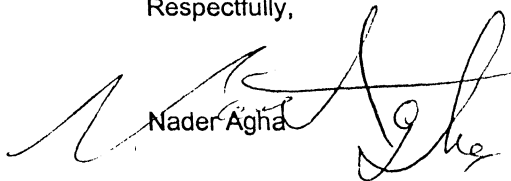
- a. Clear Hayes Park, remove the dead trees, shrubbery and mow all of the lawns.
- b. Repair surface and pave all of the roads.
- c. Remove all of the plywood from the boarded-up windows and doors, and replace said doors and windows; give a general clean up to all of the houses.
- d. Paint all of the houses with attractive, colorful paint.
- e. Architects are ready to design hip or gable roofs to be added to some of the houses, especially those on corners and those which are seen from the highway in order to enhance their appearance with the possibility of additions to some of them.
- f. My engineers are ready to map the park and establish a one way street pattern to which the park lends itself very comfortably with room for pedestrians.

The utilities are not a serious issue and may be handled very easily.

The offer I made of Twenty five million (\$25,000,000.00) dollars, minus credits, is a fair market value for this residential park and I am ready to make equivalent fair market offers on all the other parks and available land at Fort Ord. I do so with a clear conscience and complete knowledge that everyone is getting a fair deal. I will be providing good, attractive, affordable housing for everyone. I have made a very careful evaluation and study of this project, using my thirty (30) years of experience in the field.

I invite you to come and visit us when you are in the area.

Respectfully,

  
Nader Agha

**EXHIBIT F**

**NADER AGHA**  
542 Lighthouse Avenue  
Pacific Grove, CA 93950  
Tel. (831) 594-9711 646-1677  
June 23, 1999

The Honorable Jerry Smith  
Mayor, City of Seaside  
440 Harcourt Avenue  
Seaside, CA 93955

Dear Jerry:

This is a new proposal I am submitting for the Hayes Park Development. After careful evaluation, study and consultation with engineers, contractors, subcontractors and others, I feel confident in submitting this offer which is in the best interest of the City of Seaside.

Although originally I stated that my intent was to bring the Hayes houses to a new, marketable condition rather than demolishing them, I have since looked into the City Council's recommendation to tear them down and start all over from scratch. My findings will please you a great deal.

I am prepared to propose the following offer in addition to my original offer of remodeling and selling the existing houses which is possible, but not of interest to the Council.

My proposal is:

1. Purchase Hayes Park from the City of Seaside for Twelve Million Five Hundred Thousand Dollars (\$12,500,000);
2. Tear down all structures at a cost of Eight Million Dollars (\$8,000,000);
3. Create six hundred (600) lots, plus or minus, as the City and engineers agree;
4. Pay the City of Seaside an impact fee of Fifteen Thousand Dollars (\$15,000) per lot (600 X \$15,000) equals Nine Million Dollars (\$9,000,000);
5. Sell finished houses for Two Hundred Fifty Thousand Dollars (\$250,000);
6. Share profit with the City at the rate of Twenty Five Percent (25%) which equals Ten Million Dollars (\$10,000,000). This could be accomplished in whatever method the City chooses to do. The total that the City will receive is:

The Honorable Jerry Smith  
Mayor, City of Seaside  
Page Two

1)	\$12,500,000
4)	9,000,000
6)	<u>10,000,000</u>

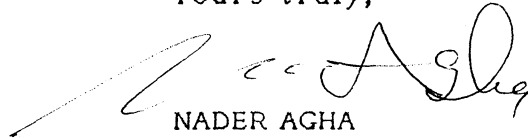
Total: \$31,500,000 (Thirty One Million Five  
Hundred Thousand Dollars)

In addition to the Thirty One Million Five Hundred Dollars (\$31,500,000) cash, the City will receive its share of the real estate property tax revenue which is equal to:

$$600 \times \$250,000 = \$150,000,000 \times 1.1\% = \$1,650,000$$

I believe this should make you very happy.

Yours truly,



NADER AGHA

**EXHIBIT G**

AGHA Construction Inc.  
542 Lighthouse Avenue  
Pacific Grove, CA 93950  
831-646-1677  
fx 831-646-0898

Thursday, June 24, 1999

The Honorable Jerry Smith  
Mayor, City of Seaside  
440 Harcourt Avenue  
Seaside, CA 93955

Re: Alternative to my proposal to the City of Seaside

In addition to the proposal you have just read, I would like to reiterate the tremendous possibilities of remodeling the existing units in the Hayes Park, selling them on the open market and splitting the profits 50%-50% with the City of Seaside, whereby, the City will receive Fifty Million Dollars (50,000,000.00).

This could be accomplished simply by spending \$30,000 on each building to do the following:  
Add a second story, a new roof, new windows and doors, remove window sills and door jams, add a second garage, install carpet, build fencing, install utility meters where needed, install landscaping, install outside lighting.

General repair and maintenance:

Create a subdivision map; install street lighting, remove dead trees, resurface pavement, update sewer line systems where needed.

Market completely remodeled and refurbished houses, duplexes, and triplexes and sell them for approximately One Hundred Ten Million Dollars(\$110,000,000.00).

\$110,000,000.00

- 10,000,000.00

\$100,000,000.00 divided by 2 = \$50,000,000.00

In addition to the above calculation, sites will be created for a minimum of 150 houses established through the engineered site maps. These houses could produce One Hundred Twenty-five

Thousand Dollars (\$125,000) in net profit for each house.

\$ 125,000,000.00

x 150 Houses

\$ 18,750,000.00 divided by 2 = Nine Million, Three Hundred Seventy-five Thousand Dollars  
(\$9,375,000.00)

\$ 9,375,000.00

+ 50,000,000.00

\$ 59,375,000.00

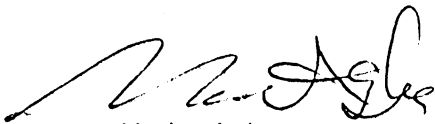
I believe these are serious numbers to be considered for the benefit of the City of Seaside and should not be ignored.

Remodeling the existing units would avoid a massive outlay of funds, therefore keeping these homes very affordable. By retaining these solidly built living quarters and using them as a nucleus for new buildings, the City of Seaside would not only be providing a huge number of jobs for locals, but it would be held up as an exemplary "city of vision" for recycling these 500 units rather than creating additional waste.

In review, you would be:

1. Making a good profit for the City.
2. Providing affordable housing.
3. Providing numerous jobs for locals.
4. Looked to as an example of a progressive city known for recycling, rather than waste.

Respectfully,



Nader Agha

1 Jay P. Renneisen (Bar No. 173531)  
2 **LAW OFFICES OF JAY P. RENNEISEN**  
3 1931 San Miguel Drive, Suite 210A  
4 Walnut Creek, California 94596  
5 Telephone: (925) 280-8900  
6 Facsimile: (925) 955-1601

7 Heidi K. Whilden (Bar No. 183458)  
8 **LAW OFFICES OF HEIDI K. WHILDEN**  
9 1130 Fremont Blvd. #105, PMB 262  
10 Seaside, CA 93955  
11 Telephone: (831) 869-9584

12 Attorneys for Plaintiff  
13 Benjamin Kaatz

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY

13 BENJAMIN KAATZ, in his capacity as a )  
14 taxpayer resident of the City of Seaside, )  
15 )  
16 Plaintiff, )  
17 v. )  
18 )  
19 CITY OF SEASIDE, a California municipal )  
20 corporation, DANIEL E. KEEN, in his official )  
21 capacity as City Manager for the City of Seaside, )  
22 and DOES 1-20, inclusive, )  
23 )  
24 Defendants. )

CASE NO. M65043  
**DECLARATION OF RICHARD VAN  
STEENKISTE IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION**  
[CCP §557]  
Date: August 7, 2003  
Time: 10:30 a.m.  
Dept.: 17

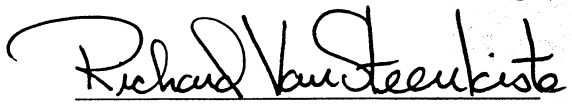
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I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct, to the best of my knowledge and belief. Executed in Grass Valley, CA, this 10<sup>th</sup> day of July, 2003.



RICHARD VAN STEENKISTE

**COMPLETE SUMMARY  
MARKET VALUE APPRAISAL**

of  
the former Hayes Park Housing Area of old Fort Ord  
located east of Monterey Road and north of Coe Avenue  
in the City of Seaside, Monterey County, California

for

**MR. JAY P. RENNEISEN, ESQ.  
1931 SAN MIGUEL DRIVE, SUITE 210A  
WALNUT CREEK, CA 94596**

by

**LANDMARK REALTY ANALYSTS, INC.  
17284 DOG BAR ROAD  
GRASS VALLEY, CALIFORNIA 95949  
(530) 346-7575**

as of

**July 25, 2002**

# LANDMARK REALTY ANALYSTS, INC.

17284 DOG BAR ROAD

PHONE: (530) 346-7575



E-MAIL: RVANSTEEN@DIRECPC.COM

GRASS VALLEY, CA 95949

FAX: (530) 346-6575

July 7, 2003

Mr. Jay P. Renneisen, Esq.  
1931 San Miguel Drive, Suite 210A  
Walnut Creek, CA 94596

RE: Complete, summary market value appraisal of the Hayes Park Area 4-J, located east of Monterey Road and north of Coe Avenue in the southwest corner of the former Fort Ord in the northeastern portion of the City of Seaside, Monterey County, California

Dear Mr. Renneisen:

At your request, Richard Van Steenkiste, Ph.D., MAI, has inspected and appraised the above-referenced property, which is identified as the Hayes Park Area 4-J. As of both the effective date of valuation and the date of this report, the property is comprised of a single legal parcel in the City of Seaside, Monterey County, California, identified as Monterey County Assessor's Parcel Number (APN) 031-051-012. For a complete legal description please refer to the Legal Description section of the Appendix of this report.

The effective date of this appraisal is July 25, 2002, which is the date requested by the client and the date the property transferred ownership from the United States to the City of Seaside to the current owners. This is a complete appraisal in a summary report. The purpose of this complete, summary appraisal is to form an opinion of the underlying land value on the date the property transferred from public to private ownership (July 25, 2002), as if the then-existing housing had been razed to clear the land for its highest and best use.

This appraisal is intended exclusively for use in the matter of Katz vs. City of Seaside et al, Monterey County Superior Court Case No. M65043. The appraiser is not responsible for any other use or for any use by any other persons or entities.

"Market Value" as used herein is as defined by the Office of the Comptroller of the Currency under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions [f]. The full text of this definition is included in the body of the report.

This appraisal report has been made with the intent to conform with the requirements of the Standards of Professional Appraisal Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (U.S.P.A.P.) of the Appraisal Foundation.

The value conclusions herein are subject to the following special assumptions or limiting conditions.

- 1) The appraiser assumes the subject land can be subdivided into 380 lots for single-family residential construction. A different number of lots would affect the final value opinion.
- 2) The appraiser assumes that the average selling price of a single-family residence to be built on the lots to be subdivided out of the subject land will be \$660,990, including upgrades and buyer's options, with an average size of 2,870 square feet.

Predicated on the data and analyses contained in this report and on the contingent and limiting conditions as stated herein, it is the opinion of the undersigned California state certified general real estate appraiser that the market value of the fee-simple estate in the subject property as of July 25, 2002, was as follows:

**NINETY-FOUR MILLION ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS**

**\$94,195,000**

This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan. Based upon the analysis performed by the appraiser, the subject property is not considered to have any measurable or special scientific, cultural, archeological or environmental value.

For further information concerning the supporting data and rationale of our conclusions, your attention is directed to the following report.

Respectfully submitted,  
Landmark Realty Analysts, Inc.



Richard Van Steenkiste, Ph.D., MAI  
California State Certified General Real Estate Appraiser # AG 017093

S-0305

**EXHIBIT A**

# LANDMARK REALTY ANALYSTS, INC.

17284 DOG BAR ROAD

PHONE: (530) 346-7575



E-MAIL: RVANSTEEN@DIRECPC.COM

GRASS VALLEY, CA 95949

FAX: (530) 346-6575

*This is a Complete Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.*

**CLIENT:** Mr. Jay P. Renneisen, Esq.  
1931 San Miguel Drive, Suite 210A  
Walnut Creek, CA 94596

**APPRAISER:** Richard Van Steenkiste, Ph.D., MAI  
Landmark Realty Analysts, Inc.  
17284 Dog Bar Road  
Grass Valley, California 95949

**SUBJECT:** Hayes Park Area 4-J, located east of Monterey Road and north of Coe Avenue in the southwest corner of the former Fort Ord in the northeastern portion of the City of Seaside, Monterey County, California.

**DATE OF VALUATION:**

July 25, 2002

**DATE OF REPORT:**

July 7, 2003

**DATES OF INSPECTION:**

June 19 and 20, 2003

**PURPOSE OF THIS APPRAISAL:**

The purpose of this complete, summary appraisal is to form an opinion of the underlying land value on the date the property transferred from public to private ownership (July 25, 2002), as if the then-existing housing had been razed to clear the land for its highest and best use.

**INTENDED USE OF THIS APPRAISAL:**

This appraisal is intended exclusively for use in the matter of Katz vs. City of Seaside et al, Monterey County Superior Court Case No. M65043. The appraiser is not responsible for any other use or for any use by any other persons or entities.

**DEFINITION OF MARKET VALUE:**

Market Value as used herein is defined as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: Office of the Comptroller of the Currency, under 12-CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions [F].

**MARKET VALUE "AS IS" APPRAISAL PREMISE:**

The market value "as is" means that a property is valued based on its precise condition or status as of the effective date of value. An appraisal of the "as is" condition will estimate the defined value of a property



while accurately reflecting its actual physical, legal, economic and political status as of the effective date of valuation.

### **APPRAISAL DEVELOPMENT AND REPORTING PROCESS:**

In preparing this appraisal, the appraiser

- inspected the subject site;
- interviewed representatives of the Community Development Department, City of Seaside ;
- interviewed representatives of the Monterey Regional Water Pollution Control Agency;
- interviewed representatives of the Marina Coast Water District;
- interviewed David Beck at Paul T. Beck Contractors;
- gathered and confirmed data on sales of vacant residential lots in the surrounding market area;
- applied a Land Residual Approach to arrive at a value opinion for the subject property as residential development land.

This summary appraisal reporting format presents a brief recapitulation of the appraiser's data, analyses and conclusions. Supporting documentation is retained in the appraiser's file and is available to the client and the Appraisal Institute for review upon request. This appraisal is intended to be an "appraisal assignment," as defined by the USPAP, i.e., the intention was that the appraisal service was performed in such a manner that the result of the analysis, opinions, or conclusions be that of a disinterested third party.

### **LEGAL DESCRIPTION:**

As of both the date of valuation and the date of this report, the subject property is comprised of a single legal parcel in the City of Seaside, Monterey County, California. For a complete legal description please refer to the Appendix portion of this report under the heading "Legal Description."

### **HISTORY OF THE SUBJECT PROPERTY:**

According to the real property records of Monterey County, title to the subject property currently is vested in K & B Bakewell Seaside Venture, LLC, according to a Quit Claim Deed dated July 23, 2002. On that date, there were back-to-back transfers of the subject land from the United States Government to the City

of Seaside and then immediately from the City of Seaside to the current owners. The United States reportedly sold the property to the City of Seaside for \$5,100,000 and the City of Seaside sold it to the current owners for \$5,900,000.

### **AREA DESCRIPTION:**

The subject property is located in the City of Seaside, Monterey County, California. According to the Demographic Research Unit of the California Department of Finance, this coastal city had a 2002 population of 33,600, which makes it the second largest city in Monterey County, behind only the county seat of Salinas. Seaside is located only about 4.5 miles northeast of the historic downtown district and world renowned waterfront and Cannery Row districts of the City of Monterey.

The Monterey Bay Area consists of the two counties of Santa Cruz and Monterey. The Monterey Bay region starts about 75 miles south of San Francisco and extends southward for about 50 miles along the Pacific Coast. Santa Cruz County is at the north end of the bay. The resort city of Santa Cruz is situated on the north shore of the bay and is the county seat and principal city of Santa Cruz County. Monterey County occupies the south end of the bay. The world-famous small cities of Monterey and Carmel-by-the-Sea are situated on a peninsula at the south end of the bay. The county seat of Monterey County is the city of Salinas, located inland in the Salinas Valley about 16 miles northeast of Monterey and about 33 miles southeast of Santa Cruz.

While both counties are famous for their scenic locations on the bay and attract tourists and vacationers literally from around the world, both counties also contain inland areas that produce an abundance of agricultural products. While both counties have economies that rely heavily on tourism, both counties also receive substantial income from agriculture and are coming to have an increasing reliance upon high-tech manufacturing and agricultural processing.

### **Geographic Factors**

Both Santa Cruz and Monterey counties are located in the portion of California known as the "Central Coast." As noted above, the north end of Monterey Bay is about 75 miles south of San Francisco, and Monterey Bay is about 50 miles long. South of the bay is the rugged and picturesque Big Sur coastal area of Monterey County, which extends southward for about 75 miles to San Luis Obispo County. The Monterey Bay area also is about 75 miles southwest of San Jose, 190 miles southwest of Sacramento, and 335 miles northwest of Los Angeles.

Scenic State Highway 1 hugs the coast for much of the length of California and skirts the shore of Monterey Bay, linking Santa Cruz and Monterey. U.S. Highway 101 also runs much of the length of California, usually a few miles inland from the coast, generally on the east side of the coastal mountains. Scenic State Highway 1 passes through Seaside as a freeway along the western boundary of the city and the subject land. Highway 101 runs through the heart of the Monterey County agricultural regions and links the Monterey Bay region to San Jose, Silicon Valley and San Francisco to the north and to San Luis Obispo and Los Angeles to the south.

Santa Cruz County is the second smallest county in California with 441 square miles. The location along Monterey Bay and the proximity to Monterey, San Francisco and Silicon Valley contribute to the desirability of the area. The county has a range of natural attractions, including several beaches and state parks. Tourist attractions include Henry Cowell Park, the Santa Cruz Beach and Boardwalk, Capitola Village, and the "quaint" downtown of Santa Cruz, Soquel and Aptos. These strong recreational amenities and a liberal lifestyle have attracted a diverse base of residents and businesses who value these qualities.

Monterey County is much larger than Santa Cruz County and contains 3,324 square miles. Like Santa Cruz, Monterey County's proximity to the San Francisco Bay area makes it highly available to the millions of residents of the San Francisco Bay region as a nearby vacation and retreat location. The Monterey Peninsula is world-famous as one of the most beautiful locales in the United States. Attractions include the incredibly scenic Big Sur portion of the central California coast, historic Spanish missions, the Monterey Bay Aquarium, Fisherman's Wharf, legendary Cannery Row, the 17-Mile-Drive around the peninsula, Pebble Beach and other championship golf courses, and dozens of fine hotels, restaurants, entertainment venues and sports facilities which attract millions of visitors to Monterey County each year from all over the world. The Monterey Bay Aquarium is the largest facility of its type in the world and one of the most modern and innovative. It alone attracts between 1.6 and 2.0 million visitors annually. The city of Monterey has many historic buildings, and Carmel-by-the-Sea is an artists colony as well as a quaint and picturesque small town.

The Salinas Valley portion of Monterey County is called the "Salad Bowl of the World." This relatively small area produces 80 percent of the nation's artichokes, 73 percent of its broccoli, 53 percent of its cauliflower, 47 percent of its spinach and up to 80 percent of all the domestically grown lettuce consumed in the United States. In addition, the Valley produces grapes, strawberries, mushrooms and nursery plants and flowers. The area around Soledad has many vineyards and a number of wineries. Much of the grape harvest is turned into wine, making Monterey County one of the largest wine producing regions in the state. In the past few years, hundreds of additional acres have been planted in grapes for wine production. In addition, the Valley produces strawberries, mushrooms and nursery plants and flowers.

Agriculture also is a major component of the landscape in Santa Cruz County. The highly productive Pajaro Valley in the southern part of the county is known for an assortment of berries and apples, and the northern part of the county is billed as the Brussels sprouts capital of the world. Other major crops in Santa Cruz County are strawberries, lettuce, raspberries, roses, cauliflower, celery, artichokes and bushberries.

### **Demographic Factors**

As of January 1, 2003, Monterey County had a population estimated at 415,800, up 1.5 percent from 409,600 in 2002. The four largest cities in Monterey County are Salinas with a 2003 population of 150,300; Seaside with 33,450; Monterey with 30,350 and Soledad with a population of 24,200. Monterey County contains just over 60 percent of the population of the two counties and is growing slightly faster than the rate of Santa Cruz County: 1.1 percent in the last year versus 1.0 percent in Santa Cruz County. The population of the two-county area has grown over 12 percent since 1990.

Despite the enormous agricultural production of Monterey County, the population is nearly 75 percent urbanized with a total of 12 incorporated towns and cities. The largest of these by far is the county seat of Salinas, which contains over 36 percent of the entire county population. As noted above, the next largest towns, in order, are Seaside, Monterey and Soledad. The fifth largest is Marina, which has an estimated population of 19,650, and the remaining seven towns have populations that total about 53,500. It should be noted that of the Monterey County cities, Soledad is the fastest growing. Soledad grew by 10.3 percent in 2002 and was the eighth fastest growing city in the state of California.

A major reason for this growth is that Soledad is one of the few areas of Monterey County that has water available to service new subdivisions. By comparison, the City of Monterey grew by just 1.8 percent in 2002 and Marina grew by just 0.3 percent. The City of Seaside actually lost 0.4 percent of its population in 2002. These slow or even negative rates of growth in the coastal cities of the county are due in part to the lack of water for new home developments. Owners of vacant residential lots around the City of Monterey and in other jurisdictions along the coast must get on waiting lists for water service or buy unused water rights from other property owners. Some owners reportedly have been on the waiting list for as long as five years, and other property owners reportedly have paid as much as \$250,000 for transferable water rights.

Santa Cruz County is more rural overall. There are only four incorporated towns and cities containing less than half the total population. Approximately 52 percent of the population lives in the unincorporated areas. The largest city is Santa Cruz, the county seat, which has a population estimated to be 55,600 at the beginning of 2003. The small cities of Watsonville and Scotts Valley have 47,700 and 11,650 residents, respectively. The smallest incorporated community is Capitola, which has 10,150 residents. Unincorporated communities include Aptos, Live Oak, Ben Lomond, Corralitos, Soquel and others.

The population of the Monterey Bay region has been growing more rapidly in the past few years than earlier in the decade. This is due in part to expansion of the Silicon Valley area southward into Santa Cruz and Monterey Counties, especially the former, which abuts Santa Clara County where Silicon Valley is located. This growth is expected to continue, if not intensify, over the next several years. In Monterey County, growth has been spurred by expansion of tourism and of agricultural production and processing but has been inhibited in coastal areas by environmental constraints and the lack of water for domestic service. Demand is expected to far outpace supply of new residential properties for at least the next four or five years.

### **Economic Factors**

As alluded to earlier, the economies of both Monterey Bay Area counties are based on tourism, agriculture and to a lesser but growing extent, high-tech and food-processing industries. The figures as of October 2002, indicated the combined labor force of the two counties totaled about 341,200. Both counties traditionally have annual unemployment rates somewhat above the California and national averages because of seasonal employment in agriculture, and to a lesser extent, in tourism-related services such as hotels and restaurants. The unemployment rate as of October 2002 in Santa Cruz County was 5.7 percent, and in Monterey County it was 6.3 percent, according to the California Employment Development Department. At the same time, the California average was 6.1 percent, and the U.S. rate was 6.3 percent. The table on the next page shows the employment profile by major sectors in each county:

<b>EMPLOYMENT BY SECTORS IN MONTEREY BAY AREA*</b>				
<b>Sector</b>	<b>Santa Cruz County</b>	<b>Monterey County</b>	<b>Total Bay Area</b>	<b>% of Total Employed Labor Force</b>
Farm	11,100	49,200	60,300	17.04%
Mining & Const.	5,000	6,500	11,500	3.25%
Manufacturing	13,300	17,300	30,600	8.65%
Transportation & Public Utilities	3,100	4,700	7,800	2.20%
Trade	27,400	33,800	61,200	17.30%
F.I.R.E.	3,500	6,700	10,200	2.88%
Services	30,600	36,400	67,000	18.94%
Government	19,900	31,200	51,100	14.44 %
Self-employed	22,900	12,600	54,100	15.30%
<b>Total Employed</b>	<b>136,800</b>	<b>198,400</b>	<b>353,800</b>	<b>100.00%</b>
<b>Total Unemployed</b>	<b>8,200</b>	<b>12,600</b>	<b>20,800</b>	

\*As of August 2002

Source: California Department of Employment Development

As can clearly be seen in the table above, the largest employment sectors in Monterey County are the Services and Farm sectors, and for Santa Cruz County they are Farm and Services. Although Santa Cruz County is attracting some high-tech industries, this county remains largely a farming community.

After trade and services, the next largest employment sector is state and local government. The fourth largest non-farm sector is manufacturing, which is growing at an annual rate of about five percent. However, farm employment, which is more than double the employment in manufacturing, is growing at only about one percent per year. Within the manufacturing sector, the largest growth, not surprisingly, is food processing.

According to the California Employment Development Department, the services sector will be the fastest growing segment of the economy in Monterey County between 1999 and 2006. Service jobs will grow by 19.7 percent during that period, the EDD predicts, a far faster growth rate than for any other segment. Within this segment, the majority of the jobs will be in the elementary teaching profession indicating the expected housing boom for Monterey County over the next four years. Jobs in Government is expected to grow by 12.1 percent during the same period followed by Retail jobs which are expected to grow by 10.7 percent.

Manufacturing is a growing segment in both Monterey Bay Area counties. In Monterey County, the manufacturing growth sectors will be durable goods and food processing. In Santa Cruz County, the largest

manufacturing growth sector will be electronic equipment, reflecting the expansion of Silicon Valley into Santa Cruz County.

Historically, Monterey County's economy centered on agriculture and tourism. Recent trends include the closure of the U.S. Army's Fort Ord, located along the coast between Seaside and Marina and extending several miles inland from the coast. Old Fort Ord is to be reused for educational, residential, commercial and light industrial purposes. For example, the California State University at Monterey Bay campus, established in 1994, is located on land formerly a part of Ford Ord, and the subject property was part of Fort Ord until deeded to the City of Seaside in July 2002. Fort Ord is a highly desirable location for residential development because it is just about the only area along the Monterey Bay coast that has water available to service new homes. The availability of water for domestic service, combined with the convenient and desirable coastal location make the former Fort Ord land highly valuable in the current market.

In summary, the economies of both counties depend heavily on agriculture, tourism and, to a growing extent, manufacturing. There is little that is likely to change this picture in the foreseeable future. The Monterey Bay Area will remain one of the most prolific agricultural production areas in the country, and the natural beauty and reputation of the Central Coast and Monterey Bay will continue to draw tourists and new residents. At the same time, expanding food processing industries and growing electronic equipment manufacturing will draw more business travelers to the region. The coastal cities should continue to experience strong demand for residential growth, but residential expansion is likely to be slow for the foreseeable future because of the lack of water for domestic service throughout the entire Monterey Peninsula area except for the old Fort Ord property.

### **Cultural Factors**

The Monterey Bay Area has a cultural history that dates back to Native Americans who inhabited the area for centuries prior to the arrival of Spanish soldiers and missionaries. The Spanish built the Presidio at Monterey and missions at Carmel, Soledad, San Juan Bautista and at various other places throughout the San Antonio Valley and around the bay. Under Mexican rule, the first big land grants in the rich valley areas were made. Agricultural production became big business during the California Gold Rush and continued to thrive after railroads made the products of the area accessible to a much wider market. Prior to World War I, the agricultural production of the area centered on cattle, wheat, hides and tallow, but after the First World War, sugar beets, beans, lettuce, artichokes and broccoli became dominant.

The culture of the Monterey Bay region today is a blend of contributions from Native American, Spanish, Mexican, Swiss, Danish, Chinese, Japanese, German, Irish and a variety of other settlers in the area. The predominant Spanish/Mexican heritage is reflected today in the names of towns, streets, shopping centers, districts, lakes and recreation areas.

Perception of a good quality of life and a moderate cost of living outside the Monterey Peninsula continue to draw new residents to the region. A mild climate with an average temperature of about 68 degrees, with an annual daytime range from the 60s in the winter to the 80s in the summer, enhances the attraction of the area and contributes greatly to the region's ability to produce agricultural products year-round.

Elements which make the region attractive to residents – the natural beauty of the coast, valleys and coastal mountain ranges, the mild climate, the rich cultural history, and an abundance of entertainment venues – also make the area attractive to tourists. The coastal areas from Santa Cruz to the Monterey Peninsula and on south into Big Sur have attracted tourists for generations and are renowned world-wide. But interior sites like the Spanish missions and the area around Salinas are becoming increasingly popular themselves. Salinas was the home of Nobel-prize-winning author John Steinbeck, who made the Monterey Bay Area famous in his novel *East of Eden* and in stories like “The Red Pony.” His novel *Cannery Row* tells the story of anchovy fishermen in Monterey. The award-winning new National Steinbeck Center museum in downtown Salinas has become a popular venue for business meetings, seminars and social events since it opened in 1998. The annual Steinbeck Festival, usually held in August, draws scholars and Steinbeck buffs from all over the world.

### **Conclusion**

The Monterey Bay Area is a world-famous region renowned for its natural beauty, rich cultural history, and its prolific agricultural production. The economies of both Bay Area counties – Monterey and Santa Cruz – are based on agri-business, tourism, and to a growing extent, high-tech manufacturing and food processing. The population of the area is growing at a modest pace due to the attractiveness of the natural environment, the quality of life, and a moderate cost of living (outside the Monterey Peninsula), but demand for new housing for new residents far exceeds supply due to a lack of water for domestic service in the coastal areas and other parts of the counties. The three bases of the economy are all strong and are likely to continue growing for the foreseeable future. The continued growth of both tourism and business will continue to provide a basis for expanding residential housing developments as water can be provided. Both the short- and long-term outlooks for real estate development and values are good. The inability of developers to satisfy demand for new housing due to the lack of water and other environmental constraints has resulted in dramatically increasing residential property values for the past several years.

### **NEIGHBORHOOD DESCRIPTION:**

The subject property is located in the northwestern portion of the City of Seaside. The boundaries of this neighborhood are considered to be Light Fighter Drive to the north; Cabrillo Highway (State Highway 1 freeway) to the west; General Jim Moore Boulevard to the east; and Military Avenue to the south. This area is the extreme southwest corner of the old Ford Ord Army Base. The neighborhood is separated from the shoreline of Monterey Bay by California Scenic Highway 1 and Dunes State Park. The desirability of this location is its close proximity to the City of Monterey and that city’s famous attractions, such as Cannery Row, Fisherman’s Wharf, the Monterey Bay Aquarium and the 17-Mile Drive. Also, the subject neighborhood is virtually adjacent to state beaches and approximately a quarter mile from the shoreline of Monterey Bay. It is only approximately 5.5 miles northeast east of the Monterey Fisherman’s Wharf district, which is just west of the historic downtown district of Monterey. The presence of the Monterey Bay Aquarium at one end of Cannery Row in Monterey draws about 1.8 million visitors per year to the district. A few years ago when the aquarium opened a new wing, the number of annual visitors swelled to well over two million for a couple of years. The tourist impact of Monterey immediately to the southwest has a significant impact on Seaside and other nearby coastal towns like Marina and Sand City.

Seaside's major thoroughfares are lined with stores and services of many types, restaurants, bars, motels and a variety of retail businesses, almost all focused on the local residents. This community has several vacant commercial parcels that have been purchased during the past three years by large regional and national chain stores. Further, several older strip centers have been remodeled or replaced with newer franchise restaurants. Although almost any commercial area in Monterey is dependent upon tourism to some extent, most of the retail development in Seaside appears to be primarily to serve for the local residents of Seaside and to some extent for neighboring cities of Monterey, Sand City and Marina. For example, there is an Auto-Mall on the northern portion of Seaside.

Improved properties in Seaside range in age from less than one year to approximately 75 years old. Commercial buildings range in size from as little as 500 square feet to over 30,000 square feet and most are one to three stories in height. Some of the buildings were designed and built as commercial structures, but some are converted old houses, warehouses or factories. Most of the buildings house retail businesses. Office uses are much fewer in number and are almost all on upper stories scattered among the retail buildings and uses. Office uses are somewhat limited in part due to the lack of off-street parking for tenants and because of the desirable office space in neighboring Monterey. The majority of the buildings are used primarily for retail and office purposes with a very small number of office/warehouse and light-industrial uses.

Residential districts of Seaside are mostly modestly priced (for the Monterey Bay area) older, well established neighborhoods with a variety of home sizes and styles. Aside from the old Fort Ord property, water for new residential development is largely non-existent in Seaside, and owners of vacant lots have been on a waiting list for years for water permits. The new Seaside Highlands subdivision currently under construction on the subject land is possible only because it has the water rights that came with the old Hayes Park housing area of the Army base. Because of the availability of water for this new subdivision, it is virtually the only large-scale development of production homes in the entire Monterey Bay coastal area.

In summary, the subject neighborhood is a mixed-use coastal area focused on mixing older and newer residential uses with neighborhood commercial and office/warehouses. Several older single-family homes and older building are being purchased and demolished to build new residences and commercial buildings. It is unusual to have single-family residences mixed with commercial and light industrial uses, but this occurs because a good portion of Seaside is located within a quarter to half mile of the Monterey Bay and there is very little vacant land available for new construction. The area has relatively high property values because of the limited space available and the close proximity to the beach area and neighboring Monterey. The new residential development appears to be in the northern portion of Seaside and the City of Marina, the next city to the north. The real estate market in the neighborhood should have rising property values for the foreseeable future due to the shortage of water for extensive new development. Consequently, demand far exceeds the supply.



**SITE DESCRIPTION:**

The subject land consists of a single assessor's parcel located west of Monterey Road and north of Coe Avenue several hundred feet east of the Cabrillo Highway (Highway 1) in the northwestern portion of the City of Seaside, Monterey County, California. The subject site is irregular in shape and is comprised of  $\pm 104$  acres or  $\pm 4,530,240$  square feet, according to the City of Seaside Planning Department. The subject property has a draft map to subdivide the property into residential 380 lots with an average lot size of 6,457 square feet. However, as of both the date of this valuation and the date of this report, a final subdivision map had not been approved and the subject land consists of one Assessor's Parcel.

The map coordinates for the Thomas Guide for Metropolitan Monterey Bay are Page: 1114, Grids: F-5, 6 and G-5, 6. The Monterey County Assessor's Parcel Number is 031-051-012. According to the real property records of Monterey County, title to the property is vested in K & B Bakewell Seaside Venture LLC .

The main subdivision streets are Lienbach Avenue and Coe Avenue with several smaller feeder streets within the subdivision. Lienbach Avenue is on the western edge of the Bayonet Black Horse Golf Course and a number of lots are platted to have golf course views. The subject property is located at street grade with gentle to moderate slopes on gently rolling land. Please see the Assessor's Parcel Map reproduced in the Appendix for a visual representation of the subject parcel. No signs of erosion or drainage problems were noted during the appraiser's inspection, however it should be noted that at the date of inspection in late June 2003, all the old subdivision infrastructure had been removed, and new subdivision infrastructure consisting of new streets and drainage with underground utility service was under construction on the site. This is highly unusual since a final subdivision map had not been approved and recorded, but city officials said the owner was proceeding at its own risk, although there was little doubt the final map would be approved because everything had been negotiated and informally approved before the actual sale occurred.

The subject property is currently zoned "R1-FO – Residential 1 - Ford Ord" by the City of Seaside. This designation allows for single-family residential use as part of a master-planned multi-stage development. According to city planning officials, this is a special residential category created especially for the Seaside Highlands subdivision currently under construction, but it is similar to the city's standard "R1 – Residential" zoning designation. Under the former ownership as a U.S. Army Base by the United States Government, city zoning regulations did not apply, but the area was an Army housing district known as Hayes Park.

Since the units were vacant and were considered to be at the end of their economic life, most potential buyers of the subject property probably would remove the older structures as part of the redevelopment of the subject land. As of the date of this report, the new owners have demolished all the old Army housing so new homes can be built. However, as of the effective date of this valuation, the old Army improvements existed, and their cost of removal, as well as the cost to remove the underlying subdivision infrastructure, has been taken into account in this valuation.

According to the City of Seaside Planning Department, the subject property is not located in a 100-year flood zone (Community Map 060203-0003B, dated August 19, 1986). The subject site is located within an Earthquake Zone 4, that is, an area with the potential for moderate to severe earthquakes. Any

improvements should be constructed in such a manner as to mitigate potential damage from this phenomenon.

The appraiser was not provided with a preliminary title report. The appraiser assumes that there are no adverse covenants, conditions or restrictions (C,C&Rs). The appraiser was not supplied with a survey but assumes there are no encroachments.

#### **TAX ANALYSIS:**

As of the effective date of valuation, the subject property had just been transferred from the United States Government to the City of Seaside and then to the current owners. As government land, no assessment was made by the County Assessor. Under the new private ownership, the subject land will be subject to taxation, however, in California, due to Proposition 13, the assessed value is based on the purchase price, and there may be little relationship between the assessed value and the market value for a specific property.

#### **HIGHEST AND BEST USE:**

*As Vacant:* Legally, due to the subject land's current zoning, the site can be used for single-family residential development as part of a master-planned subdivision. The property is located in an area characterized by single-family residential uses to the south, a freeway and state beaches to the west, and a golf course and old Army base land to the north and east. The legally permissible uses are also physically possible since the subject land's physical characteristics create no impediments for almost any type of development.

Speculative construction of residential properties is considered financially feasible within the Monterey County, and more specifically, within the City of Seaside as evidenced by the recent construction of new homes built within the past few years in the general neighborhood. Further evidence of financial feasibility is the fact that the prices of the homes currently under construction or planned for the subject land have been rising by \$2,000 to \$5,000 literally on a weekly basis. The developer is holding lotteries to determine who gets to buy each newly released group of homes.

The subject property is located in an area that has a mixture of both older and newer single-family homes directly to the south. The location across the highway from the Monterey Bay and within walking distance of beaches and also adjacent to the Bayonet Black Horse Golf Course makes this area highly desirable for new residential construction. There are very few vacant parcels available for development in the coastal areas of the county due to environmental concerns and lack of water for domestic service. Therefore, individual vacant parcels with water rights are sometimes in direct competition for both the residential and commercial users. This means that the residential market often is willing to pay commercial prices. Based on all of these factors, the highest and best use of the subject land as of the effective date of this appraisal is for residential development.

**VALUATION:**

The Sales Comparison Approach to value is based on the principle of substitution and involves analysis of recent sales in the same market of similar vacant land that would have similar development potential as the subject. The appraiser researched the public records of Monterey County, the Monterey County Assessor's Office and the Multiple Listing Service for the Monterey/Seaside area for such sales. The appraiser was unable to find recent sales of either vacant land available for residential subdivision development or land that has already been subdivided into paper-lots or finished lots for residential development in the general market area. The comparable sales search revealed paper-lot sales in the Salinas and Soledad market areas, but these sales are not comparable to the subject property due to the distance to the Monterey Bay area, which is approximately 45 miles by highway from the Soledad area to the subject property. Further, the lack of Bay views and the inferior location attributes when compared to the subject's close proximity to the beach, a golf course and Monterey Peninsula attractions and amenities makes the Salinas and Soledad properties too different for meaningful comparison. Although the appraiser expanded the search into portions of southern Santa Clara County to the north and found a few recent sales of land in Morgan Hill for subdividing, these too ultimately were too far away and too different from the subject property to be meaningful in a comparison to the subject land. Therefore, a Sales Comparison Approach would involve only far inferior land and was not used in the valuation analysis.

Since the Sales Comparison Approach was not a useful method of valuation in this instance, the appraiser used another common valuation technique to estimate the value of the subject as a paper-lot subdivision in a bulk-sale. This approach is a land residual technique.

### **Analysis of the Subject Land as a Bulk Sale of Paper Lots Using a Residual Value Technique**

According to *The Appraisal of Real Estate*, (12<sup>th</sup> edition, 2001, the Appraisal Institute), "a land residual technique is a method of estimating land value in which the net operating income attributable to the land is isolated and capitalized to produce an indication of the land's contribution to the total property." What this means is that the value of the underlying land can be estimated by starting with the known sale price of the improved property and deducting all the expenses involved with developing the land and building the structure, including a reasonable developer's profit. What is left after the deduction of all the costs involved with improving the land is the underlying land value, or residual value.

In this instance, the appraiser has been concerned with forming an opinion of the value of the subject land in "as is" condition at the time it was acquired by the current owner (July 2002). At that time, according to city officials, the buyer knew the land could be used for single-family residential development and that it could be subdivided into approximately 380 lots. Since these lots did not actually exist in final legal form, they are most comparable to "paper lots," that is, lots for which a draft map has received preliminary approval for the appropriate authorities but which do not yet legally exist.

In order to estimate the average value of an individual paper lot out of the subject land, the appraiser has applied a land residual technique based upon the developer's list price of an average individual, new production home in the Seaside Highlands subdivision with an average house size of 2,870 square feet and an average sales price of \$660,990 in mid 2003. The listing price information was supplied by the Sales Office of the Seaside Highlands subdivision and is a weighted average of the listed home prices for the various models available for sale at the date of this report.

The building costs for the production home were taken from the *Marshall & Swift Manual*, a national building cost manual used by builders, developers and appraisers throughout the United States. The production house assumed in this valuation is classified as a Good, Class D single-family residence in the Marshall & Swift classification system. The cost breakdown is shown on the following page.

**COMPLETE, SUMMARY  
MARKET VALUE APPRAISAL**

**HAYES PARK SUBDIVISION  
SEASIDE, CALIFORNIA**

Base Cost/SF:	\$ 81.89	
Ceiling Height Adj:	1.030	
Perimeter Multiplier:	0.974	
Current Cost Multiplier:	1.020	
California Cost Multiplier:	<u>1.120</u>	
Adjusted Base Cost:	\$ 93.85	
Soft Costs (7%):	<u>\$ 6.57</u>	
Base Construction Cost:		\$ 100.42/SF

Gas Fireplace:	\$ 4,425	
Built-in Appliances:	<u>\$ 3,880</u>	
Base Cost of Built-ins	\$ 8,305	
Current Cost Multiplier:	\$ 1.020	
California Cost Multiplier:	<u>\$ 1.120</u>	
Built-ins Construction Cost:	\$ 9,488 or	<u>\$ 3.31/SF</u>

Total Base Cost/SF \$ 103.73

Average Sales Price of Average Size

Individual Production Home:	\$630,990
Average Upgrades Cost:	<u>\$ 30,000</u>
Total Average Sales Price:	\$660,990
Less: Building Cost, incl. overhead & contractor's profit: (2,870 SF x \$103.73/SF)	<\$297,693>
Less: Developer's Profit @ 15%:	<u>&lt;\$ 44,654&gt;</u>
Finished Retail Lot Value:	\$318,643

Cost to Complete Finished Lots on a Per-Lot Basis:

Finished Retail Lot Value:	\$ 318,643
Abatement & Demolition:	\$ 9,420
Less: Cost to Finish Lots:	<u>\$ 17,598</u>
Individual Paper Lot Value:	\$ 291,625

The abatement and demolition costs were confirmed by the Ford Ord Reuse Authority. The costs to finish the lots were taken from actual cost proposals prepared and estimated by Dave Beck of Paul T. Beck Contractors, Inc. of Salinas, California.

The \$291,625 value for an average paper lot as derived above assumes that the lot would be sold on an individual basis and not in a bulk sale. Normally, paper lots are almost never available for sale as single lots. The typical paper lot subdivision involves many lots, and if they are sold, they are almost always sold in groups, that is, in bulk. A typical buyer would require a discount in order to assume the risk in a bulk sale purchase. In discussions with market participants and based upon the appraiser's experience in appraising bulk sales of single-family residential paper lots, the typical discounts that developers require range from 10 to 20 percent. Since the subject subdivision involves a large number of potential lots, a discount from

the high end of the range would be normal. However, the subject land is located in a market where demand far exceeds supply, reducing the risk and making a discount factor in the middle the range more appropriate.

Using a 15 percent net discount, the appraiser concludes that the "as is" bulk value of the subject tentatively approved single-family residential paper lots may be calculated as follows:

$$\$291,625 \text{ per paper lot} \times 0.85 = \$247,881$$

Based on the above analysis the appraiser concludes the following bulk value for the subject paper lots:

$$\$247,881 \text{ per paper lot} \times 380 \text{ lots} = \$94,194,780$$

Rounded to \$94,195,000

In the above residual valuation analysis, the indicated value for a finished, retail lot is \$318,643. As a test of the reasonableness of this value conclusion, the appraiser researched the local Multiple Listing Service and other data bases for sales of individual, vacant residential lots. The sales below are located in the market area and demonstrate that the value concluded for an individual lot in the Hayes Park area is well within the price range of nearby residential lots sold in 2002.

<u>Address</u>	<u>Sales Price</u>	<u>Sale Date</u>	<u>Water</u>	<u>Amenities</u>
780 Lyndon Street Monterey	\$215,000	2/27/02	No	No
3138 Lake Dr. Marina	\$450,000	1/4/02	Yes	Ocean View/Access
140 Tide Avenue Monterey	\$725,000	11/08/02	Waiting (#9 on list)	Ocean View/Access
311 Pasadera Ct. Monterey County	\$810,000	4/08/02	Yes	Golf Course
<b>Subject Lots</b>	<b>\$318,643 (est)</b>	<b>7/02</b>	<b>Yes</b>	<b>Ocean View/Access, Golf Course</b>

These sales are located within a few miles of the subject subdivision. The first sale indicates that a buyer is willing to pay at least \$215,000 for an average residential lot in the northern portion of the City of Monterey without water availability and with no special amenities such as easy beach access, view, or golf course, and is presumably willing to wait for water to become available. The second sale is in Marina and has proximity to the Bay and to Highway 1 quite similar to the subject land. The third lot was sold based on being number nine on the waiting list for water and is an ocean-front lot in the northeastern part of the City of Monterey only a little more than a mile southwest of the subject land. The fourth sale is a finished

lot with a golf course view and access. This lot has water and is ready for development, however, it is several miles from the ocean in the Pasadera Golf Club area of the county.

The indicated subject retail lot value of \$318,643 lies between the sale price of the first sale, which is clearly inferior for lack of water and special amenities, and the second sale, which is similar for water availability and ocean view/access but inferior for golf-course access. In light of these sales, all of which occurred in 2002, the value concluded for an individual finished subject lot appears to be reasonable.

**ASSUMPTIONS AND LIMITING CONDITIONS:**

1. This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standard Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it might not include full discussions of the data, reasoning and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning and analyses is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report.
2. No responsibility is assumed for legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated in this report.
3. The property is appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.
4. Responsible ownership and competent property management are assumed unless otherwise stated in this report.
5. Information, estimates and opinions furnished to the appraiser by others were obtained from sources considered reliable and believed to be true and correct. However, no warranty is given for its accuracy.
6. All engineering is assumed to be correct. Any plot plans and illustrative materials in this report are included only to assist the reader in visualizing the property.
7. It is assumed that there are no hidden or unapparent conditions of the property, subsoil or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
8. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless otherwise stated in this report.
9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with unless a nonconformity has been stated, defined and considered in this appraisal report.

10. It is assumed that all required licenses, certificates of occupancy or other legislative or administrative authority for any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.
11. Any sketch of the property may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in this report are provided for reader reference purposes only. No guarantee as to the accuracy is expressed or implied unless otherwise stated in this report. No survey has been made for the purpose of this report.
12. It is assumed that the use of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless otherwise stated in this report.
13. The appraiser is not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determinations would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The appraiser's value estimate is predicated on the assumption that there is no contamination on or in the properties that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of the routine observations made during the appraisal process.
14. Unless otherwise stated in this report, the subject property is appraised without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans With Disabilities Act. The presence of architectural and communications barriers that are structural in nature that would restrict access by disabled individuals may adversely affect the property's value, marketability or utility.
15. The distribution, if any, of the total valuation in this report between land and improvements applies only under the state program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
16. Possession of this report or a copy thereof does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed with the written consent of the appraiser, and in any event, only with proper written qualification and only in its entirety.
18. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, new sales or other media without prior written consent and approval of the appraiser.



19. Unless otherwise stated in this report, to the best of the appraiser's knowledge, there are no rare, threatened or endangered species of plants or animals or significant areas of potential habitat for rare, threatened or endangered species included in the subject property.
20. We are not required to give testimony or appear in court concerning the subject property or this appraisal unless separate arrangements have been made therefor.
21. The client has been furnished with three original copies of this report with a certification signed in blue ink and dated by hand. The reader is warned that any copy of this report not signed in blue ink is not an original copy and is not warranted to be a complete, true and accurate copy of this appraisal.

**The value conclusions herein are subject to the following special assumptions or limiting conditions.**

- 1) **The appraiser assumes the subject land can be subdivided into 380 lots for single-family residential construction. A different number of lots would affect the final value opinion.**
- 2) **The appraiser assumes that the average selling price of a single-family residence to be built on the lots to be subdivided out of the subject land will be \$660,990, including upgrades and buyer's options, with an average size of 2,870 square feet.**

**CERTIFICATION:**

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, unbiased professional analyses, opinions and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
5. This appraisal was not based on a requested minimum valuation, a specific valuation or the approval of a loan.
6. My analyses, opinions and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
7. I have made a personal inspection of the property that is the subject of this report.
8. No one other than the undersigned is responsible for the research, analysis and preparation of this report.
9. The reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.
10. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
11. As of the date of this report, I have completed the requirements of the continuing education program of the Appraisal Institute.
12. The undersigned meets all the current requirements of the Competency Provision of the Uniform Standards of Appraisal Practice for appraisal of this type of property.

The value conclusions herein are subject to the following special assumptions or limiting conditions.

- 1) The appraiser assumes the subject land can be subdivided into 380 lots for single-family residential construction. A different number of lots would affect the final value opinion.
- 2) The appraiser assumes that the average selling price of a single-family residence to be built on the lots to be subdivided out of the subject land will be \$660,990, including upgrades and buyer's options, with an average size of 2,870 square feet.

Predicated on the data and analyses contained in this report and on the contingent and limiting conditions as stated herein, it is the opinion of the undersigned California state certified general real estate appraiser that the market value of the fee-simple estate in the subject property as of July 25, 2002, was as follows:

**NINETY-FOUR MILLION ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS**

**\$94,195,000**

This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan. Based upon the analysis performed by the appraiser, the subject property is not considered to have any measurable or special scientific, cultural, archeological or environmental value.



Richard Van Steenkiste, Ph.D., MAI  
California State Certified General  
Real Estate Appraiser # AG 017093

July 7, 2003  
Date of Report

**QUALIFICATIONS OF THE APPRAISER:**

Richard Van Steenkiste graduated from the University of Texas at Austin in 1963 with a Bachelor of Journalism degree in public affairs reporting. He received a Master of Arts degree from UT-Austin (1966) and a doctorate in economic and political geography (1970).

From 1970 to 1980, Dr. Van Steenkiste taught political and economic geography, as well as journalism, technical writing and public relations, at universities in Ohio and Texas. He became a sales associate with a real estate brokerage company in 1977, and in 1980 left his faculty position to devote full-time to a real estate career. From 1982 to 1985 he was director of marketing and a commercial real estate broker and analyst for a brokerage and development company serving primarily European investors and clients. From 1985 to 1987, he was president and a principal in another commercial real estate brokerage company. In May 1987 he joined McCluskey-Jenkins Appraisal, Inc., in Austin, Texas, as a staff appraiser. Dr. Van Steenkiste became one of five equal owners of McCluskey-Jenkins Appraisal, Inc., and in January 1993 opened a California branch of the company, based in the Sacramento area. In mid-1994, he became the sole owner of the California company and changed the name to Landmark Realty Analysts, Inc.

Dr. Van Steenkiste has appraisal experience with vacant land, apartments, office buildings, retail centers, industrial buildings, hotels, residential and commercial subdivisions, and many types of special-purpose properties. For the past 10 years, he has completed appraisal assignments on these types of properties throughout northern and central California, as well as in the Carson City and Reno areas of northwestern Nevada. He is an approved independent fee appraiser for many California and Nevada banks, including Union Bank of California, Bank of America, Wells Fargo Bank, US Bancorp, First Banks, Tokai Bank, China Trust Bank, First Union Bank, Bank of the West and others across the United States. He is a member of the national appraisal panel of Wells Fargo for hotel and motel valuations. He also undertakes appraisal assignments for private developers, investors, attorneys, and real estate consultants.

Dr. Van Steenkiste served as Education Committee Chairman of the Sacramento-Sierra Chapter of the Appraisal Institute from 1995 through 1998 and was a member of the Board of Directors in 1998. In 1999, he was Program Chairman of the Chapter. He served a three-year term on the Board of Directors (2000-2002) and also has served on the Region I (West Coast) Ethics Panel of the Appraisal Institute. He is currently the newsletter editor of the Sacramento-Sierra Chapter. Together with Dr. Ko Wang, professor of finance at California State University at Fullerton, Dr. Van Steenkiste has written computer programs for sequential pure-pairing analysis of real estate sales comparables and discounted cash flow analyses for use in appraisal work.

***Appraisal Institute Course Work***

Real Estate Appraisal Principles  
Basic Valuation Procedures  
Standards of Professional Practice, Parts A, B and C  
Capitalization Theory and Techniques, Parts A and B  
Case Studies in Real Estate Valuation  
Valuation and Report Writing  
Understanding Limited Appraisals & Appraisal Reporting Options: General

***Other Pertinent Course Work, Seminars and Workshops***

Location Theory  
Economic, Urban, and Political Geography  
Fundamentals of Location Theory and Market Analysis  
Fundamentals of Real Estate Investment and Taxation  
Advanced Real Estate Taxation and Marketing Tools for Investment Real Estate  
Fundamentals of Commercial Construction  
Commercial Office and Retail Leasing  
PRO-JECT Discounted Cash Flow Program - Basic Course  
California Assessment Bond Seminar - Appraisal Institute  
California Wetlands Workshop - Appraisal Institute  
Environmental Issues for Appraisers in the Sacramento Area - Appraisal Institute  
Seminar on Analyzing Operating Expenses - Appraisal Institute  
Seminar on the Internet and Appraising - Appraisal Institute  
Workshop, Federal & State Laws & Regulations Concerning Appraisals - Appraisal Institute (instructor)  
Workshop on Market Conditions in the Highway 65 Corridor, Placer County - Appraisal Institute  
Seminar on Internet Search Strategies for the Appraiser - Appraisal Institute  
Seminar on Valuation of Detrimental Conditions in Real Estate - Appraisal Institute  
Seminar on Litigation Skills for the Appraiser: An Overview - Appraisal Institute  
Appraisal Institute Instructor Leadership and Development Training Conference to qualify as an  
Instructor for Report Writing and Valuation Analysis for the Appraisal Institute  
Discounted Cash Flow Analysis Seminar – Appraisal Institute  
Seminar on Geographic Information Systems (GIS) and Computer Mapping – Appraisal Institute  
Seminar on Feasibility, Market Value, Investment Timing: Option Value – Appraisal Institute  
Seminar on Appraisal Consulting – Appraisal Institute  
Case Studies in Limited Partnership & Common Tenancy – Appraisal Institute

***Pertinent Designations and Licenses***

Member, the Appraisal Institute (MAI)  
(# 9051)  
California state certified general real estate appraiser  
(# AG 017093)  
Nevada state certified general real estate appraiser  
(# 01398)



**APPENDIX**

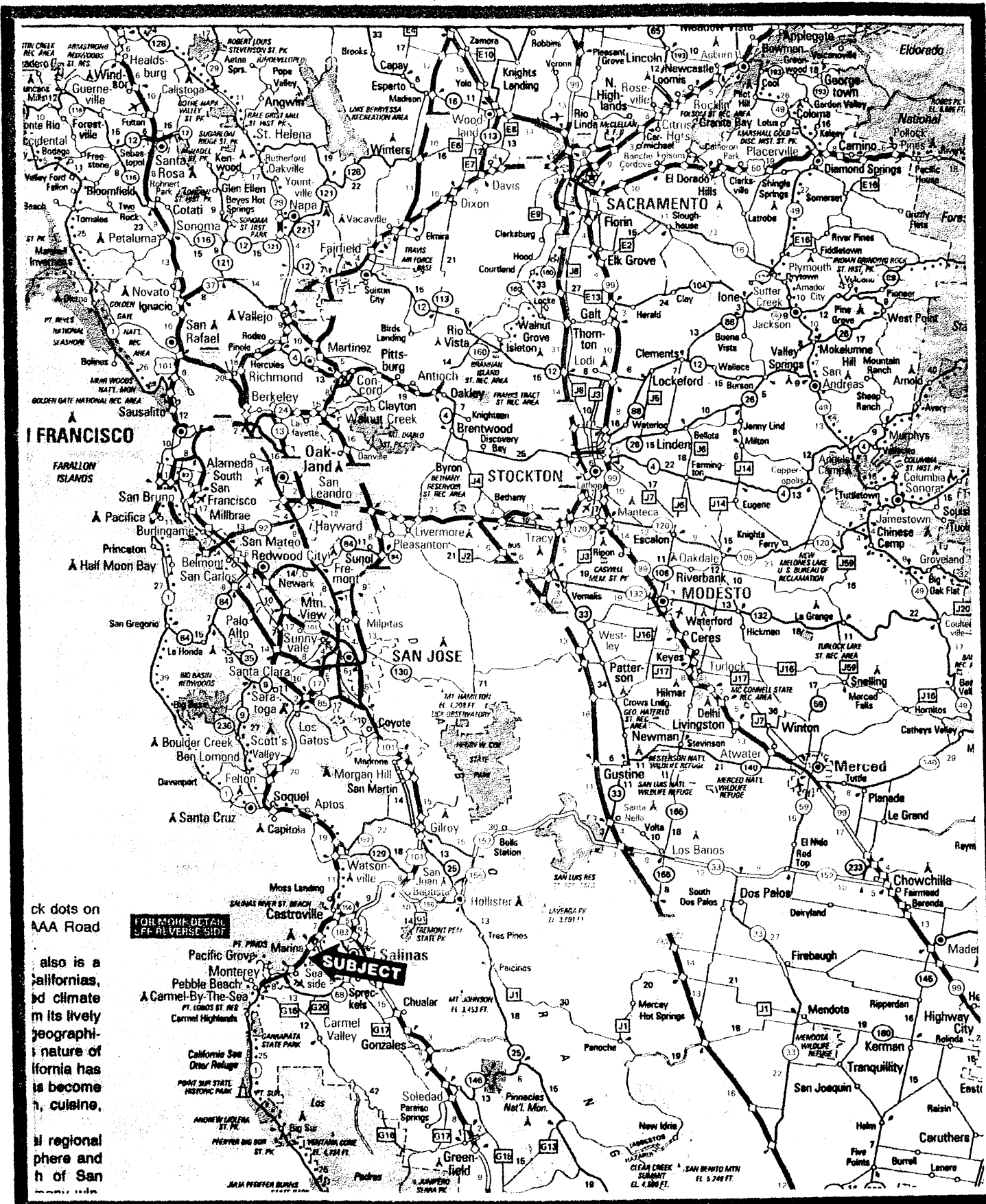
**Regional Location Map**

**Neighborhood Map**

**Plat Map of Subject Property**

**Legal Description**

**REGIONAL LOCATION MAP**



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AAA Road

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California's  
and climate  
in its lively  
geography-  
nature of  
California has  
become  
cuisine.

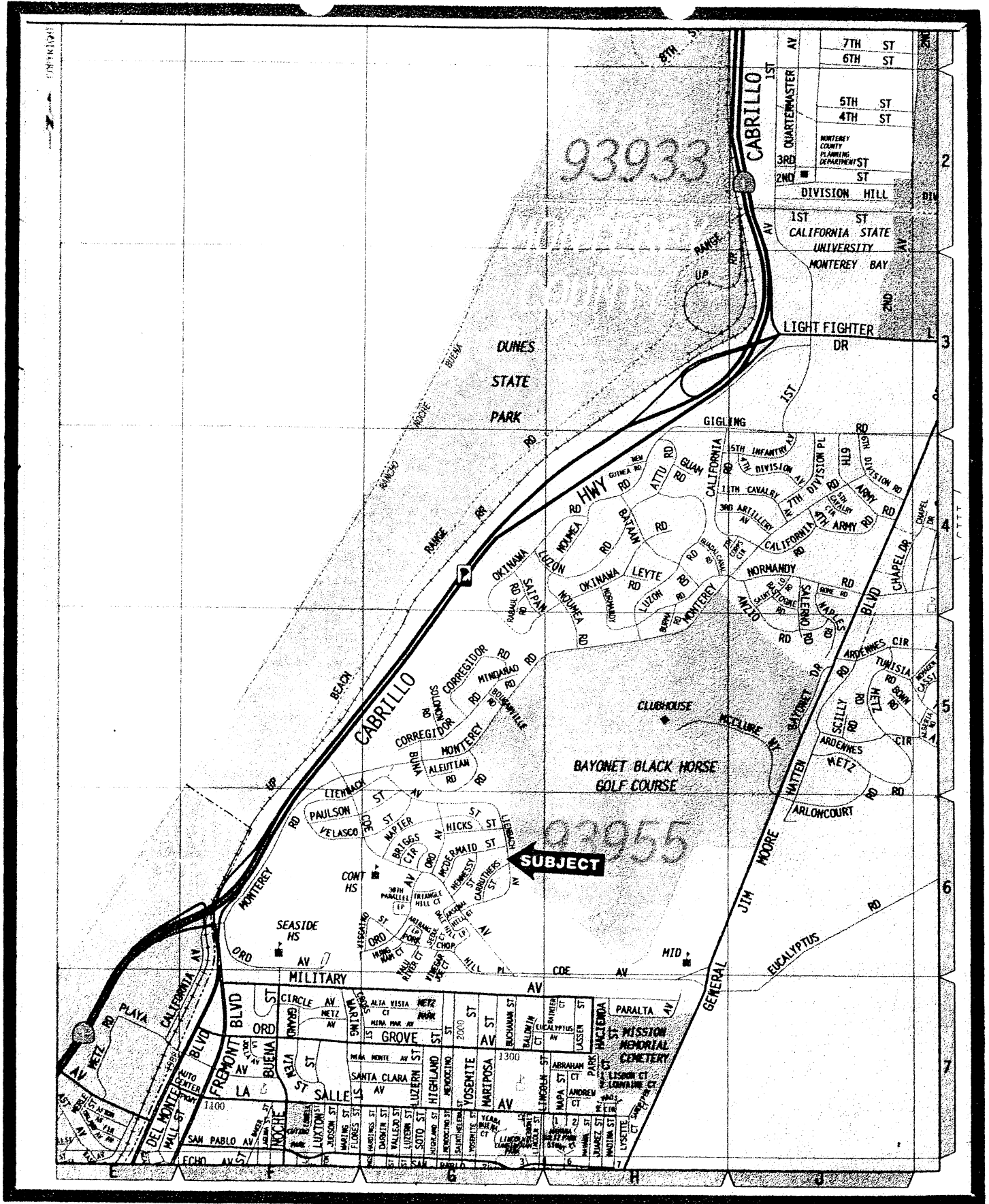
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FOR MORE DETAIL  
SEE REVERSE SIDE

**Location Map**

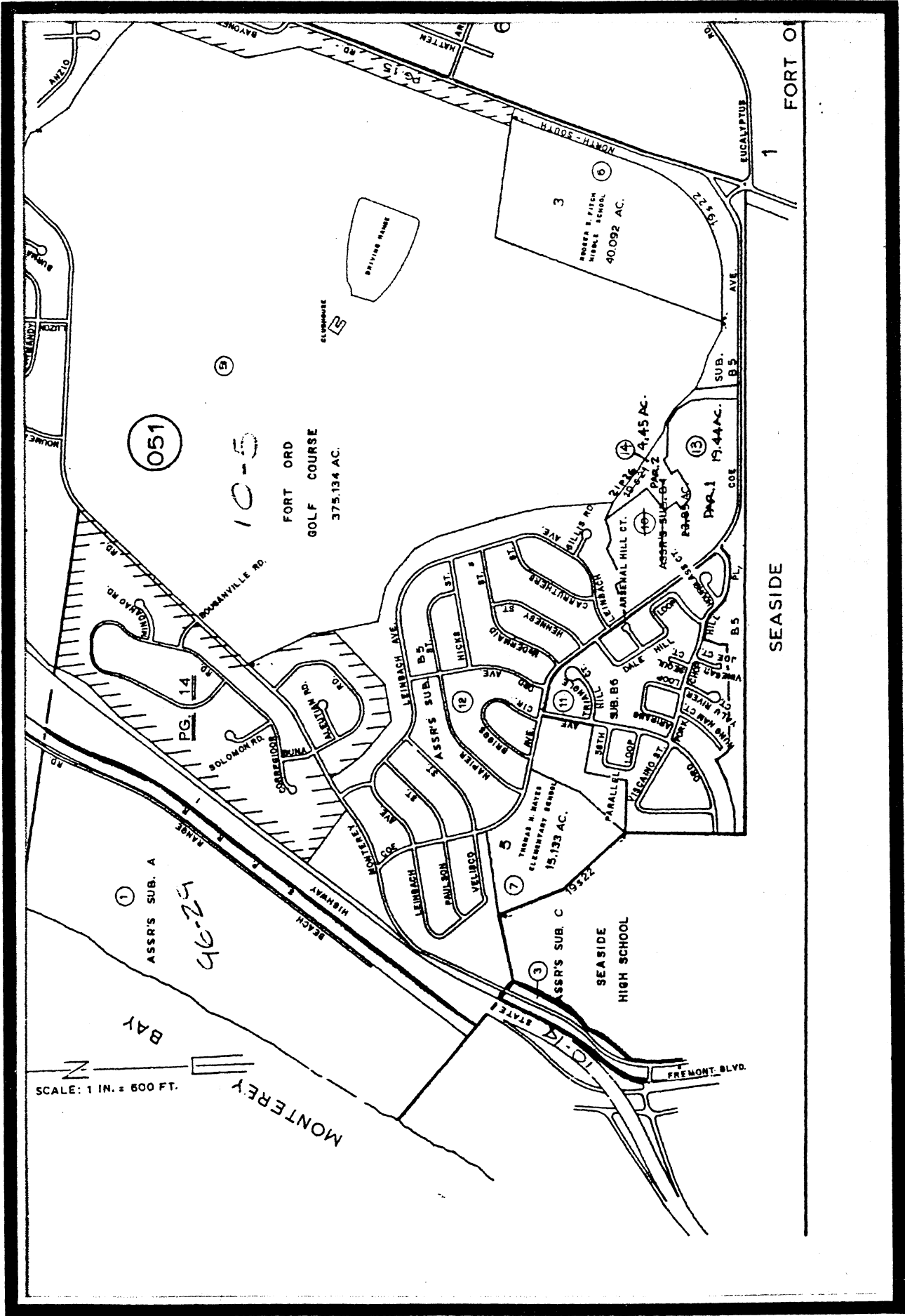


**NEIGHBORHOOD MAP**



**Neighborhood Map**

**PLAT MAP OF SUBJECT PROPERTY**



**LEGAL DESCRIPTION**

FROM :Law Offices of Heidi K Whilden FAX NO. :831 394 2891

Jun. 02 2003 11:41AM P1

Attachment A

LEGAL DESCRIPTION

Order No.: 97013878

The land referred to herein is situated in the State of California, County of MONTEREY, City of SEASIDE described as follows:

CERTAIN REAL PROPERTY BEING A PORTION OF FORT ORD MILITARY RESERVATION SITUATE IN RANCHO NOCHE BUENA, COUNTY OF MONTEREY, STATE OF CALIFORNIA PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE SOUTHWESTERLY BOUNDARY OF THAT CERTAIN 375.134 ACRE PARCEL (FORT ORD GOLF COURSES), AS SAID BOUNDARY AND PARCEL ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED NOVEMBER 16, 1994 IN VOLUME 19 OF SURVEY MAPS; AT PAGE 21, RECORDS OF MONTEREY COUNTY, CALIFORNIA, SAID POINT ALSO BEING SHOWN AND DESIGNATED AS CORNER NUMBERED TEN (10) ON SAID MAP (HAVING COORDINATES: NORTHING = 2122654.23 AND EASTING (= 5732550.58); THENCE ALONG SAID BOUNDARY

- (1) N. 01° 05' 39" W., 245.40 FEET; THENCE
- (2) N. 00° 02' 24" W., 238.08 FEET; THENCE
- (3) N. 06° 39' 13" W., 196.46 FEET; THENCE
- (4) N. 10° 56' 04" W., 239.05 FEET; THENCE
- (5) N. 14° 02' 58" W., 479.24 FEET; THENCE
- (6) N. 25° 14' 12" W., 188.26 FEET; THENCE
- (7) N. 45° 42' 30" W., 230.28 FEET; THENCE
- (8) N. 57° 01' 36" W., 147.39 FEET; THENCE
- (9) N. 74° 45' 09" W., 263.40 FEET; THENCE
- (10) N. 08° 25' 05" W., 354.44 FEET; THENCE  
LEAVING SAID BOUNDARY
- (11) S. 48° 14' 24" W., 577.23 FEET; THENCE
- (12) S. 81° 47' 43" W., 287.77 FEET; THENCE
- (13) N. 47° 27' 12" W., 343.17 FEET; THENCE

Continued on next page

FROM :Law Offices of Heidi K Whilden FAX NO. :831 394 2891

Jun. 02 2003 11:41AM P2

LEGAL DESCRIPTION - continued  
Order No.:97013878

- (14) N. 34° 52' 17" W., 224.61 FEET; THENCE
- (15) N. 26° 35' 23" W., 61.53 FEET; THENCE
- (16) S. 63° 24' 35" W., 75.47 FEET; THENCE
- (17) SOUTHWESTERLY, 162.18 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1770.00 FEET, THROUGH A CENTRAL ANGLE OF 05° 15' 00"; THENCE TANGENTIALLY
- (18) S. 58° 09' 35" W., 39.64 FEET; THENCE
- (19) S. 57° 59' 07" W., 256.14 FEET; THENCE
- (20) SOUTHWESTERLY, 284.36 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 630.00 FEET WHOSE CENTER BEARS N. 32° 00' 53" W., THROUGH A CENTRAL ANGLE OF 25° 54' 09"; THENCE TANGENTIALLY
- (21) S. 83° 50' 50" W., 173.72 FEET; THENCE
- (22) SOUTHWESTERLY, 296.65 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 545.00 FEET, THROUGH A CENTRAL ANGLE OF 31° 11' 12" THENCE; THENCE NON-TANGENTIALLY
- (23) S. 39° 02' 05" W., 46.70 FEET; THENCE
- (24) SOUTHWESTERLY, 217.71 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 560.04 FEET WHOSE CENTER BEARS S. 41° 34' 56" E., THROUGH A CENTRAL ANGLE OF 22° 16' 23"; THENCE TANGENTIALLY
- (25) S. 26° 08' 41" W., 693.51 FEET; THENCE
- (26) S. 63° 51' 19" E., 19.64 FEET; THENCE
- (27) N. 83° 42' 05" E., 507.64 FEET; THENCE
- (28) S. 85° 00' 00" E., 650.96 FEET; THENCE

Continued on next page

FROM :Law Offices of Heidi K Whilden FAX NO. :831 394 2891

Jun 02 2003 11:42AM F3

LEGAL DESCRIPTION - continued  
Order No.:97013878

(29) SOUTHEASTERLY, 530.42 FEET ALONG THE ARC OF A  
NON-TANGENT

CURVE TO THE LEFT OF HAVING A RADIUS OF 582.00 FEET WHOSE  
CENTER BEARINGS N. 66° 15' 40" E., THROUGH A CENTRAL  
ANGLE OF 52° 13' 05"; THENCE TANGENTIALLY

(30) S. 75° 56' 25" E., 60.48 FEET; THENCE

(31) S. 27° 15' 00" W., 430.00 FEET; THENCE

(32) S. 84° 41' 35" E., 593.22 FEET; THENCE

(33) N. 11° 46' 00" E., 271.23 FEET; THENCE

(34) NORTHEASTERLY, 48.21 FEET ALONG THE ARC OF A TANGENT  
CURVE

TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, THROUGH A CENTRAL  
ANGLE OF 92° 04' 19"; TANGENTIALLY

(35) S. 76° 09' 41" E., 182.36 FEET; THENCE

(36) SOUTHEASTERLY, 161.30 FEET ALONG THE ARC OF A TANGENT  
CURVE

TO THE RIGHT HAVING A RADIUS OF 220.00 FEET, THROUGH A CENTRAL  
ANGLE OF 42° 00' 34"; THENCE RADIALLY

(37) N. 55° 50' 53" E., 18.56 FEET; THENCE

(38) S. 34° 09' 07" E., 604.94 FEET; THENCE

(39) N. 55° 50' 53" E., 62.65 FEET; THENCE

(40) N. 71° 35' 01" E., 176.06 FEET; THENCE

(41) S. 23° 48' 52" E., 66.98 FEET; THENCE

(42) N. 66° 11' 08" E., 280.00 FEET; THENCE

(43) S. 60° 25' 00" E., 73.38 FEET; THENCE

(44) N. 81° 29' 43" E., 104.49 FEET; THENCE

Continued on next page



FROM :Law Offices of Heidi K Whilden FAX NO. :831 394 2891

Jun. 02 2003 11:42AM P4

## LEGAL DESCRIPTION - continued

Order No.:97013878

(45) N. 70° 10' 12" E., 58.99 FEET; THENCE

(46) S. 65° 18' 44" E., 140.69 FEET; THENCE

(47) S. 48° 34' 36" E., 6.72 FEET TO THE POINT OF  
BEGINNING.

A.P.N.: 031-051-012 (AFFECTS SAID LAND AND OTHER PROPERTY)

1 Jay P. Renneisen (Bar No. 173531)  
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3 1931 San Miguel Drive, Suite 210A  
4 Walnut Creek, California 94596  
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7 Heidi K. Whilden (Bar No. 183458)  
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10 Seaside, CA 93955  
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12 Attorneys for Plaintiff  
13 Benjamin Kaatz

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY

13 BENJAMIN KAATZ, in his capacity as a  
14 taxpayer resident of the City of Seaside,

15 Plaintiff,

16 v.

17 CITY OF SEASIDE, a California municipal  
18 corporation, DANIEL E. KEEN, in his official  
19 capacity as City Manager for the City of Seaside,  
20 and DOES 1-20, inclusive,

21 Defendants.

CASE NO. M65043

**DECLARATION OF U.S. REP. SAM FARR  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION  
[CCP §557]**

Date: August 7, 2003

Time: 10:30 a.m.

Dept.: 17

25 ///

26 ///



1 affordable housing units, thus serving no public benefit. The \$5.95 million paid by the developers to the  
2 City of Seaside, representing approximately \$15,000 per developable residential lot with water rights,  
3 ensures that the City of Seaside will receive next to nothing compared to the over two hundred million  
4 dollars to be reaped by the developers; again confirming that no public benefit was realized in the  
5 conversion of the 105 acres of prime public property of the former Fort Ord into Seaside Highlands.

6 I declare under penalty of perjury under the law of the State of California that the foregoing is  
7 true and correct, to the best of my knowledge and belief. Executed in Washington, D.C., this  
8 9 day of July, 2003.

9   
10 U.S. REP. SAM FARR

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25 Defendants. )

CASE NO. M65043  
**DECLARATION OF TOM CRAVENS  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**  
[CCP §557]

Date: August 7, 2003  
Time: 10:30 a.m.  
Dept.: 17

25 ///  
26 ///



1 of my colleagues, was that this was a “done deal” between the City and K&B/Bakewell.

2 6. The Housing Authority did not bid for the acquisition and development of Hayes Park in  
3 1998 because the City of Seaside did not own the property, and it was unknown at that time if the City  
4 would ever own it, and it was unknown what the City’s purchase price from the Department of Defense  
5 would be if the City ever did acquire title to the land. Moreover, the City had elected to single-source the  
6 project, for reasons unknown to the Housing Authority.

7 7. Land cost is an underlying issue in the determination of whether and where the Housing  
8 Authority can develop affordable housing within Monterey County. Constructing or redeveloping  
9 affordable homes is absolutely viable with low cost land. When Fort Ord closed, the Housing Authority  
10 was interested, as were a number of nonprofit housing providers, in acquiring available federal surplus  
11 land. With low cost surplus land, the Housing Authority is able to develop affordable housing that is  
12 financially self-supporting and does not create a measurable debt service. When homes are renovated or  
13 constructed for sale, rather than lease, the Housing Authority has even greater flexibility in its ability to  
14 acquire and develop available land.

15 8. In my seventeen years with the Housing Authority, I performed numerous analyses  
16 involving property valuations, demolition and cleanup costs. During my tenure, I was aware that the  
17 Hayes Park housing units contained lead-based paint and non-friable asbestos, which would require  
18 encapsulating the potentially hazardous materials, or razing the structures. Nevertheless, I consider the  
19 parcel prime real estate by virtue of its location, alone. Even if the structures were razed for the  
20 development of new construction, it would not have materially impacted the value of this property.

21 9. Had the Housing Authority known in 1998 that Hayes Park would ultimately be acquired  
22 and sold by the City of Seaside in July 2002 for approximately \$13,000 per lot, with water rights, the  
23 agency would have made every effort to acquire and develop the parcel.

24 I declare under penalty of perjury under the law of the State of California that the foregoing is  
25 true and correct, to the best of my knowledge and belief. Executed in Monterey County, California, this  
26 27 day of JUNE, 2003.

27   
TOM CRAVENS

28 - 2 -

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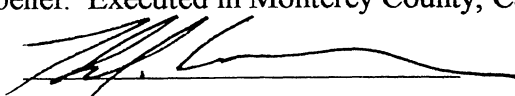
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