

SETTLEMENT AGREEMENT

THIS AGREEMENT TO SETTLE ONGOING LITIGATION (the "Agreement") is entered into as of October 19, 2010, by and between Petitioners CALIFORNIA NATIVE PLANT SOCIETY ("CNPS") and CENTER FOR SIERRA NEVADA CONSERVATION (together "Petitioners"); and the following parties (collectively referred to as "Respondents"): the COUNTY OF EL DORADO (the "County"); CAMERON PARK VENTURES ("CPV"), PACIFIC OAK DEVELOPMENT, and ERIK PILEGAARD, in *CNPS v. County of El Dorado et al* (2009) 170 Cal.App.4th 1026 (El Dorado County Superior Court Number PC20070021). This Settlement Agreement shall be effective on and after the date all Parties, or their authorized representatives, sign it (the "Effective Date"). Petitioners, County and CPV are sometimes referred to collectively below as the "Parties."

RECITALS

A. On October 17, 2006, the County Board of Supervisors approved the Congregate Care Facility Project ("Project") pursuant to a mitigated negative declaration ("MND") under the California Environmental Quality Act ("CEQA").

B. On January 12, 2007, Petitioners filed a Petition for Writ of Mandate in the El Dorado Superior Court requesting that the Court set aside the County's approval of the Project as unlawful under CEQA. On August 2008, the Superior Court denied Petitioners' Petition.

C. On January 28, 2009, the Third District Court of Appeal reversed the trial court's denial of the Petition and issued a ruling requiring the trial court to issue a writ directing the County to prepare an environmental impact report ("EIR") under CEQA due to the potentially significant impacts of the project on rare and endangered plants and their habitat located on the project site.

D. The Project has since been fully built out and is occupied by seniors.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated by reference, and of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, IT IS HEREBY AGREED as follows:

1. Dedication of Land.

Upon the Effective Date of the Agreement (defined below) CPV agrees to provide an irrevocable offer to dedicate in perpetuity approximately 23 acres of land, as shown in Exhibit 1 (and including approximately 2 acres previously required for mitigation of the Project), to the conservation of the rare plant species and their habitats that are endemic to the gabbro soils in El Dorado County. The title of the property is to be conveyed to the United States Bureau of Land Management (“BLM”) for inclusion in the Pine Hill Preserve for the stated purposes of plant conservation. In the event that BLM is unable to take title or to do so in a timely fashion, the property will be transferred to a successor acceptable to both CNPS and the County. CPV agrees to bear the expenses of the land surveying fee and title cost to transfer via grant deed. On or before the transfer described above or the payment of fees, CNPS agrees to cooperate in good faith to assist in providing proof of donation needed for tax purposes. The County agrees to process the required approvals for the dedication of land in a prompt and timely manner, assuming timely receipt of all relevant submissions. The County agrees to pay CPV \$135,000, in a check made payable to “Cameron Park Ventures” from the County’s Rare Plant Mitigation Account. This amount reflects the amount of in-lieu fees that CPV paid previously for the project. Reimbursement of this amount is based on the fact that, but for the reimbursement, CPV would not be able to provide the above-referenced irrevocable offer to dedicate 23 acres to the conservation of the rare plant species and their habitats that are endemic to the gabbro soils in El Dorado County. Donation of 23 acres is in excess of the amount of in-lieu fees that the County would have required for the project. The County will make payment as soon as practicable but no later than 45 calendar days from the Effective Date of this Agreement.

2. Other Obligations.

a. *Dismissal of Action by CNPS.* On the Effective Date, the Action shall be deemed settled and CNPS shall execute and file a Request for Entry of Dismissal with Prejudice of Case Number PC 20070021 at the El Dorado County Superior Court. Petitioners’ shall file the Request for Entry of Dismissal with Prejudice within 10 business days after occurrence of all the following events:

(1) Receipt of Notice of the Court’s signing and entry of the Order submitted pursuant to paragraph 2 subsection b, below; and

(2) Receipt of Payment of attorneys' fees payment made pursuant to paragraph 2 subsection d, below.

b. *Entry of Dismissal with Prejudice.* The Entry of Dismissal with Prejudice shall have the effect of dismissing the Action against all of the Parties named in the Action.

c. *Submission of Stipulation and Proposed Order to Court.* The Parties agree to submit a proposed order reserving jurisdiction in the trial court pursuant to a Stipulation and Order substantially in the following form:

Petitioners and Respondents have entered into a Litigation Settlement Agreement and Release (the "Agreement"), a copy of which is attached hereto as Exhibit 1. The Agreement also memorializes a global settlement reached between the Parties, including provisions barring future litigation by Petitioners, including individual members, over the Ponte Palmero II project and its related environmental document as described in subsection f below and provided the County decides to approve the project.

The Agreement includes terms anticipating that the trial court enter an order reserving jurisdiction to enforce the Agreement pursuant to C.C.P. § 664.6.

The Court is authorized to reserve jurisdiction to enforce the Agreement pursuant to C.C.P. § 664.6 upon written request of the parties as provided in *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 439-441.

THEREFORE, it is hereby STIPULATED by Petitioners and Respondents that, and Petitioner and Respondents hereby jointly request that, this Court reserve jurisdiction to enforce the Litigation Settlement Agreement pursuant to C.C.P. § 664.6 and this written stipulation of the parties.

The Parties agree that it is a condition precedent to the effectiveness of the Agreement that the trial court, in response to said motion, enter an order reserving jurisdiction to enforce the Agreement pursuant to Code of Civil Procedure § 664.6.

d. *Attorney's Fees.* CPV shall pay to CNPS, within 10 business days after performance by County in paragraph 1 of payment of the \$135,000, above, \$200,000 for attorney's fees and costs incurred by CNPS in connection with the litigation and settlement of this Action. In the event that payments are made as set forth above, Petitioners waive any right to seek recovery of any additional money from Respondents, or any of them, in connection with the dismissed claims and this Agreement. Respondents shall bear their own attorneys' fees and costs.

e. *Project EIR Waived:* Pursuant to this agreement, the Parties agree that no EIR need be completed for the Congregate Care Project.

f. *Ponte Palmero II.* CPV intends to submit an application with the County for a new Ponte Palmero II project adjacent to the Congregate Care Project at issue in this litigation. (See Exhibit 2.) Ponte Palmero II includes approximately 99 beds for skilled nursing care, 65 units of assisted living and an approximately 12,000 sf clubhouse on ten acres. The parties hereby agree to the following regarding the Ponte Palermo II project:

(1) CPV agrees to propose only a private emergency access road approximately twenty feet wide to connect the new project to the existing parking area located to the southeast. The Parties agree that the County and County Fire Department have final approval over the design and location of the road.

(2) If the County decides to approve the Ponte Palmero II project, CPV agrees, within 30 days from the date of filing of the Notice of Determination and assuming no petition for writ of mandate is filed by Petitioners or any of their individual members challenging the approval under CEQA, the Planning and Zoning Law or other related statute, to provide CNPS with a second irrevocable offer to dedicate in perpetuity approximately 10.64 acres of additional land, as shown in Exhibit 2 for "Phase 2." As in paragraph 1 above, the title of the property is to be conveyed to the United States Bureau of Land Management ("BLM") for inclusion in the Pine Hill Preserve for the stated purposes of plant conservation.

(3) If neither Petitioners nor any of their individual members file a petition for writ of mandate on the Ponte Palmero/ Phase 2 project, CPV also agrees to pay CNPS, within (40) days from the date of filing of the Notice of Determination for Ponte Palmero II, \$50,000 to be used for conservation studies and/or other conservation activities at the discretion of CNPS.

(4) On or before the transfer of the additional lands or payment of the \$50,000, CNPS agrees to cooperate in good faith to assist in providing proof of donation needed for tax purposes. In the event that BLM is unable to take title or to do so in a timely fashion, the property will be transferred to a successor acceptable to both CNPS and the County. CPV agrees to bear the expenses of the land surveying fee and title cost to transfer via grant deed. The County agrees to process the required approvals for the dedication of land in a prompt and timely manner.

g. *Sole and Final Agreement.* Except as otherwise specifically provided herein, this Agreement is intended to be and is the final expression of the Agreement between the Parties with respect to the subject matter of this Agreement, and supersedes and fully and completely extinguishes any prior understandings or agreements by or between the Parties, whether oral or written, express or implied.

h. *Warranty of Authority.* Each party warrants that the execution of this Agreement, and the covenants, representations, warranties, promises, and releases created hereunder have been duly authorized by all necessary corporate, partnership, or other necessary action and that the persons signing this agreement have full authority to do so.

i. *Mutual Cooperation.* The Parties agree to cooperate in good faith to carry out the provisions and intent of this Agreement, including the timely execution and delivery of any other documents necessary to carry out its provisions. Each of the Parties shall execute and deliver to the others all such other further instruments and documents, and take all other such actions, as may be reasonably necessary to carry out the terms and provisions of this Agreement and secure to the others the full and complete enjoyment of their respective rights and privileges hereunder. The parties agree to meet and confer in good faith to try to resolve any conflicts arising under this Agreement prior to bringing any actions in court to enforce the Agreement.

j. *Notices.* Except as otherwise specifically set forth herein, all notices or other communications specifically required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by certified mail, return receipt requested and postage prepaid, or sent by reputable overnight courier (such as Fed Ex), or by telefacsimile with copies sent by overnight courier or U.S. Postal Service the following day, to the addresses or telefacsimile numbers set forth below. Any Party may at any time change its address or telefacsimile number for the delivery of notice upon five (5) days' written notice to the other Parties.

k. *Third Party Beneficiaries.* Nothing in this Agreement shall be construed to confer any rights or impose any obligations upon any person or entity not a Party to this Agreement.

l. *Execution in Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, and together shall constitute one and the same instrument, having the same force and effect as if a single original had been executed by all

Parties. Furthermore, this Agreement may be executed and delivered by the exchange of electronic facsimile copies or counterparts of the signed documents, which facsimile copies or counterparts shall be binding upon the Parties.

m. *Time of the Essence.* Time is of the essence for this Agreement.

n. *Interpretation; Governing Law.* This Agreement shall be interpreted, and the rights and the duties of the Parties shall be determined, in accordance with the laws of the State of California, as applied to contracts entered into and performed (or capable of performance) in California by California persons or entities.

o. *Headings; Cross-References.* The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All cross-references in this Agreement, unless specifically directed to another agreement or document, shall refer to provisions in this Agreement and shall not be deemed to be references to any other agreements or documents.

p. *No Duress.* This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part of, or on behalf of any of them. Each of the Parties to this Agreement has read and fully understands the meaning of each provision of this Agreement and has relied on the independent advice and representation of legal counsel in entering into this Agreement.

q. *Successors and Assigns.* The terms and conditions of this Agreement shall be binding upon and insure to the benefit of the Parties. Petitioners' rights and obligations hereunder may not be assigned.

r. *Construction.* This Agreement has been reviewed by legal counsel for all Parties, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or application of this Agreement.

s. *Equitable Relief.* Because the amount of damages in the event of a breach of this Agreement may be difficult or impossible to determine, the obligations of the Parties shall be enforceable by specific performance or other equitable relief, in addition to any other available remedy.

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u. *Denial of Wrongdoing and Liability.* This Agreement pertains to disputed claims and does not constitute an admission of liability by the Respondents, or any of them. Neither this Agreement nor the fact that it has been entered into shall be construed as an admission of liability nor shall anything contained within this Agreement be construed or deemed to be evidence of any admission of any liability or wrongdoing whatsoever, or of any allegation made in the Action. It is expressly understood that Respondents deny any such liability or wrongdoing.

3. Effective Date. This Agreement shall become effective upon execution by all parties, or their authorized representatives.

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

Approved as to Form:

LAW OFFICES OF MICHAEL W. GRAF

Dated: September 24, 2010

By: 

Michael W. Graf
Attorneys for CALIFORNIA NATIVE
PLANT SOCIETY & CENTER FOR
SIERRA NEVADA CONSERVATION

KENYON YEATES, LLP

Dated: _____

By: _____

William Yeates
Attorneys for CALIFORNIA NATIVE
PLANT SOCIETY & CENTER FOR
SIERRA NEVADA CONSERVATION

admission of liability nor shall anything contained within this Agreement be construed or deemed to be evidence of any admission of any liability or wrongdoing whatsoever, or of any allegation made in the Action. It is expressly understood that Respondents deny any such liability or wrongdoing.

3.. This Agreement may be executed in counterparts and by original or facsimile signature, each of which shall be deemed to be an original and all of which together shall be deemed to physically form one document.

4. Effective Date. This Agreement shall become effective upon execution by all parties, or their authorized representatives.

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

Approved as to Form:

LAW OFFICES OF MICHAEL W. GRAF

Dated: _____

By: _____

Michael W. Graf
Attorneys for CALIFORNIA NATIVE
PLANT SOCIETY & CENTER FOR
SIERRA NEVADA CONSERVATION

Dated: 9/3/10

KENYON YEATES, LLP

By: 

William Yeates
Attorneys for CALIFORNIA NATIVE
PLANT SOCIETY & CENTER FOR
SIERRA NEVADA CONSERVATION

CALIFORNIA NATIVE PLANT SOCIETY

By: 

Tara Hansen
Executive Director
CNPS State Organization

By: _____

Susan Britting, Conservation Chair
El Dorado Chapter

By: _____

Cynthia Podsiadlo, President
El Dorado Chapter

By: _____

Annie Walker, Member
El Dorado Chapter

By: _____

Joanne Geggatt, Member
El Dorado Chapter

CENTER FOR SIERRA NEVADA
CONSERVATION

By: _____

Karen Schambach, President
CSNC

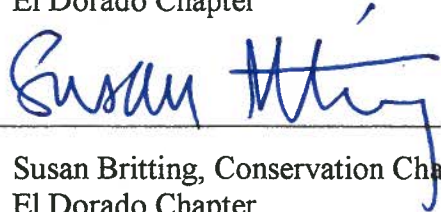
Dated: Sept 8th, 2010

CALIFORNIA NATIVE PLANT SOCIETY

By: _____

Tara Hansen
El Dorado Chapter

By: _____


Susan Britting, Conservation Chair
El Dorado Chapter

By: _____

Cynthia Podsiadlo, President
El Dorado Chapter

By: _____

Annie Walker, Member
El Dorado Chapter

By: _____

Joanne Geggatt, Member
El Dorado Chapter

CENTER FOR SIERRA NEVADA
CONSERVATION

Dated: _____

By: _____

Karen Schambach, President
CSNC

CALIFORNIA NATIVE PLANT SOCIETY

By: _____

Tara Hansen
Executive Director
CNPS State Organization

By: _____

Susan Britting, Conservation Chair
El Dorado Chapter

By: Cynthia Podsiadlo

Cynthia Podsiadlo, President
El Dorado Chapter

By: _____

Annie Walker, Member
El Dorado Chapter

By: _____

Joanne Geggatt, Member
El Dorado Chapter

CENTER FOR SIERRA NEVADA
CONSERVATION

Dated: 9/14/10

By: _____

Karen Schambach, President
CSNC

CALIFORNIA NATIVE PLANT SOCIETY

By: _____

Tara Hansen
Executive Director
CNPS State Organization

By: _____

Susan Britting, Conservation Chair
El Dorado Chapter

By: _____

Cynthia Podsiadlo, President
El Dorado Chapter

By: Annie Walker

Annie Walker, Member
El Dorado Chapter

By: _____

Joanne Geggatt, Member
El Dorado Chapter

CENTER FOR SIERRA NEVADA
CONSERVATION

Dated: Sept 9, 2010

By: _____

Karen Schambach, President
CSNC

CALIFORNIA NATIVE PLANT SOCIETY

By: _____

Tara Hansen
El Dorado Chapter

By: _____

Susan Britting, Conservation Chair
El Dorado Chapter

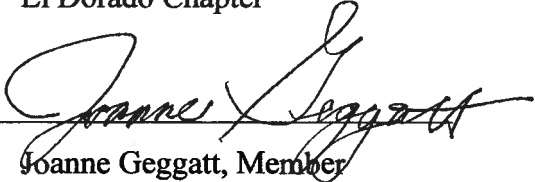
By: _____

Cynthia Podsiadlo, President
El Dorado Chapter

By: _____

Annie Walker, Member
El Dorado Chapter

By: _____


Joanne Geggatt, Member
El Dorado Chapter

CENTER FOR SIERRA NEVADA
CONSERVATION

Dated: SEPTEMBER 3, 2010

By: _____

Karen Schambach, President
CSNC

CALIFORNIA NATIVE PLANT SOCIETY

By: _____

Tara Hansen
Executive Director
CNPS State Organization

By: _____

Susan Britting, Conservation Chair
El Dorado Chapter

By: _____

Cynthia Podsiadlo, President
El Dorado Chapter

By: _____

Annie Walker, Member
El Dorado Chapter

By: _____

Joanne Geggatt, Member
El Dorado Chapter

CENTER FOR SIERRA NEVADA
CONSERVATION

Dated: 9-9-10

By: Karen Schambach

Karen Schambach, President
CSNC

Dated: 10/19/10

COUNTY OF EL DORADO

By: *Norm Sontag*

Chairman of the Board of Supervisors
COUNTY OF EL DORADO

REMY, THOMAS, MOOSE & MANLEY

Dated: _____

By: _____

Andrea K. Leisy
Attorneys for CAMERON PARK
VENTURES, LLC & PACIFIC OAK
DEVELOPMENT, INC.

CAMERON PARK VENTURES, LLC;
PACIFIC OAK DEVELOPMENT, INC.

By: _____

Erik Pilegaard, President
PACIFIC OAK DEVELOPMENT, INC.,
CAMERON PARK VENTURES, LLC

COUNTY OF EL DORADO


Dated: _____

By: _____

Chairman of the Board of Supervisors
COUNTY OF EL DORADO

REMY, THOMAS, MOOSE & MANLEY

Dated: 10/4/10

By:  _____

Andrea K. Leisy
Attorneys for CAMERON PARK
VENTURES, LLC & PACIFIC OAK
DEVELOPMENT, INC.

CAMERON PARK VENTURES, LLC;
PACIFIC OAK DEVELOPMENT, INC.

By: _____

Erik Pilegaard, President
PACIFIC OAK DEVELOPMENT, INC.,
CAMERON PARK VENTURES, LLC

COUNTY OF EL DORADO

Dated: _____

By: _____

Chairman of the Board of Supervisors
COUNTY OF EL DORADO

REMY, THOMAS, MOOSE & MANLEY

Dated: _____

By: _____

Andrea K. Leisy
Attorneys for CAMERON PARK
VENTURES, LLC & PACIFIC OAK
DEVELOPMENT, INC.

CAMERON PARK VENTURES, LLC;
PACIFIC OAK DEVELOPMENT, INC.

By: _____

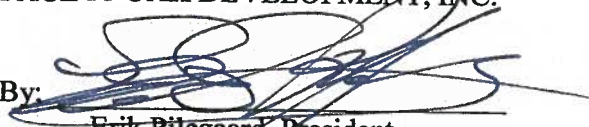
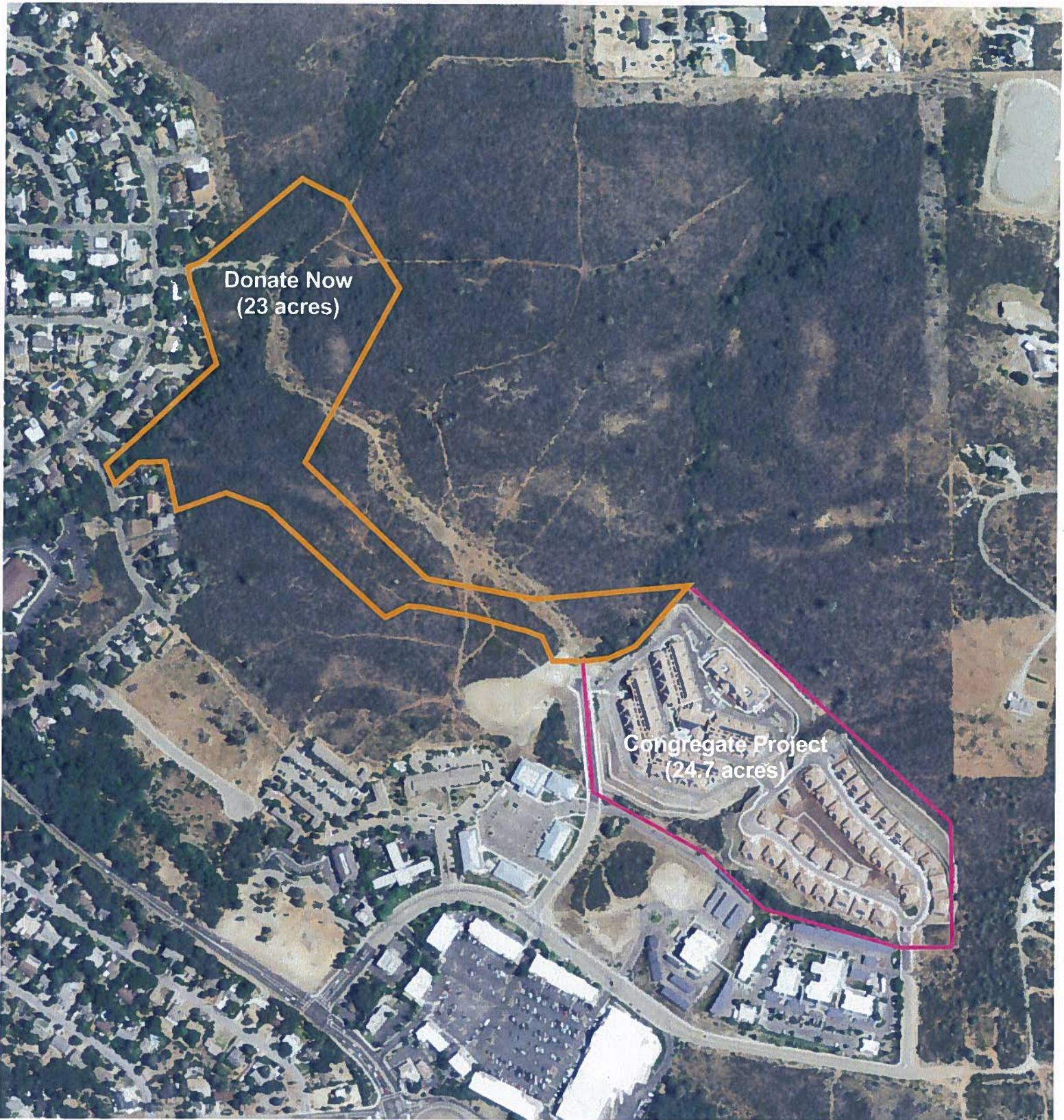

Erik Pilegaard, President
PACIFIC OAK DEVELOPMENT, INC.,
CAMERON PARK VENTURES, LLC

Exhibit 1

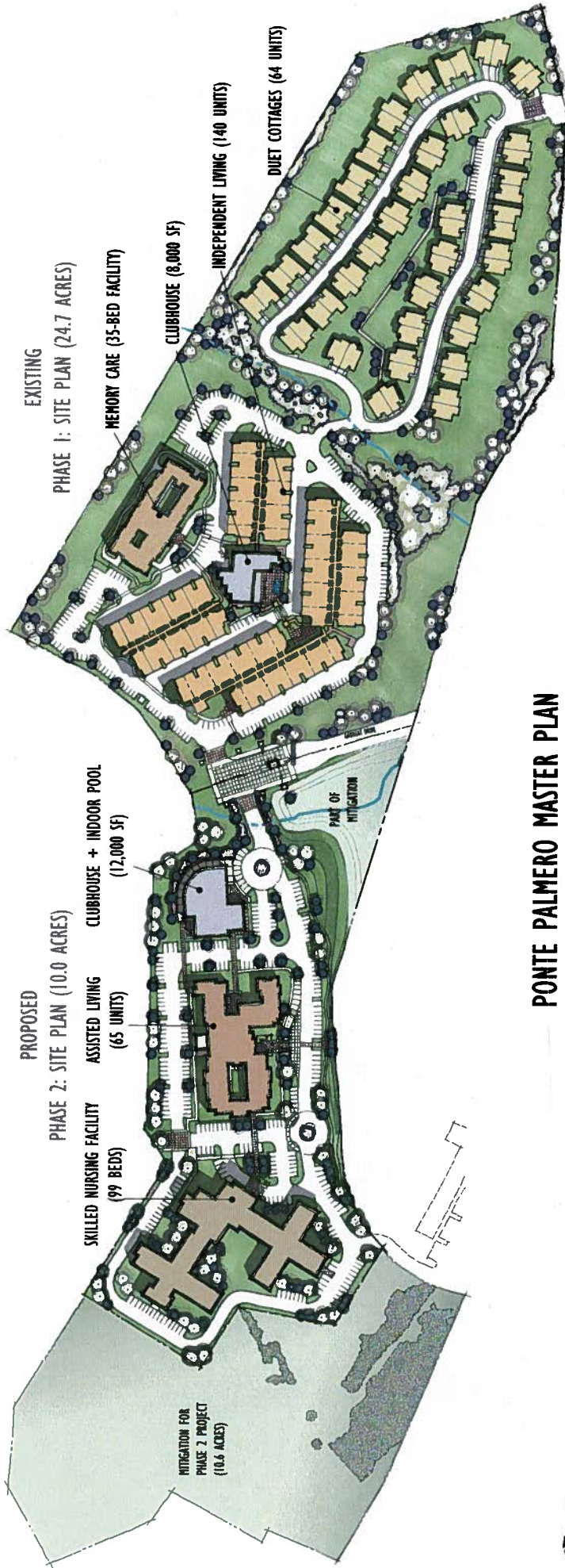


Settlement proposal 4-26-10 - Version A
Donation for settlement (23.0 acres)
Congregate project (24.7 acres)

0.1 0 0.1 Miles



Exhibit 2



EXISTING
PHASE 1: SITE PLAN (24.7 ACRES)

PROPOSED
PHASE 2: SITE PLAN (10.0 ACRES)

MEMORY CARE (35-BED FACILITY)
CLUBHOUSE (8,000 SF)
INDEPENDENT LIVING (140 UNITS)
DIET COTTAGES (64 UNITS)

SKILLED NURSING FACILITY (99 BEDS)
ASSISTED LIVING (65 UNITS)
CLUBHOUSE + INDOOR POOL (12,000 SF)

MITIGATION FOR
PHASE 2 PROJECT
(70.4 ACRES)

PART OF
MITIGATION

PONTE PALMERO MASTER PLAN

GABBERT DRIVE
CAMERON PARK, CALIFORNIA
06/22/2018

Pacific Oak Development
1000 N. WILSON
SUITE 100
DREHMAN, CALIF. 94702
916-455-5828
DREHMAN@PACIFICOK.COM

Botges
ARCHITECTS
1000 N. WILSON
SUITE 100
DREHMAN, CALIF. 94702
916-455-5828
DREHMAN@PACIFICOK.COM