



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING

### FORT ORD REUSE AUTHORITY (FORA) ADMINISTRATIVE COMMITTEE

Wednesday, December 4, 2019 at 8:30 a.m.

920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933 (FORA Conference Room)

## AGENDA

#### 1. CALL TO ORDER/ESTABLISHMENT OF QUORUM

#### 2. PLEDGE OF ALLEGIANCE

#### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

#### 4. PUBLIC COMMENT PERIOD

*Members of the public wishing to address the Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes and will not receive Committee action. Whenever possible, written correspondence should be submitted to the Committee in advance of the meeting, to provide adequate time for its consideration.*

#### 5. APPROVAL OF MEETING MINUTES

**ACTION**

- a. November 13, 2019 Meeting Minutes

#### 6. DECEMBER 13, 2019 DRAFT BOARD MEETING AGENDA REVIEW

#### 7. BUSINESS ITEMS

**INFORMATION/ACTION**

- a. Habitat Conservation Plan Update
  - i. Draft Habitat Conservation Plan
  - ii. Joint Powers Authority Formation
- b. 2018 Transition Plan Status
  - i. 2020 Proposed Meeting Schedule
- c. Eucalyptus Road Storm Water Infiltrator Repair
- d. Marina Coast Water District Capacity Fees and Water/Wastewater Oversight Committee Recommendation

#### 8. ITEMS FROM MEMBERS

**INFORMATION**

*Receive communication from Committee members as it pertains to future agenda items.*

#### 9. ADJOURNMENT

**NEXT MEETING: Wednesday, December 18, 2019 at 8:30 a.m.**

Persons seeking disability related accommodations should contact the Deputy Clerk at (831) 883-3672 48 hours prior to the meeting. Agenda materials are available on the FORA website at [www.fora.org](http://www.fora.org).



**FORT ORD REUSE AUTHORITY**  
**ADMINISTRATIVE COMMITTEE MEETING MINUTES**  
**8:30 a.m., Wednesday November 13, 2019 | FORA Conference Room**  
920<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

**1. CALL TO ORDER**

Chair Michael A. Houlemard, Jr. called the meeting to order at 8:33 a.m.

The following were present:

Dino Pick* (City of Del Rey Oaks)	Mike Zeller (TAMC)
Anya Spear (CSUMB)	Melanie Beretti* (County of Monterey)
Patrick Breen (MCWD)	Debbie Hale* (TAMC)
Layne Long* (City of Marina)	Steve Matarazzo (UCMBEST)
Matt Mogensen (City of Marina)	Gage Dayton (UCMBEST)
Todd Muck (TAMC)	Vicki Nakamura (MPC)
Craig Malin* (City of Seaside)	Hans Uslar* (City of Monterey)
Lisa Reinheimer (MST)	Elizabeth Caraker (City of Monterey)
Nicole Hollingsworth (Senator Monning's Office)	*Voting member

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by City of Monterey Community Development Department Manager Elizabeth Caraker.

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**

- Assistant Executive Officer Josh Metz announced the Monterey Bay Opportunity Zone Investment Forum will take place Friday, November 15, 2019 from 8:00 a.m. to 12:30 p.m. at the CSUMB Salinas City Center. Visit [www.mboz.eventbrite.com](http://www.mboz.eventbrite.com) for more information.
- Executive Officer Michael Houlemard reported Assembly Bill ("AB") 1486 passed and goes into effect January 1, 2020. The Bill imposes requirements regarding the disposal or reuse of public land by local agencies. AB 1486 may affect housing goals in the Cities of Marina, Seaside, Del Rey Oaks and the County of Monterey, particularly on former military-owned land. Mr. Houlemard encouraged Committee members to research the Bill and discuss its possible impacts with jurisdictions' counsels.
- Mr. Houlemard announced the Habitat Conservation Plan ("HCP") was published November 1, 2019 and is currently under public review. An "all permittees" meeting is scheduled for 9:00 a.m. on November 20, 2019 at Soper Field Community Center in Seaside. Public meeting will be held from 6:00 p.m.- 8:00 p.m.

**4. PUBLIC COMMENT PERIOD**

*Members of the public wishing to address the Administrative Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.*

No public comments were received.

**5. APPROVAL OF MEETING MINUTES****ACTION**

## a. October 30, 2019 Meeting Minutes

**MOTION:** On motion by Committee member Malin, second by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the October 30, 2019 meeting minutes.

**MOTION PASSED UNANIMOUSLY****6. NOVEMBER 8, 2019 BOARD MEETING FOLLOW-UP**

Mr. Houlemard reviewed items discussed during the November 8, 2019 regular Board meeting. The Board pulled Building Removal Bond Legal Documents Review from the agenda to allow jurisdictions' attorneys and Authority Counsel time to determine revenue stream options for discussion at the December 13, 2019 regular Board meeting. Mr. Houlemard reported the Board received an in-depth HCP and Habitat Management Plan ("HMP") review and schedule. The Board approved the proposed personnel actions and agreed to postpone the proposed November 21, 2019 special Board meeting due to scheduling conflicts. Reimer Associates consultant Kristie Reimer noted the purpose of the special meeting was to discuss the HCP and address jurisdictions' questions and concerns. She informed the Committee a hard copy of the HCP document is available to Permittees at FORA's office. Ms. Reimer stated the HCP consultant team is available to meet individually with jurisdictions and encouraged representatives to submit questions and concerns to staff prior to the November 20<sup>th</sup> All Permittees and Public meetings.

**7. BUSINESS ITEMS****INFORMATION/ACTION**a. **Capital Improvement Program**i. **Habitat Conservation Plan Update**

Mr. Houlemard introduced the item and reviewed the history of the HMP and HCP, noting the many challenges FORA overcame in order to achieve HCP publication this year. Following the 45-day public review process there will be a decision regarding the Environmental Impact Statement/Environmental Impact Report ("EIS"/ "EIR") to accompany the HCP. Denise Duffy & Associates Senior Planner Erin Harwayne informed the Committee the HCP and EIS/EIR public review period ends December 16, 2019 and a public meeting will be held on November 20, 2019 to review California Environmental Quality Act ("CEQA") and National Environmental Policy Act ("NEPA") documentation in the HCP. Ms. Harwayne explained Fish and Wildlife Services ("FWS") are collecting public questions and comments and the HCP consultant team is working to respond to these concerns in a final CEQA/NEPA document. She stated the HCP and EIS/EIR will be finalized late January 2020, after which she anticipates the Board to take action in March, followed by Permittee actions on the two documents and their associated implementing ordinances in May. Written comments may be submitted via mail, email, or fax to FWS. Regional Government Services consultant Kendall Flint reviewed the November 20, 2019 All Permittees meeting agenda and answered questions from members.

ii. **Building Removal Bond Update**

This item was discussed during the November 8, 2019 Board Meeting Follow-up.

**b. 2018 Transition Plan Progress Report**

Ms. Flint gave a brief 2018 Transition Plan Progress Report and provided the Committee with an updated version of the Transition Plan Implementing Agreement (“TPIA”). She noted the TPIA was edited significantly to reflect comments received from Monterey County and other local agencies. Ms. Flint requested all Permittees’ counsels review the Agreement and submit any final comments/concerns so that a final TPIA may be executed. Ms. Flint and staff heard questions from members.

*\*Member Debbie Hale of the Transportation Agency for Monterey County (“TAMC”) expressed concern regarding changes to verbiage in section 3.2, Roadway Projects- Regional Roads, and requested the language return to that of the previous draft in the final TPIA. Ms. Flint requested TAMC submit a written request for changes, and stated she would provide Members with additional information regarding this section prior to the next Board meeting.*

*\*Member Beretti requested the latest draft Marina Coast Water District Implementing Agreement be distributed to Committee members.*

**8. ITEMS FROM MEMBERS**

- Committee Member Layne Long noted the California Coastal Commission will meet November 14, 2019 at Marina City Council Chambers.
- Mr. Houlemard noted comprehensive Certificates of Completion will be distributed for all properties regulated under the Environmental Services Cooperative Agreement and Deeds for Transfer will be executed in December.

**9. ADJOURNMENT** at: 9:32 a.m.

Minutes Prepared By:  
Heidi Gaddy  
Deputy Clerk

Natalie Van Fleet  
Administrative Assistant

**- START -**

**DRAFT  
BOARD PACKET**



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING

### FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS

Friday, December 13, 2019 at 2:00 p.m. | 910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenters Union Hall)

## AGENDA

**ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON DECEMBER 12, 2019.**

### 1. CALL TO ORDER

### 2. PLEDGE OF ALLEGIANCE *(If able, please stand)*

### 3. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
- b. Conference with Legal Counsel—Anticipated Litigation—Initiation of litigation pursuant to ¶ (4) of subdivision (d) of CA Gov't Code §54956.9—one potential case
- c. Public Employment, Government Code section 54959.7(b) – Personnel – Executive Officer Succession Planning Report

### 4. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

### 5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

- a. Adopt Resolution 19-XX Acknowledging Michael A. Houlemard, Jr.
- b. Fiscal Year 2018-19 Audit

### 6. ROLL CALL

*FORA is governed by 13 voting members: (a) 1 member appointed by the City of Carmel; (b) 1 member appointed by the City of Del Rey Oaks; (c) 2 members appointed by the City of Marina; (d) 1 member appointed by Sand City; (e) 1 member appointed by the City of Monterey; (f) 1 member appointed by the City of Pacific Grove; (g) 1 member appointed by the City of Salinas; (h) 2 members appointed by the City of Seaside; and (i) 3 members appointed by Monterey County. The Board also includes 12 ex-officio non-voting members.*

### 7. CONSENT AGENDA

### INFORMATION/ACTION

*CONSENT AGENDA consists of routine information or action items accompanied by staff recommendation. Information has been provided to the FORA Board on all Consent Agenda matters. The Consent Agenda items are normally approved by one motion unless a Board member or the public request discussion or a separate vote. Prior to a motion, any member of the public or the Board may ask a question or make comment about an agenda item and staff will provide a response. If discussion is requested, that item will be removed from the Consent Agenda and be considered separately at the end of the Consent Agenda.*

- a. Approve November 8, 2019 Meeting Minutes  
**Recommendation:** Approve November 8, 2019 Meeting Minutes.
- b. Administrative Committee  
**Recommendation:** Receive a report from the Administrative Committee.
- c. Water/Wastewater Oversight Committee  
**Recommendation:** Receive a report from the Water/Wastewater Oversight Committee (“WWOC”).
- d. Habitat Conservation Plan Update  
**Recommendation:** Receive a Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) report regarding United States Fish and Wildlife Service (“USFWS”) HCP and California Department of Fish and Wildlife (“CDFW”) 2081 Incidental Take Permit (“ITP”) developments.

- e. Environmental Services Cooperative Agreement/Base Realignment and Closure Headquarters Meeting Briefing

**Recommendation:** Receive a briefing/report on the November 18 2019 FORA trip to Washington, DC to meet with US Army (“Army”) Base Realignment and Closure (“BRAC”) Head Quarters (“HQ”) and US Department of Defense (“DoD”) Office of Economic Adjustment (“OEA”) to discuss Environmental Services Cooperative Agreement (“ESCA”) status and ESCA Successor requirements.

- f. Public Correspondence to the Board

**Recommendation:** Receive Public Correspondence to the Board.

## 8. BUSINESS ITEMS

## INFORMATION/ACTION

*BUSINESS ITEMS are for Board discussion, debate, direction to staff, and/or action. Comments from the public are **not to exceed 3 minutes** or as otherwise determined by the Chair.*

- a. Review Building Removal Bond Legal Status Report

**Recommendation:** Receive a Building Removal Bond Status Report

- b. 2018 Transition Plan and Draft Implementing Agreements Status Report

**Recommendation:** Receive a Fort Ord Reuse Authority (“FORA”) Transition Plan Implementing Agreements Progress Report.

- c. Marina Coast Water District Capacity Fees and WWOC Recommendation

**Recommendation:**

- d. Economic Development Report.

**Recommendation:** Receive an Economic Development (“ED”) Report.

- e. Eucalyptus Road Storm Water Infiltrator Repair

**Recommendation:** Approve the Executive Officer (“EO”) to bid and execute all necessary contracts for the completion of Eucalyptus Road infiltrator repairs not to exceed a project budget of \$\_\_\_\_\_.

## 9. PUBLIC COMMENT PERIOD

## INFORMATION

*Members of the public wishing to address the Board on matters within its jurisdiction, but **not on this agenda**, may do so for up to 3 minutes or as otherwise determined by the Chair and will not receive Board action. Whenever possible, written correspondence should be submitted to the Board in advance of the meeting, to provide adequate time for its consideration.*

## 10. ITEMS FROM MEMBERS

## INFORMATION

*Receive communication from Board members as it pertains to future agenda items.*

## 11. ADJOURNMENT

**NEXT MEETING: January 10, 2020 AT 2:00 P.M.**

*Persons seeking disability related accommodations should contact FORA 48 hours prior to the meeting. This meeting is recorded by Access Media Productions and televised Sundays at 9 a.m. and 1 p.m. on Marina/Peninsula Channel 25. The video and meeting materials are available online at [www.fora.org](http://www.fora.org)*

# **Placeholder for Item 7a**

**Regular Board Meeting Minutes November 8, 2019**

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**This item will be included in the final Board packet.**

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Administrative Committee

**Meeting Date:** December 13, 2019

**Agenda Number:** 7b

**INFORMATION/ACTION**

### **RECOMMENDATION:**

Receive a report from the Administrative Committee.

### **BACKGROUND/DISCUSSION:**

The Administrative Committee held a meeting on October 30, 2019 and November 13, 2019. The approved minutes for this meeting are provided as **Attachment A and B**.

### **FISCAL IMPACT:**

Reviewed by the FORA Controller \_\_\_\_\_

Staff time for the Administrative Committee is included in the approved annual budget.

### **COORDINATION:**

Administrative Committee

Prepared by \_\_\_\_\_ Approved by \_\_\_\_\_  
Heidi L. Gaddy Michael A. Houlemard, Jr.



APPROVED

**FORT ORD REUSE AUTHORITY**  
**ADMINISTRATIVE COMMITTEE MEETING MINUTES**  
**8:30 a.m., Wednesday October 30, 2019 | FORA Conference Room**  
920<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

**1. CALL TO ORDER**

Chair Dino Pick called the meeting to order at 8:30 a.m.

The following were present:

Dino Pick\* (City of Del Rey Oaks)  
Anya Spear (CSUMB)  
Patrick Breen (MCWD)  
Layne Long\* (City of Marina)  
Todd Muck (TMAC)  
Craig Malin\* (City of Seaside)  
Lisa Reinheimer (MST)

Mike Zeller (TMAC)  
Melanie Beretti\* (County of Monterey)  
Steve Matarazzo (UCSC)  
Vicki Nakamura (MPC)  
Hans Uslar\* (City of Monterey)  
\*Voting member

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Seaside City Manager Craig Malin.

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**

- Assistant Executive Officer Josh Metz announced a property transfer status update that may be accessed at [www.fora.org](http://www.fora.org).
- Mr. Metz reported an Oak Woodland Conservation Plan project update will be added to the November Board meeting consent agenda, pending Executive Committee approval.

**4. PUBLIC COMMENT PERIOD**

*Members of the public wishing to address the Administrative Committee on matters within its jurisdiction, but not on this agenda, may do so for up to 3 minutes.*

No public comments were received.

**5. APPROVAL OF MEETING MINUTES**

**ACTION**

- a. October 16, 2019 Meeting Minutes

**MOTION:** On motion by Committee member Malin, second by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the October 16, 2019 meeting minutes.

**MOTION PASSED UNANIMOUSLY**

## 6. NOVEMBER 8, 2019 REGULAR BOARD MEETING AGENDA REVIEW

Mr. Metz reviewed the items proposed to appear on the draft Board agenda for November 8, 2019. Mr. Metz noted a second vote is required for Business Item 8a, Terminated Employee Health Benefit Options and Retiree Medicare Reimbursement. Mr. Houlemard stated the Executive Committee will likely approve adding Oak Woodland Conservation Plan update as a Consent Item.

## 7. BUSINESS ITEMS

## INFORMATION/ACTION

### a. Overall Capital Improvement Program

#### i. Habitat Conservation Plan and Schedule

FORA Habitat Conservation Plan (“HCP”) consultant Erin Harwayne reviewed the HCP schedule and confirmed an estimated publishing date of Friday, November 1, 2019. An All Permittees meeting will be held on November 20, 2019 from 9:00 a.m. to 12:00 p.m., followed by a public meeting to review the draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) from 6:00 p.m. to 8:00 p.m. at Soper Field Community Center in Seaside. The Committee was provided a list of invitees to the All Permittees meeting and Mr. Metz encouraged permittees’ legal counsels and executive staff members attend to discuss Joint Powers Authority (“JPA”) formation details.

Economic Planning Systems consultant Ellen Martin presented refined cost allocation scenarios and discussed three potential cost allocation approaches, noting inclusion of additional supporting data may lead to further refinements. Ms. Martin discussed the following potential cost allocation alternatives:

- **Alternative #1:** Community Facilities District (“CFD”) replacement revenues; continuation of the current HCP financing model by allocating costs based on current FORA Capital Improvement Plan (“CIP”) development projections and CFD rates.
- **Alternative #2:** Costs allocation based on remaining developable acres determined by:
  - a) Short Term Planning Pipeline; costs allocated based on FORA CIP forecasts, development projections and average land use density assumptions or;
  - b) Long Term Development Pipeline; costs allocated based on the parcel’s full acreage for development taking place within the fifty-year HCP permit term.
- **Alternative #3:** Water Allocation; costs allocated based on either:
  - a) Potable water allocation based on current potable water for development capacity or;
  - b) Total water allocation based on current potable and recycled water allocation for development capacity.

Ms. Martin provided in depth analysis of the proposed cost allocation alternatives, detailing how costs could be distributed amongst jurisdictions under each scenario. She noted there may be other cost allocation alternatives proposed, as determined by the JPA. Executive Officer Michael A. Houlemard, Jr. noted this is a policy question that will need to be approved by the Board as it pertains to the decision about the application of remnant CDF funding for HCP or other priorities. Ms. Martin and staff answered questions and received feedback from members.

Regional Government Services (“RGS”) consultant Kendall Flint provided a brief review of the JPA finalization timeline, noting the Agreement’s current version does not include the term “successor entity” or reference FORA. Individual agreements between the permittees will be negotiated and

included in the JPA moving forward. Ms. Flint reported RGS continues to monitor comparable instances of JPA implementation statewide, specifically in the counties of San Joaquin, Yolo, Santa Clara and Contra Costa, which have similar habitat conservation concerns as FORA. These four JPAs are also similar in that they involve HCP implementation between multiple agencies, multiple species, sizeable acreage and comparable formation. Ms. Flint provided a analysis of these four counties' JPA formations, management/staffing structures, jurisdiction count, species count, Habitat Management Areas and various HCP fee calculation methods. Per the Committee's request at the October 16, 2019 meeting, Ms. Flint provided comparative analysis of JPA vs. Memorandum of Understanding ("MOU") agreements, noting RGS found all other HCPs are being run through JPA or another governing agency, as opposed to MOU. She reported the primary advantage to JPA over MOU is shielding member agencies from liability and separating them from possible litigation. Ms. Flint reviewed an updated JPA finalization timeline, noting the permittees will be in charge of the JPA, which is a sole entity, and not a successor entity to FORA. She emphasized the JPA would not be associated with FORA in any way other than as recipient of FORA endowment funds. Ms. Flint and staff answered questions from members.

*\*Marina Mayor Pro-Tem Gail Morton requested additional information regarding what provisions must be included in the JPA if a permittee leaves the JPA. Ms. Flint stated that she would research whether any of the JPAs discussed at this meeting had such provisions. In addition, an analysis of housing development costs and how estimated remaining funds are to be allocated.*

#### **ii. Review Building Removal Bond Legal Documents**

Executive Officer Michael A. Houlemard, Jr. introduced the item, noting staff is working with Bond Counsel and Department of Finance to clarify whether obligations will be on individual jurisdictions' Recognized Obligation Payment Schedule ("ROPS") or a statutory pass-through. He reported FORA bond consultants are moving forward in preparing necessary legal documents and anticipates bond issuance in the coming months. Mr. Houlemard emphasized the bonds create a regional benefit by providing jurisdictions enough revenue to complete building removal after FORA's June 30, 2020 dissolution. He noted Monterey County's concern regarding determination of the bond's public benefit, and stated staff anticipate providing a recommendation to the Board in December. Senior Project Manager Peter Said stated bond counsel presented the following technical items to the Board for clarification at the October 11, 2019 meeting: 1) acceptance of a successor agency, 2) establishment of covenant to put bond issue on the ROPS, and 3) scheduling a county public hearing. Mr. Said reported draft legal documents were sent to the Administrative Committee for review on October 8<sup>th</sup> and requested any feedback or questions from members be submitted to staff for consideration/incorporation. Mr. Said and staff answered questions from members.

*\*Lisa Reinheimer of Monterey-Salinas Transit ("MST") requested clarification regarding MST's 1.75% allocation and associated estimated building removal cost. Mr. Said stated he would provide a current cost assumption list.*

#### **iii. Review Final Draft Transportation Study**

Mr. Said presented an updated final draft Transportation Study. Per the Committee's request, Kimley-Horn planning consultants analyzed the impact of alternative transportation modes on gridlock. A summary of this analysis was included in the 2020 Transportation Study Key Findings and will be presented to the Board as an informational item at the November 8, 2019 regular Board meeting. Mr. Said explained the Transportation Study informs the CIP and FORA's mid-year budget. The Committee received a list of transportation projects currently within the budget for the next six months

and a recommendation from staff to allocate \$70,000 to complete the NE/SW connector. Mr. Said explained several environmental studies are being conducted on the site and in order for that data to be usable the project must be closed out before FORA's sunset. Mr. Said reviewed a draft summary table of the CIP, divided by estimated CFD funds and estimated land sales funds. He reported an estimated 2020 final balance of \$3,691,458 in CFD funds and asked the Committee to consider recommendations regarding allocation, with the understanding that CFD funds may only be used for CFD approved projects. Mr. Said and Ms. Flint agreed the best use of these funds is investment in HCP. Regarding land sales Mr. Said reported 100% of the \$7,364,085 will be used to complete project expenditures and general CIP/FORA costs. The Committee was asked to consider the information provided and discuss staff's proposed recommendation to invest the 2020 CFD fund balance into HCP. Mr. Said and staff answered questions from members.

**8. ITEMS FROM MEMBERS**

**9. ADJOURNMENT** at: 10:38 a.m.

Minutes Prepared By:  
Heidi Gaddy  
Deputy Clerk

Natalie Van Fleet  
Administrative Assistant

# **Attachment B to Item 7b**

**Administrative Committee Meeting Minutes Nov 13, 2019**

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**This item will be included in the final Board packet.**

# **Placeholder for Item 7c**

**Water/Wastewater Oversight Committee Report**

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**This item will be included in the final Board packet.**

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

<b>Subject:</b>	Habitat Conservation Plan Update	
<b>Meeting Date:</b>	December 13, 2019	<b>INFORMATION</b>
<b>Agenda Number:</b>	7d	

### **RECOMMENDATION(S):**

Receive a Fort Ord Multi-Species Habitat Conservation Plan (“HCP”) report regarding United States Fish and Wildlife Service (“USFWS”) HCP and California Department of Fish and Wildlife (“CDFW”) 2081 Incidental Take Permit (“ITP”) developments.

### **BACKGROUND:**

To complete the reuse of former Fort Ord as envisioned in the 1997 Fort Ord Base Reuse Plan (“BRP”), the Fort Ord Reuse Authority (“FORA”) must complete an HCP for “take” of Federally-listed species and a 2081 ITP for take of State-listed species as required by the Endangered Species Act (“ESA”) and California Endangered Species Act (“CESA”), respectively. Since 1997, FORA pursued a base-wide HCP, and worked through many challenges in its pursuit, including impediments to conducting habitat restoration burns, State listing of California Tiger Salamander (“CTS”), changing CDFW and USFWS staffing, added funding requirements, and adjustments to HCP/2081 ITP requirements.

Funding the HCP program is based on building to a habitat endowment that would generate sufficient annual interest earnings to fund protection “in perpetuity,” restoration and enhancement of habitat as mitigation for take, and management of the funds. The Cities, County, and other members of a future JPA, called the “Cooperative,” would be issued Federal and State ITPs and oversee stay-ahead provisions so that species take would not exceed completed mitigations.

HCP preparation and environmental review has been paid for by FORA, using Community Facilities District (“CFD”) special taxes collected from former Fort Ord development. FORA has paid several million dollars for the environmental review and document preparation so far as performed by consultants and staff. The required Endowments were originally projected to be \$9 million but are now expected to cost \$48 to \$66 million. By FORA sunset, about \$17 million is expected to be collected for this use. FORA has set 30% of CFD funds aside for HCP funding. Given the June 30, 2020 FORA sunset, permittees/jurisdictions must determine how to generate the remaining \$27 to \$45 million required to demonstrate to USFWS/CDFW (“Wildlife Agencies”). Wildlife Agencies provided strong input into the design of the HCP so that funding is scalable and must fund Habitat Management Area management and additional mitigations five percent ahead of impacts.

In late 2016, USFWS issued FORA a comment letter outlining nine general recommendations for changes to the draft Fort Ord HCP which resulted in major revisions to the species covered and the areas included as Federal permit “preserved” habitat. In July 2017, FORA distributed a second screen check draft HCP to Wildlife Agencies and Permittees, because the edits were significant. CDFW took eleven months to send in comments on the July 2017 HCP draft document. Many of CDFW staff comments brought up issues that were already resolved through discussions with prior CDFW staff. FORA Staff met with CDFW several times in 2018 to resolve the issues. FORA staff and consultants made edits in response to CDFW and the other stakeholders.

Because USFWS is the lead agency on the HCP under the National Environmental Policy Act (“NEPA”), their solicitor does the final screen check review before release of the Public Draft. Those editorial comments from the USFWS came in late November and early December of 2018. The comments included the request to remove the Implementing Agreement, updates to mitigation summaries in the Conservation Strategy chapter to better align with the current assessment framework, and a redraft of the Funding chapter to more explicitly depict BLM’s role. USFWS completed the solicitor review of the HCP Environmental Impact Statement/ Environmental Impact Report (“EIS/EIR”) in October 2019.

**DISCUSSION:**

At the March 2019 Board Meeting, staff presented an update to the HCP project timeline that forecasted a Spring 2019 Public Draft release date and an estimated completion for a Record of Decision (“ROD”) in Fall, 2019. These dates were not achieved, and the schedule was again delayed addressing further solicitor and technical edits. The HCP EIS/EIR Public Draft was released on November 1, 2019 and the ROD is scheduled for March 2020. FORA Board Action being requested to be concurrent. Staff and the consultant team has been very responsive to agency information requests and document updates and is optimistic that these dates will be met.

FORA Staff, HCP and EIS/EIR Consultants, USFWS Staff, and CDFW Staff held a DRAFT HCP EIS/EIR Public Meeting from 6-8pm Wednesday, November 20, 2019 at the Soper Field Community Center in Seaside. Staff and consultants presented an overview of the HCP and DRAFT EIS/EIR. The team answered questions and directed stakeholders to submit written comments on the DRAFT EIS/EIR no later than 5:00pm December 16, 2019 to the mailing address, fax number, or email address listed below.

*By Mail:*

Stephen P. Henry, Field Supervisor  
Ventura Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B, Ventura, CA  
93003

*By Email:*

fw8fortordhcp@fws.gov

*By Fax:*

805-644-3958 (please also send a physical copy of the correspondence to ensure receipt)

**FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

Staff and Authority Counsel time for this item is included in the approved annual budget.

**COORDINATION:**

Authority Counsel, Administrative Committee, ICF, Denise Duffy & Associates, Reimer Associates Consulting, Inc., CDFW, and USFWS.

Prepared by \_\_\_\_\_ Approved by \_\_\_\_\_  
Josh Metz Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

<b>Subject:</b>	Environmental Services Cooperative Agreement/Base Realignment and Closure Headquarters Meeting Briefing	
<b>Meeting Date:</b>	December 13, 2019	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	7e	

### **RECOMMENDATION:**

Receive a briefing/report on the November 18, 2019 FORA trip to Washington, D.C. to meet with U.S. Army ("Army") Base Realignment and Closure ("BRAC") Headquarters ("HQ") and U.S. Department of Defense ("DoD") Office of Economic Adjustment ("OEA") to discuss Environmental Services Cooperative Agreement ("ESCA") status and ESCA Successor requirements.

### **BACKGROUND:**

In Spring 2005, the Army and the Fort Ord Reuse Authority ("FORA") entered into negotiations toward an Army-funded ESCA for removal of remnant Munitions and Explosives of Concern ("MEC") on 3,340 acres of the former Fort Ord. FORA and Army signed the ESCA agreement in early 2007. Under the ESCA terms, the Army awarded FORA approximately \$98 million to perform Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") MEC cleanup on those parcels. FORA also entered into the Administrative Order on Consent ("AOC") with U.S. Environmental Protection Agency ("EPA") and California Department of Toxic Substance Control ("DTSC") (collectively referred to as "Regulators") defining FORA's contractual conditions to complete the Army remediation obligations for the "ESCA parcels." FORA received ESCA parcel ownership after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer in 2009.

To complete the ESCA and AOC obligations, FORA entered into a Remediation Services Agreement in 2007 by competitively selecting LFR Inc. (now Arcadis) to provide MEC remediation services. Arcadis remediation services are executed under a cost-cap insurance policy through American International Group assuring financial resources to complete the work and offer other protections for FORA and the jurisdictions. Arcadis ESCA contracting team included Westcliffe Engineers and Weston Solutions to provide Engineering, MEC Remediation and Public/Regulatory outreach services.

The ESCA requires FORA, acting as the Army's contractor, to address safety issues resulting from historic Fort Ord munitions training operations. Through the ESCA, FORA and the ESCA Remediation Program team have successfully addressed three (3) historic concerns: 1) yearly federal appropriation funding fluctuations that delayed Army cleanup and necessitated costly mobilization and demobilization expenses; 2) Regulator questions about protectiveness of previous actions for sensitive uses; and 3) the local jurisdiction, community and FORA's desire to reduce MEC property access risks.

The ESCA properties have received Records of Decision ("ROD") documenting the cleanup and controls required to protect public health and safety and Land Use Control Implementation Plan/Operation and Maintenance Plans ("LUCIP/OMP") implementing, operating and maintaining ROD controls tailored to individual site conditions and historic MEC use. The Final ESCA LUCIP/OMP documents were accepted by the Army and Regulators in February 2019. The staff of future property owners (California State University Monterey Bay, City of Del Rey Oaks, Monterey County, City of Monterey and Monterey Peninsula College) received LUCIP/OMP site-specific training workshops. The ESCA properties received the final remaining EPA Remedial Action Completion letter February 2019. EPA is currently outlining the requirements for a site-wide ESCA remedial completion and associated site-wide EPA Remedial Action Completion documents. ESCA property cannot be transferred to the jurisdictions and remain closed for public access until DTSC Covenants Restricting Use of Property amendments, Army deed modifications and issuance of the Army CERCLA Warrantees are completed. In September/November 2019, FORA requested the Army deed modifications and issuance of the Army CERCLA Warranty for the ESCA CSUMB Off-Campus, Monterey Peninsula College and Seaside properties.

## **Discussion/Report:**

Army BRAC HQ Chief Thomas Lederle requested FORA meet with BRAC and U.S. Secretary of DoD OEA to discuss ESCA status and FORA Successor requirements. The City of Seaside, who has stepped up to be the Successor-in -Interest, sent Mayor Ian Oglesby, Councilmember Jon Wizard, City Manager Craig Malin, Assistant City Manager Leslie Milton and Assistant City Attorney Sheri Damon to attend.

On November 18, 2019, FORA and Seaside met with the Army BRAC HQ staff. Topics discussed:

- ESCA Grant Reporting to the U.S. Army Corps of Engineers (USACE)
- ESCA Financial Status
- ESCA Fieldwork and Document Status
- FORA ESCA Regulator/U.S. Army Interface
  - EPA Coordination
  - DTSC Coordination
  - Army HQ/Base Realignment/ USACE
- ESCA Successor Issues
  - FORA Transition/FORA Successor-In-Interest
  - Seaside – Proposed ESCA Successor
  - ESCA Long-Term Obligation Management Program
  - ESCA Pollution Legal Liability Insurance
  - ESCA Successor-in-Interest and Economic Development Conveyance (“EDC”)

At the meeting FORA staff and Special Counsel provided an ESCA status and FORA Board Members, Executive Officer and Seaside Counsel Members/staff provided Mr. Lederle with an update on the ESCA Successor efforts. Mr. Lederle and Army attorneys provided both FORA and Seaside with guidance on the Army’s ESCA Successor requirements. The FORA/Seaside/BRAC HQ meeting notes with ESCA status and meeting/interaction/discussion/follow-up are included as **Attachment A**.

On November 19, 2019, FORA and Seaside met with Mr. Patrick Obrien, Director, OEA to discuss FORA’s June 30, 2020 closure and FORA ESCA Successor plans. Since many of the ESCA obligations are include multiple real property conveyance documentation and transfers that directly grow from the EDC, the attendees discussed the coordination required between these FORA responsibilities. An outgrowth of that conversation was the suggestion that FORA explore and conclude on the assignment of the EDC agreement obligations and the OEA Local Redevelopment Authority designation as well as the ESCA successor issue.

## **FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

The ESCA Grants Officer approved travel costs for two FORA Board members, the Executive Officer and the Senior Program Manager before the trip. The City of Seaside, as the proposed ESCA Successor, paid for its City Manager, Assistant City Manager and Assistant City Attorney to attend the meetings.

## **COORDINATION:**

Administrative Committee; Executive Committee; Authority Counsel; Special Counsel, Arcadis; Westcliffe Engineering, Weston Solutions, U.S. Army; EPA; and DTSC.

Prepared by \_\_\_\_\_ Approved by \_\_\_\_\_  
Stan Cook Michael A. Houlemard, Jr.

**BASE REALIGNMENT AND CLOSURE (BRAC) HEADQUARTERS (HQ) /  
ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) MEETING**

Location: BRAC HQ, Washington, D.C.  
Monday, November 18, 2019

9:00 A.M. – 12:00 P.M.

**STATUS OF ESCA NOVEMBER 2019**

*Meeting Summary  
(Follows Meeting Agenda Format)*

**1. BACKGROUND/ESCA STATUS**

**Grant Reporting to U.S. Army Corps of Engineers (USACE)**

ESCA March 2019 Quarterly Report – *submitted Spring 2019*

ESCA June 2019 Quarterly Report – *submitted Nov. 1, 2019*

ESCA September 2019 Quarterly Report – *FORA preparing Form 270 for submittal to USACE*

**Background**

ESCA Quarterly Reports include information required by the Grants Officer and BRAC HQ to provide FORA with guidance in eligible ESCA work items. Reports also include Quarterly request for advances (see "Finances").

**Meeting Interaction/Discussion/Follow-up**

*Stan Cook apprised Mr. Lederle and Army HQ of the status of ESCA Quarterly Reports to date.*

**Financial Status\***

ESCA March 2019 Quarterly Report Form 270 – *submitted April 30, 2019 – Army paid September 2019*

ESCA June 2019 Quarterly Report – *submitted Nov. 1, 2019*

ESCA September 2019 Quarterly Report – *FORA preparing Form 270 for submittal to USACE*

**Background:** ESCA is currently using Army Contingent Funds from Mods 9, 10 and 11 that require invoicing Army six (6) months in advance. Without the Grants Officer having the Forms 270 requesting these funds, FORA do not have the funds in-house to pay for Arcadis invoices when they arrive.

Arcadis has changed bookkeeping programs in early 2019 which has caused company-wide problems producing invoices and invoicing delays.

Environmental Protection Agency (EPA) was notified that FORA is not authorized to pay regulatory reimbursement past December 31, 2019. EPA provided FORA with estimates for their reimbursement expenses to June 30, 2019, but will not invoice until later in 2019. FORA requested that EPA produce an invoice up to December 2019.

Department of Toxic Substances Control (DTSC) was notified that FORA is not authorized to pay regulatory reimbursement past December 31, 2019. FORA requested that EPA produce an invoice up to December 2019.

FORA has submitted and the Army received, a request for ESCA Army Contingent Funds from September to December 31, 2019.

Meeting Interaction/Discussion/Follow-up

*Mr. Lederle was apprised of the status of EPA and DTSC invoicing to date and provided with an estimate of remaining regulatory oversight reimbursement cost anticipated to December 31, 2019. Mr. Lederle was briefed on the details concerning the ESCA legal description costs and which ESCA/Army documents were supported by the ESCA legal descriptions. Mr. Lederle agreed that the legal descriptions digital coordinate point-of-beginning enhancement costs were necessary to complete FORA and Army ESCA property transfer documents.*

**Fieldwork and Document Status**

The Army authorized lump sum funding for the ESCA team biologist to perform the 2019 ESCA property habitat monitoring, now completed. The draft Annual ESCA Habitat Monitoring report is anticipated to be submitted to the Army in November 2019.

Parker Flats Group 1 Land Use Control Implementation Plan/Operation and Maintenance Plan (LUCIP/OMP) update incorporating Parker Flats Phase 1. Parker Flats Phase 1 LUCIP/OMP was designed and approved as an intermediate LUCIP/OMP to be updated as needed. The surrounding ESCA properties' LUCIP/OMPs underwent significant information and direction evolution for future land owners. This resulted in a discrepancy in information between Phase 1 and adjacent Phase 2 properties. To make ESCA LUCIP/OMPs consistent across ESCA properties, the Parker Flats LUCIP/OMP is being revised to incorporate Phase 1 and 2 properties. Final revised document currently out for Army and Regulatory review.

EPA, after reviewing Administrative Order on Consent (AOC) Chapter 17, determined that an EPA Site-Wide ESCA Certificate of Completion is required, as supported by a Site-Wide ESCA Completion Report.

DTSC released the California State University Monterey Bay (CSUMB) Covenants Restricting Use of Property (CRUP) as Final in 2018, the Seaside CRUP in October 2019. The Monterey Peninsula College (MPC) CRUP is ready to be finalized. The Monterey, Del Rey Oaks and Monterey County (County) CRUP are in the draft final stages.

FORA has requested the Army to issue Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Warrantees/Deed Amendments for CSUMB, Seaside and MPC ESCA properties. The Army is in the process of developing and circulating these documents for their Environmental Law Division (ELD), Office of General Counsel (OGC) approval and USACE execution.

Meeting Interaction/Discussion/Follow-up

*Mr. Lederle was provided with the status of the above documents. Mr. Houlemard asked if all meeting participants to make these property transfer support documents/deeds/attachments a top priority until December 31, 2019. Participants received a list of remaining Fort Ord properties needing transfer and agreed to prioritize these property transfers during the biweekly Fort Ord Property Transfer telephone conferences. Meeting attendees from ELD and HQ will be added to the future Bi-weekly Fort Ord Property Transfer telephone conferences to aid processing coordination.*

## 2. REGULATOR/U.S. ARMY INTERFACE

### **EPA Coordination\***

Current ESCA Regulatory reimbursement funds are authorized for EPA to perform ESCA work until December 31, 2019. ESCA Regulatory reimbursement work may be required after this date. Currently, there is no Regulatory reimbursement funding identified through the 2020 to June 30, 2028 ESCA Long-Term Obligation (LTO) period.

EPA, after reviewing AOC Chapter 17, has determined that an EPA Site-Wide ESCA Certificate of Completion is required supported by a Site-Wide ESCA Completion Report. The ESCA team met with EPA to determine the format and content of a Site-Wide ESCA Completion Report. EPA asked that the Report be "summary-level" referencing the previous individual EPA Site Certificates of Completion. EPA requested and the ESCA team is currently developing a report outline for EPA to approve, before the report is drafted.

ESCA Successor future enforcement ... how will that be documented? Will the form be an AOC Amendment or Scope Adjustment, Letter Agreement, CRUP compliance or combination? It was generally agreed that the AOC Scope revision would likely be the best approach to avoid the lengthy processing time to secure an EPA HQ/Department of Justice approval of a substitute/new AOC.

#### Meeting Interaction/Discussion/Follow-up

*Mr. Lederle was provided with a description of the limitations in ESCA Regulatory oversight funding and the limitations for FORA to release these funds for work by EPA and DTSC after December 31, 2019. Mr. Lederle will investigate his options for ESCA Regulatory oversight costs after January 1, 2020 and share that information with FORA.*

### **CA Department of Toxic Substance Control (DTSC) Relationship\***

Current ESCA Regulatory Reimbursement funds are authorized for DTSC to perform ESCA work until December 31, 2019. ESCA Regulatory reimbursement work may be required after this date. Currently, there is no Regulatory reimbursement funding identified through the 2020 to June 30, 2028 ESCA LTO period.

In March 2019, during DTSC's review of the ESCA CRUP amendments they required map coordinates for the CRUP Legal Description Points of Beginning. This required engaging a licensed land surveyor and agreement by DTSC on the form that this information would be presented. DTSC initially requested the Legal Descriptions have the coordinates added which would have required recreating all ESCA Legal Descriptions. Instead, ESCA team and surveyor proposed that the legal descriptions be summarized in the CRUP in a table which was reviewed and accepted by DTSC. This was agreed upon as a reasonable approach.

As noted above in "Documents," DTSC finalized and released the California State University Monterey Bay (CSUMB) in 2018. The Seaside CRUP was finalized in October 2019. The MPC CRUP is ready to be finalized. The Monterey, Del Rey Oaks and County CRUP are in the draft final stages.

#### Meeting Interaction/Discussion/Follow-up

*Mr. Lederle was provided with a description of the limitations in ESCA Regulatory oversight funding and the limitations for FORA to release these funds for work by EPA and DTSC after December 31, 2019. Mr. Lederle will investigate his options for ESCA Regulatory oversight costs after January 1, 2020 and share that information with FORA.*

**Army Headquarters/Base Realignment/ U.S. Army Corps of Engineers (USACE)**

The Army gave CSUMB and Seaside the Final CRUP for their use. FORA requested that the Army issue CERCLA Warrantees/Deed Amendments for CSUMB, Seaside and MPC ESCA properties. The Army is in the process of developing and circulating these documents for their ELD, OGC approval and USACE execution.

Should the Army and the ESCA Successor amend the existing ESCA or craft a new ESCA?

*Meeting Interaction/Discussion/Follow-up*

*Mr. Steinberg provided Mr. Lederle with options to consider for the ESCA Successor to enter into an agreement with the Army.*

**3. ESCA SUCCESSOR ISSUES****FORA Transition/FORA Successor-In-Interest (Successor)**

FORA will cease to exist June 30, 2020 (8 months away). The current FORA Executive Officer will retire December 2019. The FORA Board adopted the 2018 FORA Transition Plan and is in the process of transitioning their resources and responsibilities to the Fort Ord Jurisdictions as FORA's Successor through "Implementing Agreements." The FORA Board requested an Implementing Agreement with the City of Seaside that focused only on the transition of ESCA Responsibilities to Seaside as the proposed FORA ESCA Successor.

FORA must notify EPA of the transition to an ESCA Successor 120 days before FORA terminates in June 30, 2020 (FORA must submit notification by February 28, 2019.)

*Meeting Interaction/Discussion/Follow-up*

*Mr. Steinberg provided Mr. Lederle with options to consider for the ESCA Successor to enter into an agreement with the Army. Mr. Steinberg also provided a briefing on EPA's current thoughts on the ESCA Successor entering into an AOC-like agreement with the ESCA Successor. The Army anticipates a new ESCA draft contract to be ready in December for briefing to the FORA Board in January. Board briefing anticipated to require Kutak Rock attorneys' expertise. It was agreed that a new ESCA Agreement would be crafted by the Fort Ord BRAC staff and USACE to replace the existing. Once drafted will be shared with FORA and Seaside Counsel for review. Language would be shared to incorporate in the new ESCA addressing concerns that Seaside expressed about its general fund. Mayor Oglesby reiterated his jurisdiction's decision to provide leadership in stepping up to accept these Successor to FORA responsibilities with Army funding.*

**Seaside – Proposed ESCA Successor**

Seaside was named as a potential FORA ESCA Successor in the original ESCA agreement. Seaside requested to be the ESCA Successor. FORA, Seaside, County attorneys and management have been meeting to identify the elements of an agreement between FORA and Seaside designating Seaside as FORA's ESCA Successor. That agreement is being drafted by FORA and Seaside Counsel.

FORA ESCA staff began developing a Scope of Work and identifying capable contractors to separate and migrate the FORA ESCA files/archives system from the FORA servers and migrate the ESCA files/archives system to the cloud-based repository. When enacted, a cloud-

based repository will enable an efficient conversion of the ESCA file/archive system for use during and after the ESCA Successor transition process.

Seaside indicated a desire to be the FORA ESCA Successor, depending on completing its due diligence. City created temporary ESCA staff positions at the City similar to the FORA ESCA Senior Program Manager and ESCA Program Coordinator. Seaside assigned Counsel to work with FORA's Special Counsel to create FORA/Seaside an ESCA Successor Implementing Agreement. They will also develop agreements with the other ESCA Jurisdictions acknowledging Seaside as the ESCA Successor with the FORA/Army ESCA property LTO rights/responsibilities for access/management.

Seaside is concerned that by becoming the FORA ESCA Successor they may inadvertently take on unforeseen ESCA obligations that would negatively impact their General Fund. Seaside, if confirmed as the FORA ESCA Successor, is concerned that a Pollution Legal Liability (PLL) insurance policy or funding, be available until June 30, 2028. Seaside and FORA Counsel are exploring other potential ESCA items/issues that may negatively impact Seaside's General Fund.

Meeting Interaction/Discussion/Follow up

*Seaside provided Mr. Lederle with an update on their work with FORA to develop a FORA/Seaside ESCA Successor Implementing Agreement and agreements with the local jurisdictions acknowledging Seaside as the ESCA Successor including funding, responsibilities and property access. Mr. Lederle and Seaside were provided with information on the FORA ESCA staff's current efforts to migrate FORA ESCA files and archives to a cloud-based repository for use during and after the ESCA Successor transition. Discussions with the Army led by Kutak Rock identified that a FORA local reuse authority (LRA) Successor may be required to retain FORA LRA powers required for retaining certain rights in the Economic Development Conveyance Agreement and may be needed in the ESCA LTO management and property transfer obligations. It was agreed that FORA and Seaside would follow up with the Office of Economic Adjustment on this matter and get back to Mr. Lederle.*

**ESCA LTO Management Program**

The jurisdictions received briefings (beginning in 2018) on the long-term stewardship of their properties. The briefings outlined the Record of Decisions (RODs) and Land Use Controls (LUC) and LUCIP/OMP that pertain to reviewing the roles of all parties in managing the ESCA property LUC and reporting.

FORA ESCA staff developed an Annual ESCA integrated reporting/inspection/meeting calendar that was reviewed by the FORA Administrative Committee to ensure that ESCA properties, LTO and reporting are done in a regular, thorough and timely manner. FORA has begun sending invitations and identifying required Inspection/meeting personnel and time frames for the year 2020.

Meeting Interaction/Discussion/Follow-up

*Stan Cook provided Mr. Lederle a description and calendars of FORA's ESCA LTO implementation efforts to date.*

**ESCA PLL Insurance\***

The FORA ESCA AIG "Coverage A" PLL insurance will expire in 2022. The FORA base-wide Chubb PLL policy which also includes coverage for ESCA property will expire in 2024. The

ESCA agreement requires FORA (or its ESCA Successor) to have PLL insurance through the term of the ESCA, June 30, 2028. Seaside, if confirmed as the FORA ESCA Successor, is concerned that a PLL insurance policy or funding, be available until June 30, 2028.

Meeting Interaction/Discussion/Follow-up

*Mr. Lederle was provided with current FORA PLL insurance expiration dates (AIG 2022, Chubb 2024) and ESCA agreement references noting that PLL policy is an ESCA requirement until the 2028 ESCA Successor transfer of ESCA LTO to the Army. Mr. Lederle will work with the ESCA Grant Administrator to identify language that would provide Seaside, as ESCA Successor with assurances that PLL insurance funds will be available to purchase PLL insurance from 2024 to 2028.*

DRAFT

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Public Correspondence to the Board

**Meeting Date:** December 13, 2019

**Agenda Number:** 7f

**INFORMATION/ACTION**

Public correspondence submitted to the Board is posted to FORA's website on a monthly basis and is available to view at <http://www.fora.org/board.html>

Correspondence may be submitted to the Board via email to [board@fora.org](mailto:board@fora.org) or mailed to the address below:

FORA Board of Directors  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, CA 93933

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEM

<b>Subject:</b>	Review Building Removal Bond Status	
<b>Meeting Date:</b>	December 13, 2019	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	8a	

### **RECOMMENDATION:**

Receive a Building Removal Bond Status Report

### **BACKGROUND:**

At the October 2018 Fort Ord Reuse Authority (“FORA”) Board meeting, the FORA Board directed staff to investigate the legality and feasibility of issuing debt against FORA’s statutory share of property tax revenue provided to FORA by the State Legislature as codified in the State of California Health and Safety Code. In January 2019, FORA released a competitive Request for Qualifications and selected NHA Advisors (“NHA”) to complete the bond feasibility and financial analysis. In July 2019, the Administrative Committee (“AC”) recommended the Board do the necessary work to prepare a bond package, and in August 2019, the Board approved the Executive Officer (“EO”) to conduct that work.

### **Successor Agency and Bond Fund Allocation**

At the September 18<sup>th</sup> AC meeting, the AC unanimously recommended: 1) the FORA Board consider “naming” the City of Marina as the bond successor agency (“SA”) pending jurisdictional review and acceptance of SA responsibilities; 2) each stakeholder receive a specific percentage share of the bond proceeds as listed in previous reports; and 3) fund use be limited to insurance, administration, management, litigation and construction costs related to removal of existing military buildings (or portions of buildings) within the project area of the former Fort Ord.

FORA intends the specific use of Bond funds for “Building Removal” and “Building Removal Costs,” to include the removal of hazardous materials and other safety measures in remnant structures. For purposes of the Bond Indenture, “Building Removal” means the cost of waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord. “Building Removal Costs” include, without limitation, costs of all planning, engineering, management, risk management including but not limited to insurance premiums, legal fees and litigation costs associated with the building removal and the associated administrative services required to remove blighted buildings from certain parcels of property within the boundaries of the former Fort Ord listed on Exhibit C of the Bond Indenture.

### **Remaining Actions:**

At the October 11, 2019 FORA Board meeting, the Board’s municipal bond consultant, NHA, reported a number of technicalities and concerns requiring action prior to the Board authorization to bond:

1. Marks-Roos Public Hearing at the County to fulfill the authorizing statute requirements.
2. County Commitment to continue FORA fund intercept at FORA sunset, and to make findings of Public Benefit after considering such at a public hearing.

3. Jurisdictional covenant to place bond on Recognized Obligation Payment Schedule (“ROPS”) to mitigate risk in future changes to California Law or other Department of Finance changes.
4. Consideration of the City of Monterey, the City of Seaside, the County of Monterey or a Joint Powers Authority as a successor trustee to FORA.
5. Whether three jurisdictions are prepared to address the question of revenue demand shortfalls to the Monterey Regional Fire District.

FORA staff are working with the AC to address the five concerns listed above (and more). The AC has reaffirmed its unanimous decision to recommend that the Board sustain the momentum toward issuing FORA Building Removal Bonds.

**Draft Legal Documents**

On October 8<sup>th</sup>, 2019, FORA staff provided the AC the DRAFT Indenture of Trust document for legal counsel review. At its October 22<sup>nd</sup> meeting, the Board of Supervisors approved special bond counsel services to provide specialized legal advice to the County regarding the proposed bond issuance and other financing options. In October, FORA staff provided the AC with an updated draft of the bond indenture for comment.

On November 19<sup>th</sup>, 2019, the Monterey County Board of Supervisors voted to hold a public hearing on the FORA building removal bond pending a formal request from FORA (**Attachment A**). The public hearing at the county will trigger a 60-day period pursuant to the Marks-Roos Act. Following this period, the FORA Board may consider the bond issuance. If a bond issuance is approved by the FORA Board, and in order to independently validate FORA’s right to issue bonds secured by tax increment funds even after FORA’s dissolution, FORA counsel will explore options. FORA Staff is currently coordinating with county and city staff to set dates with the Board of Supervisors for a Public Hearing, and with the Cities of Marina and Seaside to obtain the required covenants to place the bond on their ROPS.

Following completion of the legal documents the FORA Board will need to review and approve the document package which will include 1) bond indenture, 2) fiscal consultant’s report, 3) County and City resolutions and covenants, and 4) official disclosure statement. Staff anticipates FORA Board consideration of the legal document package at its December 13<sup>th</sup>, 2019 meeting.

**FISCAL IMPACT**

Reviewed by FORA Controller \_\_\_\_\_

Staff time to support the AC is included in the approved annual budget.

**COORDINATION:**

Authority Counsel, Bond Counsel, County of Monterey, the County Fort Ord Committee, Cities of Seaside and Marina, Administrative Committee, Executive Committee, NHA Advisors.

Prepared by \_\_\_\_\_ Approved by \_\_\_\_\_  
Peter Said Michael A. Houlemard, Jr.

# **Attachment A to Item 8a**

**Formal Letter Request from FORA to Board Supervisors**

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**This item will be included in the final Board packet.**

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEM

<b>Subject:</b>	2018 Transition Plan and Draft Implementing Agreements Status Report	
<b>Meeting Date:</b>	December 13, 2019	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	8b	

### **RECOMMENDATION:**

Receive a Fort Ord Reuse Authority (“FORA”) Transition Plan Implementing Agreements Progress Report.

### **BACKGROUND:**

At its March 22, 2019 meeting and (prior meetings) the FORA Board requested that staff and consultants provide periodic updates regarding the 2018 Transition Plan Implementation.

### **TRANSITION PLANNING PROGRESS REPORT:**

FORA transition plan implementation consultants Regional Government Services (“RGS”) continue meeting with various stakeholders and drafting Transition Plan Implementation Agreements (“TPIA”). The RGS workplan involves drafting the following set of TPIA for consideration by the Board:

1. **Multi-agency TPIA:** addressing issues relevant to each FORA land use jurisdiction (Del Rey Oaks, Marina, Monterey, Monterey County, Seaside) as well as:
  - a. Transferring FORA’s regional transportation obligations and offsite transportation reimbursement agreements to the Transportation Agency for Monterey County (“TAMC”) and the holdover jurisdictions;
  - b. Economic Development Conveyance (“EDC”) Successor (property transfers);
  - c. Local Reuse Authority (“LRA”) Successor; and
2. **Water TPIA(s):** addressing transfer of certain FORA water supply/allocation rights (as may be noted in EDC agreement above) and obligations to Marina Coast Water District (“MCWD”).
3. **Environmental Services Cooperative Agreement (“ESCA”) TPIA:** regarding post-FORA successor and obligations under this contract with the US Army.

RGS consultants met with the Administrative Committee on March 20, April 3, June 5, June 19, July 3, July 31, August 14, September 4, October 2, October 16, October 30, and November 13, 2019 to provide updates on TPIA progress.

An updated draft Multi-Agency Implementing Agreement based on comments received by signatory agencies was reviewed by the Administrative Committee on November 13 and will be shared for review by the Board and public prior to the December 13 Board meeting (**Attachment A**). MCWD released individual final draft agreements to relevant agencies the week of October 28.

Working closely with FORA ESCA staff, RGS also facilitated the development of a document describing the status and expected transfers of remaining FORA parcels (**Attachment B**).

**Joint Powers Authority (“JPA”) Formation**

In addition to facilitating the completion of the TPIA listed above, RGS has been contracted to mediate the Habitat Conservation Plan (“HCP”)-JPA formation process. A JPA is proposed to implement the HCP and receive/oversee incidental take permits. The HCP identifies certain duties and obligations that must be fulfilled to support the issuance of permits under the Federal Endangered Species Act (“ESA”) and California Endangered Species Act (“CESA”) to enable urban development, operations and management in habitat management areas, and other activities and projects on property owned or controlled by the land use jurisdictions at the former Fort Ord. These land use jurisdictions or “permittees” include the following entities:

County of Monterey	Regents of the University of California
City of Marina	Board of Trustees of the California State University
City of Seaside	Monterey Peninsula Community College District
City of Del Rey Oaks	Monterey Peninsula Regional Parks District
City of Monterey	Marina Coast Water District
California Department of Parks and Recreation	Bureau of Land Management (Cooperating Entity)

FORA Staff and Consultant team held All-Permittees Meeting from 9am-12pm, November 20, 2019 at the Soper Field Community Center in Seaside. Staff and consultants presented HCP background and JPA formation information. Stakeholders raised concerns about JPA legal and financial issues, and requested additional information prior to advancing the formation process. Staff and consultants documented questions, identified key new content needs, and have scheduled JPA finance meetings with stakeholders in mid-December.

In addition to the RGS consultant workplan, FORA Staff is advancing the following transition items:

- a) Local Agency Formation Commission of Monterey County-FORA Liability Agreement;
- b) Final FY 19/20 Capital Improvement Program;
- c) Environmental Protection Agency (“EPA”)/Department of Toxic Substances Control (“DTSC”) /Army – FORA ESCA successor acceptance process; and
- d) Public Employee Retirement System obligations and FORA projected staffing.

**FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

Funding for staff time and RGS Consultants included in the approved FORA budget.

**COORDINATION:**

Executive Officer.

**ATTACHMENTS:**

- Attachment A: DRAFT Multi-Agency TPIA Status
- Attachment B: ESCA Parcels Transfer Status Chart

**Prepared by** \_\_\_\_\_ **Approved by** \_\_\_\_\_  
 Josh Metz Michael A. Houlemard, Jr.

## IMPLEMENTING AGREEMENT

This Implementing Agreement (this “Agreement”) is dated for reference purposes \_\_\_\_\_, 2019 and is entered into by and among:

- (a) County of Monterey (“County”),
- (b) City of Marina (“Marina”),
- (c) City of Seaside (“Seaside”),
- (d) City of Del Rey Oaks (“Del Rey Oaks”), and
- (e) City of Monterey (“Monterey” and collectively with County, Marina, Seaside, and Del Rey Oaks, the “Jurisdictions”)
- (f) Transportation Agency for Monterey County (“TAMC” and collectively with the Jurisdictions, the “Parties”).

### RECITALS

**A.** The Fort Ord Reuse Authority (“FORA”) was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.* and referred to herein as the “FORA Act”) as a regional agency to, among other things, plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to various municipalities and other public entities (including the Jurisdictions) or their designees.

**B.** FORA acquired portions of the former Fort Ord from the Army under an Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000 (the “EDC Agreement”). FORA has delivered to each of the Jurisdictions a complete copy of the EDC Agreement as executed and including all amendments and attachments.

**C.** Section 67700(a) of the FORA Act provides that the FORA Act will become inoperative, at the latest, on June 30, 2020. Concurrently with the FORA Act becoming inoperative, FORA will dissolve (“FORA’s Dissolution”).

### AGREEMENT

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

#### 1.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

- 1.1 “**Agreement**” means this Implementing Agreement.
- 1.2 “**Army**” means the United States Army.

- 1.3 “**County**” means the County of Monterey, a California general law county.
- 1.4 “**Del Rey Oaks**” means the City of Del Rey Oaks, a California general law city.
- 1.5 “**EDC Agreement**” means the Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000.
- 1.6 “**FORA**” means the Fort Ord Reuse Authority, a public corporation of the State of California.
- 1.7 “**FORA Act**” means the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.*).
- 1.8 “**FORA’s Dissolution**” means the cessation of FORA’s existence when the FORA Act becomes inoperative, which is anticipated to occur on June 30, 2020.
- 1.9 “**HCP**” means the Fort Ord Multispecies Habitat Conservation Plan for the former Fort Ord military installation.
- 1.10 “**HCP Cooperative**” means the Fort Ord Regional Habitat Cooperative formed pursuant to a Joint Exercise of Powers Agreement entered into by and between the Jurisdictions, among others.
- 1.11 “**HMAS**” has the meaning given in Section 4.0.
- 1.12 “**Jurisdiction**” means individually County, Marina, Seaside, Del Rey Oaks, or Monterey. County, Marina, Seaside, Del Rey Oaks, and Monterey may collectively be referred to as the “**Jurisdictions.**”
- 1.13 “**Jurisdiction Property**” has the meaning given in Section 3.1.
- 1.14 “**Marina**” means the City of Marina, a California charter city.
- 1.15 “**Monterey**” means the City of Monterey, a California charter city.
- 1.16 “**Party**” means individually one of the Jurisdictions or TAMC. The Jurisdictions and TAMC may collectively be referred to as the “**Parties.**”
- 1.17 “**Sale or Lease Proceeds**” means the consideration received by the Jurisdiction when leasing or selling a portion of the Jurisdiction Property owned by the Jurisdiction, less any direct leasing expenses or direct sale expenses.
- 1.18 “**Seaside**” means the City of Seaside, a California general law city.

**1.19** “TAMC” means the Transportation Agency for Monterey County, a regional transportation planning agency and California public entity.

## **2.0 WATER ALLOCATIONS**

Until such time as such allocations may be amended as provided herein, the Jurisdictions agree to honor and abide by the allocations of potable and recycled water set forth in Exhibit A attached hereto, subject to compliance with all applicable laws including, but not limited to, the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) and the Sustainable Groundwater Management Act (Water Code Section 10720 *et seq.*). The Parties shall meet and confer in good faith to cooperatively develop one or more agreements between each Jurisdiction and Marina Coast Water District regarding the provision of potable and recycled water services and to establish parameters for amending the allocations in the future, as may be appropriate.

## **3.0 ROADWAY PROJECTS**

**3.1 Local Roads.** After FORA’s Dissolution, no further funding will be available from FORA for local road improvement projects that may be required to mitigate the adverse impacts of development projects on property at the former Fort Ord owned by or subject to the control or land use approval authority of any of the Jurisdictions (each a “Jurisdiction Property”). Accordingly, if any development project on one but not more than one Jurisdiction Property requires mitigation in the form of a roadway project or otherwise, the Jurisdiction undertaking or approving the development project shall have sole responsibility to arrange for the funding of all required mitigation measures from such Jurisdiction’s own resources, from the project developer(s), or from grants or other resources available to such Jurisdiction.

**3.2 Regional Roads.** Immediately after FORA’s Dissolution, TAMC will assume responsibility for the collection of Regional Development Impact Fees for the FORA Zone (Zone 5). Within thirty (30) days following the full signing of this Agreement, TAMC and each Jurisdiction will meet and confer in good faith to cooperatively develop appropriate arrangements (to be implemented immediately following FORA’s Dissolution) for the collection and remission to TAMC of the Regional Development Impact Fee or a comparable development impact fee imposed by the such Jurisdiction as mitigation for impacts to regional roads resulting from development projects on such Jurisdiction’s Jurisdiction Property.

## **4.0 HABITAT CONSERVATION PLAN**

After FORA’s Dissolution, no further funding will be available from FORA for implementation of the Fort Ord Multispecies Habitat Conservation Plan (“HCP”). All funds accumulated before FORA’s Dissolution for the purpose of habitat mitigation shall be transferred in the following order of priority. If before April 1, 2020 a Habitat Conservation Plan Cooperative (the “HCP Cooperative”) has been established, all the habitat mitigation funds held by FORA immediately prior to FORA’s Dissolution shall be transferred in their entirety to the HCP Cooperative for use in connection with the HCP being administered by the HCP Cooperative. If by April 1, 2020 no HCP Cooperative is in existence, then FORA will prepare a program to

distribute the habitat mitigation funds to one or more recipients for long-term management of the area located within the habitat reserve areas, the habitat corridors, and the restricted development parcels pursuant to the revised "Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord" issued by the U.S. Army Corps of Engineers in April 1997 (collectively, the "HMAs").

## **5.0 ORDNANCE**

The Jurisdictions shall cooperate fully with the Army's investigation, characterization, and remediation of potential ordnance and explosives impediments to allow the reuse of the Jurisdiction Property. The Jurisdictions' cooperation will specifically include recognizing, effective immediately after FORA's Dissolution, the Army's new designated agency and entering into any new agreement(s) with the Army as may be necessary to appropriately implement the change of designated agency.

## **6.0 RECORDS RETENTION AND MANAGEMENT**

All FORA records, including personnel files, documents, and meeting records will be transferred to County for retention and management.

## **7.0 LAND TRANSFER REPORTING**

At least annually, commencing with the year in which FORA transfers or transferred a respective parcel of Jurisdiction Property to the ownership of the respective Jurisdiction and ending seven (7) years thereafter, the recipient Jurisdiction shall submit to County, serving as the Economic Development Corporation Successor and Local Reuse Authority Successor, a written report of the Jurisdiction's uses of all Sale or Lease Proceeds received by the Jurisdiction in connection with its ownership of such parcel of Jurisdiction Property, to the extent that such information has not previously been provided to FORA. The Jurisdiction shall have forty-five (45) days from the anniversary of each transfer of ownership to prepare and submit its report to County, which will promptly thereafter, as the designated reporting agency, submit the same to the Army.

## **8.0 COMMUNITY FACILITIES DISTRICT REVENUES**

Immediately prior to FORA's Dissolution, any then unexpended community facilities district revenues and unencumbered other fund balances shall be transferred to County. The County of Monterey shall promptly thereafter disburse those community facilities district revenues and other fund balances to the Jurisdictions in such amounts and in such reasonable manner as the Jurisdictions may collectively agree.

## **9.0 OUTSTANDING DEBT**

If FORA has any remaining outstanding debt at the time of FORA's Dissolution, property tax revenues shall continue to be paid to County in accordance with subparagraph (D) of paragraph (1) of subdivision (c) of Section 33492.71 of the Health and Safety Code in an amount necessary to pay the principal and interest or other amounts on that debt. Upon the retirement of the debt,

any remaining property tax revenues shall be transferred to the auditor-controller of County for appropriate distribution. County may, before disbursing revenues as provided in this section, deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues to be disbursed.

## **10.0 SEVERABILITY**

If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

## **11.0 DISPUTE RESOLUTION**

If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 11.

**11.1 Duty to Meet and Confer.** The Parties shall first meet and confer in good faith and attempt to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party all the information in its possession that is relevant to the dispute, so that both Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, either Party may demand mediation.

**11.2 Mediation.** If meeting and conferring do not resolve the dispute, then the matter shall be submitted for formal mediation to the Mediation Center of Monterey County, the American Arbitration Association, the Judicial Arbitration and Mediation Services, or such other mediation service as the Parties may mutually agree upon. Either Party may terminate the mediation if it fails to produce agreement within forty-five (45) days from selection of the mediator. The expenses of such mediation shall be shared equally between the Parties.

**11.3 Arbitration.** If the dispute has not been resolved by mediation, and if both Parties wish to pursue arbitration, then the dispute shall be submitted to arbitration. The decision of the arbitrator or arbitrators shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either Party files an action in court.

(i) Any potential arbitrator must affirmatively disclose all of his or her potential conflicts of interest, and a description of the nature of his or her past and current law practice (if applicable), before the Parties select the arbitrator. A Party may disqualify any potential arbitrator whom the Party subjectively perceives to have a conflict or bias. Any potential arbitrator must be a qualified professional with expertise in the area that is the subject of the dispute, unless the Parties otherwise agree. The Parties shall jointly select a single arbitrator.

(ii) Before commencement of the arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure Section 1280 *et seq.*, and to the extent that procedural issues are not there resolved, in accordance with the rules

of the American Arbitration Association. Notwithstanding the foregoing, the requirements of subsection (iii) below shall apply.

(iii) The arbitrator must issue a written decision setting forth the legal basis of the decision, making findings of all relevant facts and stating how the law was applied to the found facts, and the decision must be consistent with and apply the law of the State of California.

**11.4 Attorneys' Fees and Costs.** Should the dispute of the Parties not be resolved by negotiation or mediation, and in the event it should become necessary for either Party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorneys' fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

**11.5 Judicial Resolution.** If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the Parties to pursue arbitration, then either Party may commence an action in the Superior Court of Monterey County. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party. For purposes this Section 11.5, "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

## **12.0 MISCELLANEOUS**

**12.1 Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. No other statement or representation by any employee, officer, or agent of any Party, which is not contained in this Agreement, shall be binding or valid.

**12.2 Multiple Originals; Counterparts.** This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

**12.3 Modifications.** This Agreement shall not be modified except by written instrument executed by and between the Jurisdictions.

**12.4 Interpretation.** This Agreement has been negotiated by and between the representatives of all Parties, all being knowledgeable in the subject matter of this Agreement, and each Party had the opportunity to have the Agreement reviewed and drafted by their respective legal counsel. Accordingly, any rule of law (including Civil Code Section. 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the Parties and this Agreement.

**12.5 Relationship of the Parties.** Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the Parties.

**12.6 Waiver.** No waiver of any right or obligation of any Parties hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by any Party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

**12.7 Further Assurances.** The Parties shall make, execute, and deliver such other documents, and shall undertake such other and further acts, as may be reasonably necessary to carry out the intent of this Agreement.

**12.8 Days.** As used in this Agreement, the term “days” means calendar days unless otherwise specified.

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

Dated: \_\_\_\_\_, 2019

COUNTY OF MONTEREY

By: \_\_\_\_\_  
County Administrative Officer

Approved as to form:

By: \_\_\_\_\_  
County/Deputy County Counsel

Dated: \_\_\_\_\_, 2019

CITY OF MARINA

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_, 2019

CITY OF SEASIDE

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_, 2019

CITY OF DEL REY OAKS

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_, 2019

CITY OF MONTEREY

By: \_\_\_\_\_  
City Manager

Approved as to form:

By: \_\_\_\_\_  
City Attorney

DRAFT

Dated: \_\_\_\_\_, 2019

TRANSPORTATION AGENCY  
FOR MONTEREY COUNTY

By: \_\_\_\_\_  
Chair

Approved as to form:

By: \_\_\_\_\_  
Agency Counsel

DRAFT

Out- Deed Name	Jurisdiction	Parcel Number	Army Parcel Name	Army/FORA In-Deed	Finish Survey Mods - ARCADIS	DTSC Completes CRUP Amendment	CRUP Recorded	State Remedial Completion Concurrence - DTSC	BRAC CERCLA Warrantee & Deed Amendment	FORA Property Transfer Notification Letters	FORA Out-Deeds Ready to Sign
ESCA FOSET-5 CERCLA Warrantee & Deed Notices						7 weeks to complete after survey's done.	1 week after CRUP Amendment complete	1 week after CRUPs completed.	8 weeks from FORA CERCLA Warrantee/Deed Amendment Request	1 week after Surveys modifications completed	4 weeks after Warrantee & Deed Amendment Complete
ESCA CSUMB Out-Deed	CSUMB	51.3.2	Expansion Area 3B (CSUMB Off-Campus)	DACA05-9-07-507	Complete	Complete	Complete	Complete	Request made September 2019	Notification made October 2019	Dec-19
ESCA Seaside Out-Deed	Seaside	E18.1.3	Housing future	DACA05-9-07-506	Oct-19	Dec-19	Dec-19	Dec-19	Request made October 2019 - Scheduled to be issued 11/14/19	Notification made October 2019	Jan-20
		E18.4	Water Tank								
		E20c.2	Housing Future								
		E23.1	ROW / retail								
		E23.2	ROW / Housing future								
		E24	ROW / Housing future								
ESCA MPC Out-Deed	MPC	E21b.3	Housing Single Family	DACA05-9-07-508	Oct-19	Dec-19	Dec-19	Dec-19	Request made October 2019	Notification made October 2019	Jan-20
		E38	MPC Reserve								
		E39	MPC Reserve								
		E41	MPC Habitat Reserve								
		E42	MPC Habitat Reserve								
		F1.7.2	BLM Parcel H / MOUT								
		L23.2	Habitat / field study area								
		E40	Range Extension								
ESCA County Out-Deed	County	E11b.6.1	Habitat Reserve	DACA05-9-07-505	Nov-19	Jan-20	Jan-20	Jan-20	Jan-20	Dec-19	Feb-20
		E11b.7.1.1	Habitat Reserve								
		E11b.8	Development / mixed use								
		E19a.1	County Development								
		E19a.2	Habitat Reserve								
		E19a.4	Habitat Reserve / County								
		L20.18	ROW / Eucalyptus Road								
		L20.19.1.1	ROW / Barloy Canyon								
		L20.3.1	Wolf Hill								
		L20.3.2	ROW / Wolf Hill								
		L20.5.1	Lookout Ridge								
		L20.5.2	ROW / Lookout Ridge								
		L20.5.3	Lookout Ridge								
		L20.5.4	South Boundary Park - Barloy Canyon Road -								
		L20.8	Barloy Canyon Road -								
ESCA Del Rey Oaks Out-Deed	Del Rey Oaks	L20.13.1.2	ROW / Gen. Jim Moore	DACA05-9-07-502	Nov-19	Jan-20	Jan-20	Feb-20	Jan-20	Dec-20	Feb-20
		L20.13.3.1	ROW / South Boundary								
ESCA Monterey Out-Deed	Monterey	E29.1	Business Park / Light	DACA05-9-07-501	Nov-19	Jan-20	Jan-20	Feb-20	Jan-20	Dec-20	Feb-20
ESCA MRPMD Out-Deed	MRPMD - Parks	L6.2	Frog Pond	DACA05-9-07-504	Nov-19	Jan-20	Jan-20	Jan-20	Jan-20	Dec-19	Feb-20
Other Fort Ord Property Transfers											
County Landfill In & Out-Deeds	County	E8a.1.1	Landfill	Deed Needed	N/A	N/A	Unknown	N/A	N/A	N/A	After 2020
		E8a.2	Landfill carrot								
County FOSET 5 Out-Deed	County	E4.7.2	Imjin Parkway Gas Extraction	DACA05-9-09-505	N/A	Needs Kutack Rock Out-Deed Created	N/A	N/A	Complete	N/A	Jan-20
County FOST 11 In & Out-Deeds	County	L2.3	MST - North Gigling	FORA reviewing Deed	N/A	Kutak Rock modifying CRUP	N/A	N/A	N/A	N/A	Feb-20
		L2.4.1	MST - North Gigling								
Seaside E20c.1 In & Out-Deeds	Seaside	E20c.1	Housing Future	Deed Needed	N/A	Army and Kutak Rock developing deeds	N/A	N/A	N/A	2020	Unknown
Seaside L36 In & Out-Deeds	Seaside	L36	Rescinded Diocese	FOST 13 & Deed Needed	Army finishing Environmental - FOST 13	Army and Kutak Rock developing deeds	N/A	N/A	N/A	N/A	Feb-20

# **Placeholder for Item 8c**

**Marina Coast Water District Capacity Fees and WWOC  
Recommendation**

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**This item will be included in the final Board packet.**

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEM

**Subject:** Economic Development Report

**Meeting Date:** December 13, 2019

**Agenda Number:** 8d

**INFORMATION**

### **RECOMMENDATION(S):**

Receive an Economic Development (“ED”) Report.

### **ECONOMIC DEVELOPMENT QUARTERLY UPDATE**

#### **Background/Discussion:**

The primary goal of the Fort Ord Reuse Authority’s (“FORA’s”) ED program, as originally referenced in the 1997 Base Reuse Plan (“BRP”) and amplified in the 2012 Reassessment Report (“RR”), is to assist the three-county (Monterey/Santa Cruz/San Benito) region in general and FORA jurisdictions specifically. This assistance is to provide leadership and support for regional economic recovery from the employment, business, and other economic losses resulting from the departure of soldiers, civilians, and families post Fort Ord closure. BRP projections to achieve full recovery include: 36-38,000 in replacement population; 15,000+ jobs to replace military employment and soldiers; 11-12,000 homes (6160 new units); and approximately 3 million sf commercial/office.

Prior to establishing the current ED program in 2015, extensive groundwork was directed by the FORA Board and overseen by FORA staff including:

- securing funding, implementation, and completion of the \$98M Environmental Services Cooperative Agreement;
- reuse and/or removal of 3614 of 4370 military buildings (including reopening 500+ units for affordable workforce housing);
- transfer of 10,013 of 17,652 habitat acres for permanent preservation;
- construction of \$66.5M worth of new transportation infrastructure (including \$40M in grant funding), 32 miles of roadway capacity added using grants and developer fees;
- storm water outfall removal (including securing \$6M in grant funding);
- continued and ongoing support for the veteran’s community leading to the Central Coast Veterans Cemetery; and
- the nation’s first Joint Department of Defense/Veterans Administration Veterans Clinic built a new in the City of Marina.

Staff led survey and research (in concert with former Fort Ord jurisdictions) results show progress toward the above noted BRP goals to date: *15,717 population; 6047 jobs; 5649 homes (1458 new + 4191 reused); and 691k sf commercial.* When coupled with the educational and institutional growth, these accomplishments demonstrate a strong foundation and equitable basis for realizing new economic development gains.

FORA’s ongoing ED strategy, established with the creation of the ED Program in 2015, is based on the following key components:

- **Build upon regional economic strengths** (Agriculture, Tourism, Higher Education/ Research, Military Missions)
- **Pursue new & retain existing businesses/enterprises.**
- **Engage internal & external stakeholders.**
- **Develop and maintain information resources.**
- **Report success metrics.**

This report summarizes key progress and success metrics for partnerships that have benefited from Board investment and staff engagement since 2015.

- **Start-up Challenge Monterey Bay/California State University Monterey Bay (“CSUMB”) Collaboration.** FORA Board investment and staff engagement have supported expansion of the Monterey Bay regional entrepreneurship ecosystem through collaboration with the CSUMB Institute for Innovation & Economic Development (“iiED”) on the Start-up Monterey Bay ecosystem. Since 2015, the FORA Board has invested \$325,000 in this partnership. Key outcomes include:
  - New digital information and online activity hub: <https://StartupMontereyBay.com>;
  - iiED Annual Cycle of Innovation: Hackathon, Startup Weekend, Startup Challenge, Startup Investment Forum;
    - 2200+ aspiring entrepreneurs;
    - 638 participating companies;
    - 150+ jobs created;
    - \$400,000 prizes awarded;
    - \$10 million raised by participating companies;
  - \$850,000 Economic Development Administration (“EDA”) grant to support operation of a regional business incubator (Startup Launchpad);
- **Small Business Development Center (“SBDC”) support.** FORA Board investment has supported the continuous operation of the Monterey County SBDC, focused on providing small business support and consultancy services to strengthen and retain existing small businesses in the region. Since 2015, the FOR A Board has invested \$100,000 in this partnership. Key outcomes include:
  - \$17.5 million client capital accessed;
  - 32 new businesses started;
  - 1912 jobs supported (created and retained);
  - 1370 training attendees;
  - 364 businesses counseled.
- **Monterey Bay Economic Partnership.** FORA Board investment and staff engagement have supported strengthening of the Monterey Bay Economic Partnership, a triple-bottom line, public-private partnership to advance regional vitality. Since 2015, the FORA Board has invested \$54,500 in this partnership. Key outcomes include:

- New regional data resource, information and online hub: <https://Mbep.biz>;
  - Creation of \$12 million Monterey Bay Housing Trust, funding 4 projects to date;
  - Launch of Monterey Bay Career Connect website: <https://mbcareerconnect.org/>, supporting 500+ career assessments & resumes;
  - Launch of Monterey Bay Internships website: <http://mbinterns.org/>, supporting 4000+ users and filling 200+ internships;
  - Launch MBEP Action Center advocating for 700+ new homes.
- **Central Coast Marketing Team.** FORA Board investment and staff engagement have supported strengthening of the Central Coast Marketing Team, a regional public-private non-profit partnership focused on business retention, attraction & site location assistance. Since 2015, the FORA Board has invested \$10,000 in this partnership. Key outcomes include:
    - New site location assistance digital presence, information and online activity hub: <https://SelectCentralCoast.org>;
    - 1<sup>st</sup> Monterey Bay Opportunity Zone Investment Forum;
    - 1<sup>st</sup> Monterey Bay Cannabis Policy Forum. Supported growth of cannabis businesses and increasing tax revenue in Seaside and Salinas;
    - Regular convening of economic development professionals from cities of Marina, Seaside, Salinas, Monterey County, and City of Santa Cruz;
    - Supported site location searches for: autonomous vehicle R&D facility, international cosmetics manufacturing facility, wine warehouse & hospitality center;
- **Monterey Bay Drone, Automation & Robotics Technology (“DART”)** initiative. FORA Board investment and staff engagement have supported strengthening of the Monterey Bay DART initiative, a regional public-private non-profit organization focused on advancing a DART focused economic development strategy for jobs growth, new venture formation & regional vitality. Since 2018, the FORA Board has invested \$10,000 in this partnership. Key outcomes include:
    - New digital presence, information and online activity hub: <https://MontereyBayDART.org>;
    - On-going series of DART Meet-ups to be hosted at the University California Monterey Bay Education Science & Technology (“UCMBEST”) Center;
    - Partnership with the UC Ag & Natural Resources Division (“UCANR”) to host the 2019 Drone Camp the week of June 17-20, 2019 on the former Fort Ord at UCMBEST and CSUMB campus. Set to return June 22-25, 2020.
    - 1<sup>st</sup> Monterey Bay DART Symposium Friday June 21, 2019, which brought together 160+ industry, academia, military and government stakeholders and highlighted regional strengths, challenges and opportunities. Set to return, Friday June 26, 2020;

- Workforce development working group to meet immediate and near-term workforce demands of DART companies and industry expanding in the region;
- Actively supporting the successful establishment of the Joby Aviation manufacturing facilities at the Marina Airport, with a focus on inter-governmental relations, infrastructure and planning needs, and workforce development opportunities and partnerships.

In addition to the programs and investments listed above, FORA ED staff engagement has produced a number of valuable outcomes including:

- **Annual Jobs Surveys.** Completed on behalf of its member jurisdictions from 2015-2019. Results of these surveys indicate continued jobs growth on the former Fort Ord.

<b>Jobs</b>	<b>2015</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<i>Full-time</i>	3374	3462	4165	4363
<i>Part-time</i>	711	1497	1487	1684
<b>Total</b>	<b>4085</b>	<b>4959</b>	<b>5652</b>	<b>6047</b>

- **Housing Starts.** New residential development at the Dunes on Monterey Bay, Sea Haven, and East Garrison continues. A summary of Community Facilities District (“CFD”) permits pulled and fees collected thru October 2019 is provided below:

<b>New Residential</b>	FY 14/15	FY 15/16	FY 16/17	FY 17/18	FY 18/19	FY 19/20*
Total Units	89	256	317	273	289	89
Total CFD Fees	\$1,982, 669	\$5,202, 626	\$7,329, 706	\$6,507, 501	\$7,115, 469	\$2,257, 218

\*thru October 2019

- **University of California Santa Cruz (“UCSC”) Coordination.** Since 2015, FORA staff have played a central role in regular coordination with UCSC personnel to advance the long-dreamed of jobs growth at the UC Monterey Bay Education Science & Technology (“UCMBEST”) center. New leadership at UCSC has renewed focus on UCMBEST.

**FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

Funding for staff time and ED program activities is included in the approved FORA budget.

**COORDINATION:**

Administrative and Executive Committees, UCSC, City of Marina, City of Seaside

Prepared by \_\_\_\_\_ Approved by \_\_\_\_\_  
 Josh Metz Michael A. Houlemard, Jr.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

<b>Subject:</b>	Eucalyptus Road Storm Water Infiltrator Repair	
<b>Meeting Date:</b>	December 13, 2019	<b>ACTION</b>
<b>Agenda Number:</b>	8e	

### **RECOMMENDATION(S):**

Approve the Executive Officer (EO) to bid and execute all necessary contracts for the completion of Eucalyptus Road infiltrator repairs not to exceed a project budget of \$\_\_\_\_\_.

### **BACKGROUND:**

The Fort Ord Reuse Authority (FORA) built Eucalyptus Road (ER) and General Jim Moore Boulevard (GJMB) to use onsite storm water retention systems (“infiltrators”) as a way of preventing water pollution and recharging the local aquifer. A number of the infiltrators have failed and require an engineered solution.

In 2017, Parikh Geotechnical Engineers, under the BKF Contract GE-SWO-1, performed a root cause analysis to determine which entity, participating in the completed roadways construction, was responsible for the repair. The background review drew no conclusive evidence citing multiple reasons for failure as follows:

- 1) FORA and the City of Seaside approved the engineering plans and designs;
- 2) The Manufacturer did not identify slope as a key infiltrator design parameter;
- 3) The Engineer did not accurately account for the soil’s ability to dynamically change when saturated;
- 4) The Construction Contractor’s Engineer, with FORA and Seaside approval, specified installation of infiltrators in roadway fill instead of native soil due to known munitions issues;
- 5) FORA did not build the hardscape until approximately two years following the grading and installation of the infiltrators;
- 6) The contractor may have over compacted the soil;
- 7) FORA approved contractor Change Orders to fix the initial failure during construction by installing road base over the failure;
- 8) Neither FORA nor the City of Seaside maintained the infiltrators; and
- 9) Large animals burrowed into the infiltrators creating tunnels or “pipes” which may have caused the failure.

The construction contract required the contractor to repair any such issue up to one year after the Notice of Completion. However, the warranty time has lapsed and the contractor, Top Grade, closed and sold its assets to another company. The original Geotech engineer

responsible for the soil compaction and design, and the former FORA Senior Project Manager are no longer available.

As a result of this study, the Board approved a contract with Harris and Associates in January 2018 for the development of a repair plan under Service Work Order SWO-H3. While researching solutions, it became clear that a Construction Support Plan (CSP) and Soils Management Plan (SMP) were required due to the Jurisdictional digging ordinances and Land Use Controls. Therefore, the Board approved a contract with Arcadis in May 2018 for the development of a CSP for Seaside Munitions Response Areas (MRA) 1-4.

FORA has since worked with Arcadis, the Department of Toxic Substance Control (DTSC), the Environmental Protection Agency (EPA) and the Army Base Re-Alignment and Closure (BRAC) Office to develop a Programmatic On-Call CSP, Roadways and Utilities Plan for Seaside MRA. DTSC provided final review of the CSP on November 18, 2019 (**Attachment A**) allowing construction to begin.

Harris and Associates provided 90% Plans for the maintenance and repair work necessary to fix the stormwater issues and close the Regional Water Board's open General Construction Permit. Staff anticipates final constructability review and plan check to be completed by the end of the calendar year. Estimated construction duration is 90 days and would put the completion of the road within 30 days of FORA closure, assuming 30 days to bid with an ER construction start in February 2020.

Staff prepared the following ER Project Budget using engineers estimates:

<b>Contract</b>	<b>Budget</b>
Construction	\$560,000
Surveying & Construction Limit Staking	25,000
Geotechnical Engineering & Testing	60,000
Construction Management / Prevailing Wage Monitoring	84,000
On-Call Construction Support & Munitions Coordination	90,000
Biological Controls/ Avoidance Measures	70,000
Contingency (25%)	193,500
<b>Total</b>	<b>\$1,082,500</b>

**DISCUSSION:**

FORA currently owns Eucalyptus Road and the surrounding parcels as it waits for the transfer paperwork to be completed. The work on-site is considered maintenance/repair on the roadway and the project specifications maintain the same biological controls used during roadway construction. FORA does not have an operations and maintenance budget, therefore this work is covered under the Transportation Contingency, especially as it involves work in an area formerly used for munitions training.

**Recommendation:**

Therefore, FORA staff is requesting approval for the EO to bid and execute all necessary contracts for the completion of ER infiltrator repairs.

**FISCAL IMPACT:**

Reviewed by FORA Controller \_\_\_\_\_

Staff time for this item is included in the approved annual budget. The FY 2019-2020 Capital Improvement Program (“CIP”): Transportation Contingency budget is \$1,000,000. \$415,787 is encumbered under contracts for munitions coordination and staff augmentation. The mid-year budget will adjust the CIP: Transportation Contingency to \$\_\_\_\_\_ to reflect an approved ER project budget.

**COORDINATION:**

Finance Committee, Authority Counsel, City of Seaside, Administrative Committee

Prepared by \_\_\_\_\_ Approved by \_\_\_\_\_  
Peter Said Michael A. Houlemard, Jr.



**Jared Blumenfeld**  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Meredith Williams, Ph.D.  
Acting Director  
8800 Cal Center Drive  
Sacramento, California 95826-3200



**Gavin Newsom**  
Governor

November 18, 2019

Mr. Stan Cook  
Fort Ord Reuse Authority  
920 2nd Avenue, Suite A  
Marina, California 93933

FINAL PROGRAMMATIC ON-CALL CONSTRUCTION SUPPORT PLAN, ROADWAYS  
AND UTILITIES, SEASIDE MUNITIONS RESPONSE AREA,  
NOVEMBER 5, 2019

Dear Mr. Cook:

The Department of Toxic Substances Control (DTSC) has reviewed the *Final Programmatic On-Call Construction Support Plan, Roadways and Utilities, Seaside Munitions Response Area (MRA), November 5, 2019 (CSP)*.

DTSC has no further comments on this final document.

DTSC appreciates the opportunity to review the CSP. If you have any questions, please contact me at (916) 255-4988 or via email at [brett.leary@dtsc.ca.gov](mailto:brett.leary@dtsc.ca.gov).

Sincerely,

Brett Leary  
Project Manager  
Military and Corrective Action Unit  
Site Mitigation and Restoration Program

cc: See next page.

Mr. Stan Cook  
November 18, 2019  
Page 2

cc: Mr. William Collins  
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**- END -**

**DRAFT  
BOARD PACKET**