

ATTACHMENT 1

FORT ORD MASTER PLAN GREATER MONTEREY PENINSULA AREA PLAN

DESCRIPTION

The purpose of this plan is to designate land uses and incorporate objectives, programs, and policies to be consistent with the Fort Ord Reuse Plan (Reuse Plan) adopted by the Fort Ord Reuse Authority (FORA) in 1997. This plan incorporates all applicable policies and programs contained in the adopted Reuse Plan as they pertain to the subject area. In addition, this plan contains additional Design Objectives and land use description clarification to further the Design Principles contained in the adopted Reuse Plan.

The Fort Ord Master Plan consists of this document, the Greater Monterey Peninsula Area Plan, and the Monterey County General Plan. Where there is a conflict or difference between a goal or policy of the Fort Ord Master Plan (FOMP) and the General Plan or Greater Monterey Peninsula Area Plan, the more restrictive policy will apply, except that land use designations will be governed by the FOMP in the Fort Ord area.

PLANNING AREA BOUNDARY

The area subject to this plan is generally located within the central portion of the former Fort Ord military base (Figure LU6a). The city limits of the City of Marina are located to the north, the city limits of the City of Seaside are located to the west, and the City limits of the Cities of Monterey and Del Rey Oaks are located to the south. The planning area is located within the Greater Monterey Peninsula Area Plan, which is part of the County's General Plan. Those areas in the former Fort Ord under the jurisdiction of the County of Monterey and located west of State Highway 1 within the designated Coastal Zone are not subject to this plan.

THE PLAN

This plan incorporates the following Fort Ord Reuse Plan Elements, either directly or by reference to the adopted Reuse Plan, specific to those portions of Fort Ord under County jurisdiction and located east of Highway 1:

- Land Use Element
- Circulation Element
- Recreation and Open Space Element
- Conservation Element
- Noise Element
- Safety Element

The Land Use Element describes land use designations, depicts the arrangement of land uses, and identifies Goals, Objectives, Policies and Programs related to land use. The Land Use Element is consistent with the Land Use Element contained in the adopted Fort Ord Reuse Plan, but also contains development and design objectives, as overlay designations, that are included to provide additional clarification of the intended development envisioned for certain Planning Districts. Other than the additional development and design objectives for those Planning Districts, the land use designation descriptions and the land use map are in conformance with the adopted Reuse Plan. The Fort Ord Land Use Element constitutes the Goals, Objectives, Policies and Programs applicable to land use in the area subject to this plan.

Because the Fort Ord Master Plan is a part of the Monterey County General Plan and Greater Monterey Peninsula Area Plan, this document can only be read in conjunction with those plans.

2003 PLAN MODIFICATIONS-LAND SWAP AGREEMENT

Biology and Residential Relocation from Parker Flats to East Garrison

The *1997 Fort Ord Installation-Wide Multi-species Habitat Management Plan* (HMP) outlines management requirements for all lands on the former Fort Ord. The HMP identifies four general categories of parcel-specific land uses: habitat reserve, habitat corridor, development with reserve areas and restrictions, and development with no restrictions. The HMP assumes a reuse development scenario for the entire base that will result in the removal of up to 6,300 acres of existing vegetation and habitat.

The Reuse Plan envisioned intensive development of the Parker Flats area and the HMP limited development in East Garrison to 200 acres. However, in 2002, FORA, the County of Monterey, and Monterey Peninsula College (MPC) submitted proposed modifications to the HMP to the U.S. Army and to the U.S. Fish and Wildlife Service for a Land Swap Agreement (LSA). The purpose was to exchange land identified for a Public Safety Training Center from the East Garrison area to Parker Flats. The County would move residential development to East Garrison. The proposed modifications were based on an *Assessment of East Garrison – Parker Flats Land Use Modifications Fort Ord, California*.

The purpose of the LSA was to resolve land use conflicts stemming from a long history of ordnance and explosives use, competing conveyance requests for surplus property at the former base, and to address impacts associated with potential East Garrison development conflicts. The assessment proposed boundary changes and other modifications to the HMP; these changes increased the overall acreage of habitat reserve lands. The assessment found that the goals, objectives and overall intent of the HMP would not be altered and that protection of the HMP species would be expanded and enhanced. The LSA amended the HMP to allow an additional 210 acres to be developed at East Garrison in exchange for the preservation of approximately 447 more acres at

ATTACHMENT 2

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	Consider Concurrence in the 2010 Monterey County General Plan Consistency Determination	
Meeting Date:	January 10, 2014	ACTION
Agenda Number:	8b	

RECOMMENDATION(S):

Approve Resolution 14-XX (**Attachment A**), concurring in the County of Monterey's (County) legislative land use determination that the 2010 Monterey County General Plan (General Plan) is consistent with the Fort Ord Base Reuse Plan (BRP).

OTHER OPTIONS:

- I. Per FORA Master Resolution section 8.01.020(e), approve Resolution 14-XX (**Attachment B**), refusing certification of the General Plan until the FORA Board's suggested modifications (included in this resolution) are adopted and transmitted to the FORA Board by the County. If the County adopts such modifications, and the Executive Officer confirms such modifications have been made, the General Plan shall be deemed certified.
- II. Refuse certification of the General Plan. Such action results in the Monterey County 2001 General Plan amendment, found consistent by the FORA Board on January 18, 2002, remaining in effect for County Fort Ord lands.

BACKGROUND:

The County submitted the General Plan for consistency determination on September 24, 2013 (**Attachment C**). **Attachment C** includes a link to the County of Monterey's website where documents related to the 2010 Monterey County General Plan consistency determination submittal can be obtained electronically. This link is: http://www.co.monterey.ca.us/planning/gpu/GPU_2007/2010_Mo_Co_General_Plan_Adopted_102610/2010_Mo_Co_General_Plan_Adopted_102610.htm At the October 11, 2013 Board meeting, several Board members raised concerns that a hard copy of the 2010 Monterey County General Plan consistency determination submittal was not included in the packet. The FORA Executive Committee previously established a policy directing staff to make large documents available on the internet in lieu of including voluminous pages in FORA Board packets. If any Board member finds this difficult, please contact staff to address the concern.

With its submittal for concurrence, the County requested a Legislative Land Use Decision review of the General Plan in accordance with section 8.02.010 of the Fort Ord Reuse Authority (FORA) Master Resolution. Under state law, (as codified in FORA's Master Resolution) legislative land use decisions (plan level documents such as General Plans, Zoning Codes, General Plans, Redevelopment Plans, etc.) must be scheduled for FORA Board review for consideration of concurrence under strict timeframes. This item is included on the Board agenda because the General Plan is a legislative land use decision, requiring Board approval.

The FORA Administrative Committee reviewed this item on October 2nd and October 30th, 2013.

At the October 30th FORA Administrative Committee meeting, County representatives addressed each of the issues that were surfaced by the two letters received earlier that month, and then also reviewed their own response letter that had been sent to the Administrative Committee. Staff described the Board report that was prepared and noted the individual meetings between the County and FORA Staff/Counsel leading up to the County letter addressing the issues in the late arriving correspondence. The Administrative Committee asked that the issues be addressed by counsel and outlined for the FORA Board at its meeting on November 8th.

FORA Special Counsel Alan Waltner's response memorandum is included in **Attachment D** to this report, outlining how his previous memoranda addressed issues raised in recent comment letters and reiterating those points.

Update: At its January 2, 2014 meeting, the Administrative Committee heard a report from FORA staff, heard comments from member of the public Jane Haines, and heard comments from County of Monterey Senior Planner John Ford. The Committee passed a motion to sustain its previous recommendation that the FORA Board concur in the County's determination that the 2010 Monterey County General Plan is consistent with the BRP.

DISCUSSION:

County staff will be available to provide additional information to the FORA Board on January 10, 2014. In all consistency determinations, the following additional considerations are made, and summarized in table form (**Attachment E**).

Rationale for consistency determinations FORA staff finds that there are several defensible rationales for making an affirmative consistency determination. Sometimes additional information is provided to buttress those conclusions. In general, it is noted that the BRP is a framework for development, not a precise plan to be mirrored. However, there are thresholds set in the resource constrained BRP that may not be exceeded without other actions, most notably 6,160 new residential housing units and a finite water allocation. More particularly, the rationales for consistency analyzed are:

**LEGISLATIVE LAND USE DECISION CONSISTENCY FROM SECTION 8.02.010
OF THE FORA MASTER RESOLUTION**

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence support by the record, that:

(1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;

The General Plan would not establish a land use designation that is more intense than the uses permitted in the BRP. Compared to the 1997 BRP, the General Plan increases the amount of habitat within the County's jurisdiction by 246.7 acres as a result of the December 20, 2005 Memorandum of Understanding (MOU) among the County, Monterey Peninsula College (MPC), FORA, the Bureau of Land Management (BLM), and U.S. Army, which swapped land uses between East Garrison and Parker Flats areas of the former Fort Ord. The result of the MOU is that an additional 210 acres are available for development in East Garrison in exchange for the preservation of approximately 447 additional habitat acres in Parker Flats. Also, the MOU added additional habitat acres next to the Military Operations Urban Terrain (MOUT) facility and provides for MPC to relocate a planned public safety officer training facility from the East Garrison area to the Parker Flats area. The County, FORA, and MPC entered into an October 21, 2002 agreement entitled "Agreement Regarding Public Safety Officer Training Facilities," which further describes relocation of MPC's planned facilities from the East Garrison area to the Parker Flats area.

(2) Provides for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory;

No increase in density would be permitted by the General Plan.

(3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution;

The General Plan is in substantial conformance with applicable programs. FORA staff notes that a member of the public and representatives of the Ventana Chapter of the Sierra Club, Keep Fort Ord Wild, the Open Monterey Project, and LandWatch Monterey County provided correspondence at the August 27 and September 17, 2013 Monterey County Board of Supervisors hearings pertaining to consistency between the 2010 Monterey County General Plan 1997 BRP. In summary, these individual letters requested that the Monterey County Board of Supervisors not adopt the consistency finding, citing instances of incomplete policies and programs and other issues. FORA staff concurs with Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/Resolution No. 13-307 page 5 of 13 that:

Some but not all of the policies programs have been implemented. Implementation efforts are currently underway. Implementation of the Base Reuse Plan policies is a separate measure from Consistency with the Base Reuse Plan.

Special legal counsel Alan Waltner's September 3, 2013 memorandum further stated that "FORA's procedures for determining consistency correctly interpret and apply the FORA Authority Act, Government Code Sections 67650-67700 and the FORA Master Resolution."

Comment letters from the Ventana Chapter of the Sierra Club and member of the public Jane Haines are included in **Attachment F**.

County staff submitted an October 23, 2013 letter (**Attachment G**) providing additional analysis on concerns raised in recent comment letters and how these concerns are addressed.

(4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;

The General Plan is compatible with open space, recreational, and habitat management areas.

(5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision;

County development within the former Fort Ord that is affected by the General Plan will pay its fair share of the basewide costs through the FORA Community Facilities District special tax and property taxes that will accrue to FORA, as well as land sales revenues. This is evidenced in Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/Resolution No. 13-307 page 6 of 13 and the May 8, 2001 Implementation Agreement between FORA and County of Monterey.

(6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan;

The Fort Ord Habitat Management Plan (HMP) designates certain parcels for "Development," in order to allow economic recovery through development while promoting preservation, enhancement, and restoration of special status plant and animal species in designated habitats. The General Plan affects lands that are located within areas designated for "Habitat Reserve," "Habitat Corridor," "Development with Reserve Areas and Restrictions," and "Development with no Restrictions" under the HMP. Lands designated as "Development with no Restrictions" have no management restrictions placed upon them as a result of the HMP. The General Plan requires implementation of the Fort Ord HMP.

(7) Is not consistent with the Highway 1 Design Corridor Design Guidelines as such guidelines may be developed and approved by the Authority Board; and

The General Plan would not modify Highway 1 Design Corridor Design Guidelines.

(8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

The General Plan is consistent with the jobs/housing balance approved by the FORA Board.

Additional Considerations

(9) Is not consistent with FORA's prevailing wage policy, section 3.03.090 of the FORA Master Resolution.

The General Plan does not modify prevailing wage requirements for future development entitlements within the County's jurisdiction on former Fort Ord.

FISCAL IMPACT:

Reviewed by FORA Controller 

This action is regulatory in nature and should have no direct fiscal, administrative, or operational impact. In addition to points already dealt with in this report, it is clarified that the developments expected to be engaged in reuse subject to the General Plan are covered by the Community Facilities District or other agreement that ensure a fair share payment of appropriate future special taxes/fees to mitigate for impacts delineated in the 1997 BRP and accompanying Environmental Impact Report. The County has agreed to provisions for payment of all required fees for future developments in the former Fort Ord under its jurisdiction.

Staff time related to this item is included in FORA's annual budget.

COORDINATION:

The County, Planners Working Group, Administrative Committee, and Executive Committee

Prepared by Jonathan Garcia Reviewed by D. Steven Endsley
Jonathan Garcia Steve Endsley

Approved by D. Steven Endsley for
Michael A. Houlemard, Jr.

Resolution 14-XX

Determining Consistency of the 2010)
Monterey County General Plan)

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. On June 13, 1997, the Fort Ord Reuse Authority (FORA) adopted the Final Fort Ord Base Reuse Plan (the "Reuse Plan") under Government Code Section 67675, et seq.
- B. The Reuse Plan requires each county or city within the former Fort Ord to submit to FORA its general plan or amended general plan and zoning ordinances, and to submit project entitlements, and legislative land use decisions that satisfy the statutory requirements.
- C. By Resolution No. 98-1, the FORA Board of Directors adopted policies and procedures implementing the requirements set forth in the Reuse Plan.
- D. The County of Monterey (County) is a member of FORA. The County has land use authority over land situated within the former Fort Ord and subject to FORA's jurisdiction.
- E. After a noticed public meeting on October 26, 2012, the County adopted the 2010 Monterey County General Plan (General Plan) affecting lands on the former Fort Ord. After noticed public meetings on August 27, 2013 and September 17, 2013, the County determined the General Plan to be consistent with the Reuse Plan, FORA's plans and policies and the FORA Act, and considered the Reuse Plan Environmental Impact Report (EIR) in their review and deliberations.
- F. On September 24, 2013, the County recommended that FORA concur in the County's determination that the Reuse Plan and the General Plan are consistent. The County submitted to FORA its General Plan together with accompanying documentation.
- G. Consistent with the Implementation Agreement between FORA and the County, on September 24, 2013, the County provided FORA with a complete copy of the submittal for lands on the former Fort Ord, the resolutions and/or ordinance approving it, a staff report and materials relating to the County's action, a reference to the environmental documentation and/or CEQA findings, and findings with supporting evidence of its determination that the General Plan is consistent with the Reuse Plan and the FORA Act (collectively, "Supporting Material"). The County requested that FORA concur in the County's determination that the General Plan is consistent with the Reuse Plan for those portions of County land that lie within the jurisdiction of FORA.
- H. FORA's Executive Officer and the FORA Administrative Committee reviewed and evaluated the County's application and Supporting Materials for consistency. The Executive Officer submitted a report recommending that the FORA Board find that the General Plan is consistent with the Reuse Plan. The Administrative Committee reviewed the supporting material, received additional information, and concurred with

the Executive Officer's recommendation. The Executive Officer and the FORA Executive Committee then set the matter for public hearing before the FORA Board on October 11, 2013. The October 11, 2013 hearing was continued to November 8, 2013. The November 8, 2013 hearing was then continued to January 10, 2014.

- I. Master Resolution, Chapter 8, Section 8.02.010(a) states: "In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that:
 - (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
 - (2) Provides a development more dense than the density of use permitted in the Reuse Plan for the affected territory;
 - (3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution;
 - (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
 - (5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision; and
 - (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.
- J. In considering whether or not the General Plan is consistent with the Reuse Plan, the FORA Board has reviewed all evidence pertaining to the six criteria described in Section 8.0.020(a).
- K. In this context, the term "consistency" is defined in the General Plan Guidelines adopted by the State Office of Planning and Research as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."
- L. FORA's consistency determination must be based upon its finding that substantial evidence exists reflecting the General Plan to be in substantial conformance with the applicable programs in the Reuse Plan.

NOW THEREFORE be it resolved:

- (1) The FORA Board acknowledges the County's recommendations and actions of August 27, 2013, September 17, 2013 and September 24, 2013 that the FORA Board concur in the County's determination that the General Plan and the Reuse Plan are consistent.
- (2) The FORA Board has reviewed and considered the EIR and the County's environmental documentation, and finds that these documents provide substantial

additional information for purposes of FORA's determination that the General Plan and the Reuse Plan are consistent.

- (3) The FORA Board has considered all the materials submitted with this application for a consistency determination, the recommendations of the Executive Officer and the Administrative Committee, and the oral and written testimony presented at the hearings, all of which are hereby incorporated by reference.
- (4) The FORA Board finds that the General Plan is consistent with the Base Reuse Plan. The FORA Board further finds that its legislative decision is based in part upon the substantial evidence submitted regarding allowable land uses, a weighing of the Reuse Plan's emphasis on a resource constrained sustainable reuse that evidences a balance between jobs created and housing provided, and that the cumulative land uses contained in the County's submittal are not more intense or dense than those contained in the Reuse Plan.
- (5) The General Plan will, considering all its aspects, further the objectives and policies of the Reuse Plan. The County application is hereby determined to satisfy the requirements of Title 7.85 of the Government Code and the Reuse Plan.

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this 10th day of January, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

Jerry Edelen, Chair

Michael A. Houlemard, Jr., Secretary

Resolution 14-XX

Denial of certification of the 2010)
Monterey County General Plan)
Until suggested modifications are)
Adopted and submitted)

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. On June 13, 1997, the Fort Ord Reuse Authority (FORA) adopted the Final Base Reuse Plan (the "Reuse Plan") under Government Code Section 67675, et seq.
- B. The Reuse Plan requires each county or city within the former Fort Ord to submit to FORA its general plan or amended general plan and zoning ordinances, and to submit project entitlements, and legislative land use decisions that satisfy the statutory requirements.
- C. By Resolution No. 98-1, the Authority Board of FORA adopted policies and procedures implementing the requirements set forth in the Reuse Plan.
- D. The County of Monterey (County) is a member of FORA. The County has land use authority over land situated within the former Fort Ord and subject to FORA's jurisdiction.
- E. After a noticed public meeting on October 26, 2012, the County adopted the 2010 Monterey County General Plan (General Plan), affecting lands on the former Fort Ord. After noticed public meetings on August 27, 2013 and September 17, 2013 the County determined the General Plan to be consistent with the Reuse Plan, FORA's plans and policies and the FORA Act and considered the Reuse Plan Environmental Impact Report (EIR) in their review and deliberations.
- F. On September 24, 2013, the County recommended that FORA concur in the County's determination that the Reuse Plan and the General Plan are consistent. The County submitted to FORA its General Plan together with accompanying documentation.
- G. Consistent with the Implementation Agreement between FORA and the County, on September 24, 2013, the County provided FORA with a complete copy of the submittal for lands on the former Fort Ord, the resolutions and/or ordinance approving it, a staff report and materials relating to the County's action, a reference to the environmental documentation and/or CEQA findings, and findings and supporting evidence of its determination that the General Plan is consistent with the Reuse Plan and the FORA Act (collectively, "Supporting Material"). The County requested that FORA concur in County's determination that the General Plan is consistent with the Reuse Plan for those portions of the County that lie within the jurisdiction of FORA.
- H. FORA's Executive Officer and the FORA Administrative Committee reviewed and evaluated the County's application and Supporting Materials for consistency. The Executive Officer submitted a report recommending that the FORA Board find that the

General Plan is consistent with the Reuse Plan. The Administrative Committee reviewed the Supporting Material, received additional information, and concurred with the Executive Officer's recommendation. The Executive Officer and the FORA Executive Committee set the matter for public hearing before the FORA Board on October 11, 2013. The October 11, 2013 hearing was continued to November 8, 2013. The November 8, 2013 hearing was then continued to January 10, 2014.

- I. Master Resolution, Chapter 8, Section 8.01.020(e) reads in part: "(e) In the event the Authority Board refuses to certify the legislative land use decision in whole or in part, the Authority Board's resolution making findings shall include suggested modifications which, if adopted and transmitted to the Authority Board by the affected land use agency, will allow the legislative land use decision to be certified. If such modifications are adopted by the affected land use agency as suggested, and the Executive Officer confirms such modifications have been made, the legislative land use decision shall be deemed certified..."
- J. Master Resolution, Chapter 8, Section 8.02.010(a)(4) reads in part: "(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record that (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property..."
- K. In this context, the term "consistency" is defined in the General Plan Guidelines adopted by the State Office of Planning and Research as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."
- L. FORA's consistency determination must be based upon its finding that substantial evidence exists reflecting the General Plan to be in substantial conformance with the applicable programs in the Reuse Plan.

NOW THEREFORE be it resolved:

1. The FORA Board acknowledges the County's recommendations and actions of August 27, 2013, September 17, 2013 and September 24, 2013 that the FORA Board concur in the County's determination that the General Plan and the Reuse Plan are consistent.
2. The FORA Board has reviewed and considered the EIR and the County's environmental documentation, and finds that these documents provide substantial additional information for purposes of FORA's determination that the General Plan and the Reuse Plan are consistent.
3. The FORA Board has considered all the materials submitted with this application for a consistency determination, the recommendations of the Executive Officer and Administrative Committee and the oral and written testimony presented at the hearings, all of which are hereby incorporated by reference.

4. The FORA Board denies certification of the General Plan until the following policies and programs are adopted in the Fort Ord Master Plan component of the General Plan as currently included in the Reuse Plan EIR: Recreation/Open Space Land Use (ROLU) Policy A-1, ROLU Program A-1.2, Hydrology and Water Quality (HWQ) Policy B-1, HWQ Programs B-1.1 through B-1.7, HWQ C-6.1, Biological Resources (BR) Policy C-2, BR Programs C-2.1, C-2.2, C-2.3, and C-2.5.
5. If such modifications are adopted by the County as suggested, and the Executive Officer confirms such modifications have been made, the General Plan shall be deemed consistent with the Reuse Plan.

Upon motion by _____, seconded by _____, the foregoing Resolution was passed on this 10th day of January, 2014, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST

Jerry Edelen, Chair

Michael A. Houlemard, Jr., Secretary

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Attachment C to Item 8b
FORA Board Meeting, 1/10/2014

Planning Department
Mike Novo, AICP, Director of Planning

168 West Alisal Street, 2nd Floor
Salinas, CA 93901
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September 24, 2013

Jonathan Garcia, Senior Planner
Fort Ord Reuse Authority
920 2nd Ave., Suite A
Marina, CA 93933

**SUBJECT: REQUEST FOR FORA CONSISTENCY DETERMINATION ON THE
2010 MONTEREY COUNTY GENERAL PLAN PURSUANT TO FORA MASTER
RESOLUTION, ARTICLE 8.01.020**

Dear Mr. Garcia,

On October 26, 2010 the Board of Supervisors of the County of Monterey adopted a comprehensive General Plan update (2010 General Plan) (Resolution 10-291). The 2010 General Plan now governs the future physical development of the unincorporated areas of the County of Monterey, excluding the Coastal Areas, but including most of the Former Fort Ord. As it relates to property in the territory of the Authority to the Executive Officer, the 2010 General Plan contains the Fort Ord Master Plan (in Chapter 9-E). The Fort Ord Master Plan is essentially the same as the 2001 Fort Ord Master Plan that was adopted by the County and found consistent by the Fort Ord Reuse Authority Board on January 18, 2002 (FORA Resolution #02-3) with some minor updates and amendments including:

- Recognition of the Land Swap Agreement
- Re-insertion of policies missing from the 2001 plan; and
- Updates to policies regarding the landfill parcel, East Garrison, and the York Road Planning area to reflect more recent events.

In February of 2012, the County submitted a package, with a formal request for a consistency determination to the Fort Ord Reuse Authority. That package included 1 hard copy and 5 CD's with the following documents and information:

- **Attachment 1** – The adopted 2010 General Plan
- **Attachment 2** – CEQA documents including:
 - a. Draft EIR
 - b. Final EIR; and
 - c. Supplemental Information to the FEIR
- **Attachment 3** – Reports and Resolutions
 - a. Planning Commission Staff Report and Resolution from August 11, 2010
 - b. Board of Supervisors Staff Report and Resolutions (10-290 and 10-291)

- **Attachment 4** – Fort Ord Master Plan redline version showing changes to text from the previously adopted and certified County version of the Fort Ord Base Reuse Plan.
- **Attachment 5** – Consistency Analysis

The County's consistency determination request was placed on hold while the County processed the consistency findings and certification required by the FORA Master Resolution. Between the time of the original submittal and the submittal of this information, the County has amended the 2010 General Plan three times. Because of these amendments, the County would like to ensure that FORA is working with, and considering consistency of, the most recent version of the General Plan. The updated sections of the General Plan along with the EIR Addendums prepared for those amendments are included in this revised submittal. In total, this revised submittal contains the following documents and information:

- **Amendments to Attachment 1 (The 2010 General Plan)** –
 - Updated Carmel Valley Master Plan Chapter (Chapter 9-B of the General Plan)
 - Updated Public Services Chapter (Chapter 5 of the General Plan)These replace the chapters in the previously submitted General Plan. Note: The third amendment involved a land use designation change on a parcel in southern Monterey County and did not have any effect on Fort Ord Territory.
- **Additions to Attachment 2 (CEQA Documents)** – Addendums to the General Plan EIR were prepared for the General Plan amendments listed above.
 - Addendum 1 – (For Amendment to Chapter 5 of 2010 General Plan)
 - Addendum 2 – (for Amendment to Carmel Valley Master Plan)
 -
- **Additions to Attachment 3 (Reports and Resolutions)** – Two new Board of Supervisors Board Reports and Resolutions certifying that the 2010 General Plan is consistent with the Base Reuse Plan:
 - September 17, 2013 Board Report and Resolution affirming and updating the August 27, 2013 decision (Resolution # 13-0952)
 - August 27, 2013 Board Report and Resolution (Resolution # 13-0290)
 - Board Report for September 17, 2013 Public Hearing
- **Amended Attachment 5 (Consistency Analysis)** – A new and updated consistency analysis was attached to the August 27 and September 17 Board Resolutions. That analysis is the same in both reports.
- **New Attachment 6 (Public Comment)** – New comments and correspondence received on for the August 27 and September 17 Board of Supervisors hearing on the consistency certification.
 - Letter from Sierra Club – Ventana Chapter – September 16, 2013
 - Letter from Law Offices of Michael Stamp – September 17, 2013
 - Letter from Jane Haines -- September 16, 2013
 - Letter from Jane Hainse – August 26, 2013

- o Letter from MR Wolfe – August 26, 2013 (Attachement D of September 17, 2013 Board Report.

As was the case with the first, submitted with this letter is one hard copy and 5 CD's with the updated information listed above. All of the documents from the original submittal and the updated submittal can be found by following the link below:

www.co.monterey.ca.us/planning/gpu/GPU_2007/2010_Mo_Co_General_Plan_Adopted_102610/2010_Mo_Co_General_Plan_Adopted_102610.htm

This link will take you to the page for the 2010 General Plan, which provides links to the EIR and all addendums and a link directly to the material submitted as part of this package.

We would be happy to provide FORA staff and the FORA Board with any additional information deemed necessary to complete the Consistency Determination review. We look forward to working with you on this and should you have any questions regarding this submittal please contact Craig Spencer at (831) 755-5233 or John Ford at (831) 755-5158.

Sincerely,


FOR

Craig W. Spencer, Associate Planner
Monterey County -- Planning Department
Email: spencerc@co.monterey.ca.us

Attachments

779 DOLORES STREET
SAN FRANCISCO, CALIFORNIA 94110
TEL (415) 641-4641
WALTNERLAW@GMAIL.COM

Memorandum

Date: December 26, 2013
To: Fort Ord Reuse Authority
Board of Directors
Mayor Jerry Edelen, Board Chair
Michael Houlemard, Executive Officer
From: Alan Waltner, Esq.
RE: Response to Certain Comments on the Monterey County General Plan
Consistency Review

This memorandum responds to your request that we address certain comments made in a series of letters submitted to FORA¹ by Jane Haines regarding the Monterey County General Plan Consistency Review that is currently pending before FORA. In general, this response highlights points made in our two previous memoranda that have been overlooked in these letters.

Although the letters are extensive in length, they largely repeat three basic arguments. First, they argue that Section 8.02.010 or the FORA Master Resolution effectively modified the consistency review standards of the FORA Act and Master Resolution to require “strict adherence to the 1997 Reuse Plan” before consistency can be found. Second, they argue that substantial evidence has been provided triggering disapproval of the Monterey County General Plan under one or more of the provisions of Master Resolution Section 8.02.010 – specifically provisions relating to the intensity of land uses, the density of land uses, and substantial conformance with applicable programs in the Reuse Plan. Third, they argue that there is no legal authority supporting a consistency review standard that parallels the standard applying in the local planning context under the Planning and Zoning Law. All three of these arguments were addressed in our previous memoranda, as summarized in this memorandum.

First, there is no support in the FORA Act or Master Resolution for a “strict adherence” standard for consistency reviews. The FORA Act itself simply requires that the FORA Board find that “the portions of the general plan or amended general plan applicable to the territory of the base . . . are consistent with the reuse plan.” Government Code Section 67840.2. As with all statutes, this provision is to be interpreted in accordance with the “plain meaning” of the word chosen by the Legislature, which is “consistent.”

¹ Abbreviations, acronyms and references used in our previous memoranda dated July 3 and September 3, 2013 will be applied in this memorandum.

Regardless of the dictionary chosen, the definition of the word is similar. For example, the Merriam-Webster online dictionary defines the term as: "marked by harmony, regularity, or steady continuity: free from variation or contradiction." The term does not require that two items be identical or strictly adhere to one another. Instead, it only requires harmony and a lack of conflict. This is the approach taken in extensive case law interpreting the Legislature's intention in using the same word in the Planning and Zoning Law, as summarized in our previous memoranda.² It is also reflected in various provisions of the Master Resolution. For example, Section 8.02.010(b) clearly allows the "transfer of the intensity of land uses and/or density of development" between specific locations on the base, so long as "the cumulative net density or intensity of the Fort Ord Territory is not increased." This means that "strict adherence" to the uses on specific parcels is not required so long as a base-wide balance of intensity and density is demonstrated. Regarding compliance with BRP programs, Section 8.02.010(a)(3) of the Master Resolution requires only "substantial conformance" with "applicable" programs. Again, this is much different than the "strict adherence" standard urged in the comment letters. We continue to conclude that the standards being applied by FORA accurately implement the FORA Act and the Master Resolution.

The comment letters argue that language in Master Resolution Section 8.02.010(a) stating that the Board "shall disapprove any legislative land use decision for which there is substantial evidence of [six listed factors]" implicitly modifies the meaning of the word "consistent" or alters the consistency review criteria of the Master Resolution to create a "strict adherence" standard. This implied modification of the applicable standard is unsupported by the structure or language of the provision. Such an interpretation would also conflict with several rules of statutory construction, particularly the rule against rendering language surplusage (the interpretation would effectively read Section 8.02.010(b) and the "substantial conformance" language out of the Master Resolution) and the rule disfavoring implied repeals.³ The plain meaning of the term "consistent" still applies, as do the limitations of the Master Resolution embodied in the "substantial conformance" and "applicable" references.

Second, there is no substantial evidence that any of the six criteria of Master Resolution Section 8.02.010(a) have been triggered.⁴ The comment letters reflect several

² The extensive discussion in the comment letters of differences between the FORA Act and the Planning and Zoning Law does not alter the fact they both use the same term ("consistent") in a similar context.

³ There are also substantial questions as to whether the 1997 FORA Board could adopt provisions in the Master Resolution that conflict with the FORA Act, establish review standards binding on a reviewing Court; or limit the police power discretion of subsequent FORA Boards. These issues are reserved for subsequent elaboration if needed.

⁴ We note that the six criteria of this section are connected with the word "and." Literally read, then, there would need to be substantial evidence that all six criteria have been triggered before disapproval is required. The comment letters focus on three of the six criteria and no argument is made regarding the other three. Since there is no substantial evidence that any of the criteria have been triggered, this memorandum does not rely upon the use of the word "and" in this provision, but the argument is reserved. Master Resolution 8.02.010(a)(3) also refers only to substantial conformance with "programs" and does not reference substantial conformance with "policies" of the BRP. Again, this memorandum does not rely

fundamental flaws in making this argument. Most importantly, the comment letters generally do not point to any specific evidence of a lack of consistency, but instead simply reference the Monterey County General Plan and FORA BRP as a whole and urge that within them are unspecified inconsistencies. In other words, the comment letters do not identify the "substantial evidence" upon which they are relying. The comment letters also do not attempt to rebut Monterey County's analyses of consistency that support the application. The argument further erroneously applies the "strict adherence" standard addressed earlier herein. Thus, for example, regarding the requirement of "substantial conformance" with "applicable" programs of the BRP, there is no specifically identified evidence in any of the comment letters that any particular applicable program has not met the substantial conformance test.

We note in this regard that the entirety of the BRP has been incorporated by reference into the Monterey County General Plan that is the subject of the pending consistency review application. See Monterey County 2010 General Plan, Chapter 9.E ("This plan incorporates all applicable policies and programs contained in the adopted Reuse Plan as they pertain to the subject area."). The comment letters do not attempt to explain how, despite this incorporation, "substantial conformance" with applicable BRP programs has not been achieved.

Given the general lack of specific objections in the comments, a more detailed response to the commenter's substantial evidence argument cannot be made. The most specific objection made is to the fact that a natural ecosystem easement has not yet been recorded by Monterey County for the Monterey Downs area. See October 10, 2013 letter from Jane Haines. However, a commitment has been made by Monterey County, through incorporation of the BRP program requiring such an easement. The fact that implementation of this easement obligation is not yet applicable (there is not yet a specific Monterey Downs proposal and adjustments to any protected areas are likely to be made, meaning that the property description in an easement cannot yet be defined and recording such an easement is not yet possible) does not provide any evidence that substantial conformance with this BRP program is not reflected in the Monterey County General Plan. Any specific development entitlements for Monterey Downs will be subject to further review by the FORA Board at which time the easement obligation can be enforced if necessary. The other objections in the comment letters are very cursory and do not describe the substantial evidence purported to demonstrate a lack of substantial conformance with applicable BRP programs.

Third, although no challenge to a FORA consistency determination has ever been brought, and no other challenge to a FORA land use action has ever proceeded to a written judicial opinion, this does not mean that there is no legal authority for the interpretation and application of the consistency standard. As discussed earlier herein, the Legislature's use of the word "consistent" in the FORA Act, and FORA's interpretations and implementation of this language in the Master Resolution, are the applicable law, as discussed earlier herein and in our earlier memoranda.

upon this omission, since there is no substantial evidence of applicable BRP policies that have not been substantially complied with, but this argument is likewise reserved.

FORA Master Resolution Section	Finding of Consistency	Justification for finding
(1) Does not provide for a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;	Yes	The General Plan does not establish land use designations more intense than permitted in the Base Reuse Plan ("BRP"). See Exhibit 1 to Monterey County Board of Supervisors Order 13-0952/Resolution No. 13-307 (Reso. 13-307) page 5 of 13.
(2) Does not provide for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory;	Yes	The General Plan does not allow denser development than permitted in the BRP. See Reso. 13-307 page 5 of 13.
(3) Is in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.	Yes	The General Plan is in compliance with applicable programs. See Reso. 13-307 page 5 of 13.
(4) Does not provide uses which conflict with or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict with or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;	Yes	No conflict or incompatibility exists between the General Plan and BRP. See Reso. 13-307 page 6 of 13.
(5) Requires or otherwise provides for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision;	Yes	The General Plan does not modify County obligations to contribute to basewide costs. See Reso. 13-307 page 6 of 13.
(6) Requires or otherwise provides for implementation of the Fort Ord Habitat Management Plan ("HMP").	Yes	The General Plan provides for HMP implementation. See Reso. 13-307 page 6 of 13.
(7) Is consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.	Yes	The General Plan does not modify Highway 1 Scenic Corridor design standards.
(8) Is consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(f) of this Master Resolution.	Yes	The General Plan is consistent with job/housing balance requirements. See Reso. 13-307 page 13 of 13.
(9) Prevailing Wage	Yes	The General Plan does not modify prevailing wage requirements.

ATTACHMENT 3

**Monterey County Board of Supervisors
Referral Submittal Form**

Referral No.: 2013.16

Assignment Date: November 5, 2013

To be completed by referring Board office and returned to CAO no later than noon on Thursday before next Board meeting:

Referral Title: County Counsel Assessment of Fort Ord Consistency Issues
Referral Purpose: To obtain a legal opinion from County Counsel on the impacts of inconsistent language between the County General Plan and the Fort Ord Reuse Plan.
Referral Description (30 words or less): See attached.

Attach additional sheet as required	
Classification - Implication	Mode of Response
<input type="checkbox"/> Ministerial / Minor <input checked="" type="checkbox"/> Land Use Policy <input type="checkbox"/> Social Policy <input type="checkbox"/> Budget Policy <input type="checkbox"/> Other: _____	<input checked="" type="checkbox"/> Memo <div style="text-align: center; padding: 5px;">Requested Response Timeline</div> <input checked="" type="checkbox"/> 2 weeks <input type="checkbox"/> 1 month <input type="checkbox"/> 6 weeks <input type="checkbox"/> Status reports until completed
Date: 10/31/13	Submitted By: Supervisor Jane Parker
District #: 4	

To be completed by CAO and copied to referring Board office:

Assigned Department: County Counsel	Referral Lead: Strimling
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To be completed by Department:

Department analysis of resources required/impact on existing department priorities to complete referral:
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Referral Completed By: _____	Recommended Response Timeline
Completion Date: _____	<input type="checkbox"/> 2 weeks <input type="checkbox"/> 1 month <input type="checkbox"/> 6 weeks <input type="checkbox"/> 6 months <input type="checkbox"/> 1 year <input type="checkbox"/> Other: _____ <input type="checkbox"/> Specific Date: _____

To be completed by Clerk of the Board:

Referral Completion Date: _____

ATTACHMENT TO BOARD REFERRAL ENTITLED: COUNTY COUNSEL
ASSESSMENT OF FORT ORD CONSISTENCY ISSUES

It has been determined that the County General Plan policies for Fort Ord do not match the mitigation policies set forth in Volume 4 of the Fort Ord Reuse Plan (FORP) because staff relied upon a draft of the FORP instead of the final version which was never printed and distributed by FORA. RMA staff have issued an opinion that, for a variety of reasons, the lack of consistency in the language is not significant and therefore does not need to be fixed.

This referral seeks a review by County Counsel on that conclusion by RMA staff, and specifically seeks an opinion as to County liability in the event a developer relies upon the County General Plan in preparing its project application and CEQA paperwork, only to be told by the Fort Ord Reuse Authority that there are additional requirements, when the developer has a reasonable expectation that the two documents match due to the consistency determinations by the County of Monterey and FORA.

Please include a specific assessment of whether the oak woodland protection policies in the General Plan, state law, and County Code provide protection that is equivalent to the protections of FORP's Biological Resources Policy C-2, as represented by RMA staff.

For convenient reference, the policies from Volume 4 of FORP (referenced in the staff's October 23, 2013 letter to FORA) are attached. The highlighting notations indicate changes that were made during final adoption, thus one can decipher the draft language used by the County versus the final adopted language.

Urban Village and Employment Center with approximately 85 acres dedicated to Office/R&D and Business Park/Light Industrial land uses. These manufacturing and possibly labor-intensive uses could create nuisances including increased noise, traffic, and air pollution, which may adversely affect the recreational opportunities and experiences at the Youth Camp District. The ~~MOUT-POST~~ facility would also potentially conflict with the Youth Camp District due to noise and public safety risks.

The following policies and programs developed for the ~~Draft Fort Ord Reuse Plan~~ for Monterey County relate to both the protection of open space and compatibility of open space areas with adjacent areas:

Land Use Element

Recreation/Open Space Land Use Policy A-1: The County of Monterey shall protect ~~encourage the conservation and preservation of~~ irreplaceable natural resources and open space at former Fort Ord.

Program A-1.1: The County of Monterey shall identify natural resources and open space, and incorporate them into Greater Monterey Peninsula Area Plan and zoning designations.

Program A-1.2: The County of Monterey shall cause to be recorded a Natural Ecosystem Easement deed restriction that will run with the land in perpetuity for all identified open space lands.

Recreation/Open Space Land Use Policy B-2: The County of Monterey shall use open space as a buffer between various types of land use.

Program B-2.1: The County of Monterey shall review each development project at former Fort Ord with regard to the need for open space buffers between land uses.

Recreation / Open Space Land Use: Program B-1.6: The Youth Camp District in the Reservation Road Planning Area is intended for rehabilitation of the existing travel camp. The County of Monterey shall assure that this planned use is compatible with adjacent land uses which may include a public safety agency training facility with shooting ranges in the East Garrison area located to the East.

Institutional Land Use Policy A-1: The County of Monterey shall review and coordinate with the universities, colleges and other school districts or entities the planning of both public lands designated for university-related uses and adjacent lands.

Program A-1.4: The County of Monterey shall minimize the impacts of proposed land uses which may be incompatible with public lands, such as major roadways near residential or university areas, location of the York School augmentation area adjacent to the habitat management area, and siting of the Monterey Peninsula College's MOUT law enforcement training program in the BLM Management/Recreation Planning Area.

Further policies regarding the general protection of open space areas can be found in Section 4.3 - Recreation and Open Space Element of the ~~Draft Fort Ord Reuse Plan~~. Additional policies and

If groundwater wells were unable to supply the projected 2015 demand of 6,600 afy of water for former Fort Ord land uses, e.g., if pumping caused further seawater intrusion into the Salinas Valley aquifer, the desalination plant could be developed earlier than the year 2015. It is recommended that an alternate water supply source, such as on-site storage facilities, be considered.

In order to ensure the water supply issue is resolved and the proposed project does not aggravate or increase the seawater intrusion problem, policies and programs have been developed that would need to be adopted before development of the proposed project could proceed. The following policies and programs for the Cities of Marina and Seaside and Monterey County relate to water supply. [Also refer to the policies and programs related to groundwater recharge in Section 4.5.2].

Conservation Element

Hydrology and Water Quality Policy B-1: The City/County shall ensure additional water supply to critically deficient areas.

Program B-1.1: The City/County, with assistance input from FORA and the MCWRA MPWMD, shall identify potential reservoir and water impoundment sites on the former Fort Ord and zone those areas for watershed use, which would preclude urban development.

Program B-1.2: The City/County shall work with FORA and the MCWRA appropriate agencies to determine the feasibility of developing additional water supply sources for the former Fort Ord, such as water importation and desalination, and actively participate in implementing the most viable options(s).

Program B-1.3: The City/County, in conjunction with FORA, shall adopt and enforce a water conservation ordinance, which includes requirements for plumbing retrofits and is at least as stringent as Regulation 13 of the MPWMD Monterey County's ordinance, to reduce both water demand and effluent generation.

Program B-1.4: The City/County shall continue to actively participate in and support the development of "reclaimed" water supply sources by the water purveyor and the MRWPCA to insure adequate water supplies for the former Fort Ord.

Program B-1.5: The City/County shall promote the use of on-site water collection, incorporating measures such as cisterns or other appropriate improvements to collect surface water for in-tract irrigation and other non-potable use.

Program B-1.6: The City/County shall work with FORA to assure the long-range water supply for the needs and plans for reuse of the former Fort Ord.

Program B-1.7: The City/County, in order to promote FORA's Development and Resource Management Plan (DRMP) shall provide FORA with an annual summary of the following: 1) the number of new residential units, based on building permits and approved residential projects, within its former Fort Ord boundaries and estimate, on the basis of the unit count, the current and projected population. The report shall distinguish units served by water from FORA's allocation and water from other available sources; 2) estimate of existing and projected jobs within its Fort Ord boundaries based on development projects that are on-going, completed, and approved; and 3) approved projects to assist FORA's monitoring of water supply, use, quality, and yield.

Program C-1.1: The City/County shall comply with the nonpoint pollution control plan developed by the California Coastal Commission and the SWRCB, pursuant to Section 6217 of the Federal Coastal Zone Management Act Reauthorization Amendments of 1990, if any stormwater is discharged into the ocean.

Program C-1.3: The City/County shall comply with the management plan to protect Monterey Bay's resources in compliance with the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, and its implementing regulations.

Hydrology and Water Quality Policy C-2: At the project approval stage, the City/County shall require new development to demonstrate that all measures will be taken to ensure that on-site drainage systems are designed to capture and filter out urban pollution. ~~to the extent feasible.~~

Program C-2.1: The City/County shall develop and make available a description of feasible and effective measures and site drainage designs that could be implemented in new development to minimize water quality impacts.

Hydrology and Water Quality Policy C-6: In support of Monterey Bay's national marine sanctuary designation, the City/County shall support all actions required to ensure that the bay and intertidal environment will not be adversely affected, even if such actions should exceed state and federal water quality requirements.

Program C-6.1: The City/County shall work closely with other Fort Ord jurisdictions and the CDFR to develop and implement a plan for stormwater disposal that will allow for the removal of the ocean outfall structures and end the direct discharge of stormwater into the marine environment. The program must be consistent with State Park goals to maintain the open space character of the dunes, restore natural landforms, and restore habitat values.

These policies and programs, in addition to compliance with applicable water quality regulations, would require development of on-site drainage systems for new developments and protection of Monterey Bay. This impact is therefore considered less than significant.

Mitigation: None required. Add a new program that shall require preparation of a Master Drainage Plan should be developed for the Fort Ord property to assess the existing natural and man-made drainage facilities, recommend area-wide improvements based on the approved Reuse Plan and develop plans for the control of storm water runoff from future development, including detention/retention and enhanced percolation to the ground water. This plan shall be developed by FORA with funding for the plan to be obtained from future development. All Fort Ord property owners (federal, state, and local) shall participate in the funding of this plan. Reflecting the incremental nature of the funding source (i.e. development), the assessment of existing facilities shall be completed first and by the year 2001 and submitted to FORA. This shall be followed by recommendations for improvements and an implementation plan to be completed by 2003 and submitted to FORA.

Program C-2.6: The City shall require that paving within the dripline of preserved oak trees be avoided wherever possible. To minimize paving impacts, the surfaces around tree trunks ~~shall should~~ be mulched, paving materials ~~shall should~~ be used that are permeable to water, aeration vents ~~shall should~~ be installed in impervious pavement, and root zone excavation ~~shall should~~ be avoided.

Biological Resources Policy B-2 (County of Monterey): As site-specific planning proceeds for Polygons 8a, 16, 17a, 19a, 21a and 21b, the County shall coordinate with the Cities of Seaside and Marina, California State University, FORA and other interested entities in the designation of an oak woodland conservation area connecting the open space lands of the ~~habitat management lands NRMMA~~ on the south, the oak woodland corridor in Polygons 17b and 11a on the east and the oak woodlands surrounding the former Fort Ord landfill in Polygon 8a on the north.

Program B-2.1: For lands within the jurisdictional limits of the County that are components of the designated oak woodland conservation area, the County shall ensure that those areas are managed to maintain or enhance habitat values existing at the time of base closure so that suitable habitat is available for the range of sensitive species known or expected to use those oak woodland environments. Management measures shall include, but not be limited to maintenance of a large, contiguous block of oak woodland habitat, access control, erosion control and non-native species eradication. Specific management measures should be coordinated through the CRMP.

Program B-2.2: For lands within the jurisdictional limits of the County that are components of the designated oak woodland conservation area, the County shall monitor, or cause to be monitored, those areas in conformance with the habitat management compliance monitoring protocol specified in the HMP Implementing/Management Agreement and shall submit annual monitoring reports to the CRMP.

Biological Resources Policy C-2: The County shall ~~preserve~~ encourage the preservation and enhancement of oak ~~the~~ woodland elements in the natural and built environments.

Program C-2.1: The County shall ~~encourage~~ clustering of development wherever possible so that contiguous stands of oak trees can be maintained in the non-developed natural land areas.

Program C-2.2: The County shall apply ~~certain~~ restriction for the preservation of oak and other protected trees in accordance with Chapter 16.60 of Title 16 of the Monterey County Code (Ordinance 3420).

Program C-2.3: The County shall require the use of oaks and other native plant species for project landscaping. To that end, the County shall ~~require~~ collection and ~~propagation~~ ~~propagate~~ of acorns and other plant material from former Fort Ord oak woodlands to be used for restoration areas or as landscape ~~plants~~ material. However, this program does not exclude the use of non-native ~~plants~~ species.

Program C-2.4: The County shall provide the following standards for plantings that may occur under oak trees; 1) plantings may occur within the dripline of mature trees, but only at

a distance of five feet from the trunk and 2) plantings under and around oaks should be selected from the list of approved species compiled by the California Oak Foundation (see *Compatible Plants Under and Around Oaks*).

Program C-2.5: The County shall require that paving within the dripline of preserved oak trees be avoided wherever possible. To minimize paving impacts, the surfaces around tree trunks ~~shall~~ should be mulched, paving materials ~~shall~~ should be used that are permeable to water, aeration vents ~~shall~~ should be installed in impervious pavement, and root zone excavation ~~shall~~ should be avoided.

The proposed project includes the establishment of an oak woodland conservation area, in addition to the preservation of oak woodlands within the habitat management lands ~~NRMA~~ and other conservation areas and corridors established by the HMP, which would result in the retention of large contiguous areas of oak woodland habitat. Because the proposed policies and programs would minimize loss of oak trees through careful site design in development areas and effectively require a 1:1 replacement for all trees removed (as called for in the Monterey County Ordinance), effects on oak woodlands would be considered a less-than-significant impact.

Mitigation: None required

6. Impact: Affecting up to Approximately Six Acres of Native Perennial Grassland

Implementation of the proposed project would result in the loss of up to approximately six acres of native perennial grassland. This represents approximately 1% of the total acreage of this community at former Fort Ord. The majority of native perennial grassland on former Fort Ord (470 acres) will be protected within the habitat management lands ~~NRMA~~ lands. As a result, the potential loss of 6 acres within the development envelope would not eliminate this plant community from the vicinity and therefore would not be considered a significant impact.

Mitigation: None required

7. Impact: Loss of vernal ponds, riparian corridors and other wetland areas

Through implementation of the proposed project, there is a potential that vernal ponds, riparian corridors or other wetland could be affected. The only wetland area that has been identified as potentially being lost is the approximately five acres of riparian forest habitat within the proposed corridor for SR 68, which would be affected by construction of the road. The affected riparian habitat would probably not be considered jurisdictional wetlands, but may be considered jurisdictional waters of the United States. All vernal ponds and most other riparian corridors and wetlands currently mapped for former Fort Ord occur within the habitat management lands ~~NRMA~~ and would therefore be preserved. However, there is potential for additional wetland areas to be identified through site-specific surveys in undeveloped natural lands in the future.

Filling of vernal ponds, streams and other wetland areas may be subject to regulation by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. Similarly, the alteration of streams and ponds is regulated by the California Department of Fish and Game. Should wetland areas occur on a project site, future landowners would have to comply with Section 404 of the Clean Water Act if the placement of dredged or fill material is proposed in wetlands or other waters of the

ATTACHMENT 4

FORT ORD REUSE AUTHORITY MASTER RESOLUTION

Adopted March 14, 1997

Amended November 20, 1998 [Addition of Chapter 8 and Amend §1.01.050, Definitions]

Amended February 19, 1999 [Update §2.03, (Committees) to add Executive Committee duties and addition of Legislative and Financial Advisory Committees; clarify and add text to §1.02.010(b)(4), (Responsibilities for Enforcement) to add City of Del Rey Oaks Police Chief as an enforcement officer and Amend §2.09.020(a), (Designated Positions; Disclosure Categories)]

Amended January 21, 2000 [Amend §2.03.040, Legislative Advisory Committee, and §2.03.050, Finance Advisory Committee (Redefine membership)]

Amended January 18, 2002 [Amend §2.03.051, Finance Advisory Committee Duties (Delete the word "monthly" in reference to Finance Committee meetings)]

Amended February 8, 2002 [Amend §2.03.040, Legislative Advisory Committee (Increase Legislative Committee membership from 6 to 8 and define voting and ex-officio members) and Amend §2.03.041, Legislative Advisory Committee Duties (Delete text that Authority Counsel should attend meetings)]

Amended April 16, 2004 [Amend Chapter 8 by the addition of Sections 8.02.020(t) and 8.02.030(a)(8), which address the jobs/housing balance in consistency determinations]

Amended February 9, 2007 [§2.02.010(a) (start time of board meetings) and §2.03.051 (duties of the Finance Advisory Committee)]

Amended March 9, 2007 [Repeal of §3.03.100 (Developers of Property Pursuant to Agreements with FORA), amendment to §3.03.090 (Prevailing Wages), and amendment to §1.01.050 (addition of definition of "First Generation Construction")]

Amended March 12, 2010 [Minor corrections throughout the document to add clarity]

Amended August 10, 2012 [Amend §2.03.020 (Executive Committee Membership) to include one ex-officio non-voting member on the Executive Committee]

Amended March 15, 2013 [Delete §2.04.060 (Authority Over Employees), amend §8.01.050(a) (Review of Development Entitlements by Appeal to Authority Board), reverse March 12, 2010 amendments to Chapter 8]

Amended April 12, 2013 [Amend §2.09.020 (Designated Positions; Disclosure Categories) to update designated positions, 23 typographical corrections to Chapter 8]

Amended May 10, 2013 [Amend §2.01.020 (Ex-Officio Membership), to delete text that prohibits ex-officio members from participation in Board/Committee closed session meetings] [Amend §2.02.030 (Notice and Call of Meetings) to add text permitting one ex-officio non-voting Board member to participate in Board/Committee closed session meetings (appointed per §2.03.020)] [Amend §2.03.020 to add text permitting currently appointed ex-officio non-voting member to participate in Executive Committee closed session meetings.]

Amended July 12, 2013 [Amend §2.02.010 (Meetings – Time and Place), to change the start time of Board meetings from 3:30 p.m. to 2:00 p.m.]

Chapter 6. AUTHORITY FEE REGULATIONS

Article 6.01. GENERAL

6.01.010. ESTABLISHMENT OF FEE REGULATIONS.

Except as otherwise provided in this Master Resolution, all fees, penalties, refunds, reimbursements, and charges of any kind collected by the Authority may be adopted by resolution or may be designated in this chapter of the Master Resolution, as amended by the Authority Board from time to time. Whenever applicable throughout the Master Resolution, reference may be made to this chapter in lieu of any reference to specific fee amounts.

Chapter 7. PUBLIC WORKS (reserved)

Chapter 8. BASE REUSE PLANNING AND CONSISTENCY DETERMINATIONS

Article 8.01 GENERAL PROVISIONS

8.01.010. REUSE PLAN.

(a) The Authority Board shall prepare, adopt, review, revise from time to time, and maintain a Reuse Plan for the use and development of the territory within the jurisdiction of the Authority. Such plan shall contain the elements mandated pursuant to the Authority Act and such other elements, policies, and programs as the Authority Board may, in its sole discretion, consider and adopt.

(b) The Reuse Plan, including all elements, policies and programs adopted in conjunction with the Reuse Plan, and any amendments thereto, shall be the official and controlling plan for the reuse of the Fort Ord Territory for the purposes specified or inferred in the Authority Act.

(c) All general and specific plans, redevelopment plans, and all other community and local plans regardless of title or description, and any amendments thereto, and all policies and programs relating to the land use or the construction, installation, or maintenance of capital improvements or public works within the Fort Ord Territory, shall be consistent with the Reuse Plan of the Authority and the plans and policies of the Authority, including the Master Resolution. The Authority shall make a determination of consistency as provided pursuant to the provisions of the Authority Act and, after the effective date hereof, this chapter.

(d) A revision or other change to the Reuse Plan which only affects Fort Ord Territory and only one of the member agencies may only be adopted by the Authority Board if one of the following conditions is satisfied:

- (1) The revision or other change was initiated by resolution adopted by the legislative body of the affected land use

- agency and approved by at least a majority affirmative vote of the Authority Board; or
- (2) The revision or other change was initiated by the Authority Board or any entity other than the affected land use agency and approved by at least a two-thirds affirmative vote of the Authority Board.

(e) All property transferred from the federal government to any user or purchaser, whether public or private, shall only be used in a manner consistent with the Reuse Plan, with the following exceptions:

- (1) Property transferred to California State University or the University of California and such property is used for educationally related or research oriented purposes; or
- (2) Property transferred to the California State Parks and Recreation Department.

(f) No land use agency or any local agency shall permit, approve, or otherwise allow any development or other change of use, or approve any development entitlement, for property within the territory of the Authority that is not consistent with the Reuse Plan.

(g) No land use agency shall issue, approve, or otherwise allow any building permit until all applicable permits, development entitlements, and approvals required under law have been approved, including, but not limited to, the approvals and permits described and enumerated in Section 3.7 of the Final Environmental Impact Report for the Reuse Plan.

(h) The Reuse Plan shall be reviewed periodically at the discretion of the Authority Board. The Authority Board shall perform a full reassessment, review, and consideration of the Reuse Plan and all mandatory elements as specified in the Authority Act prior to the allocation of an augmented water supply, or prior to the issuance of a building permit for the 6001st new residential dwelling unit (providing a total population of 35,000 persons) on the Fort Ord Territory or by January 1, 2013, whichever event occurs first. No more than 6000 new dwelling units shall be permitted on the Fort Ord Territory until such reassessment, review, and consideration of the Reuse Plan has been prepared, reviewed, and adopted pursuant to the provisions of the Authority Act, the Master Resolution, and all applicable environmental laws. No development shall be approved by FORA or any land use agency or local agency after the time specified in this subsection unless and until the water supplies, wastewater disposal, road capacity, and the infrastructure to supply these resources to serve such development have been identified, evaluated, assessed, and a plan for mitigation has been adopted as required by CEQA, the Authority Act, the Master Resolution, and all applicable environmental laws.

(i) The failure of any persons or entity to receive notice given pursuant to this chapter shall not constitute grounds for any court to invalidate the action

on any legislative act or development entitlement pursuant to this chapter for which required notice was given.

(j) The Authority shall record a notice on all property in the Fort Ord Territory advising all current and future owners of property of the existence of the Reuse Plan and that development of such property shall be limited by the Reuse Plan, the policies and programs of the Authority, including the Master Resolution, and/or the constraints on development identified in the Reuse Plan, including lack of available water supply, wastewater and solid waste disposal capacity, and inadequate transportation and other services and infrastructure.

(k) In the event the Authority receives, purchases, or acquires, by any means, fee interest title to property within the Fort Ord Territory, the Authority shall record a covenant running with the land advising all future owners of such property that development and use of the property is subject to the Reuse Plan and that development of such property shall be limited by the Reuse Plan, the policies and programs of the Authority, including the Master Resolution, and/or constraints on development identified in the Reuse Plan, including lack of available water supply, wastewater and solid waste disposal capacity, and inadequate transportation and other services and infrastructure.

8.01.020. PROCEDURES FOR CONSISTENCY DETERMINATIONS FOR LEGISLATIVE LAND USE DECISIONS.

(a) Each land use agency shall submit all legislative land use decisions affecting property in the territory of the Authority to the Executive Officer for review and processing.

(b) All submissions regarding a legislative land use decision shall include:

- (1) A complete copy of the legislative land use decision, including related or applicable text, maps, graphics, and studies;
- (2) A copy of the resolution or ordinance of the legislative body approving the legislative land use decision, adopted at the conclusion of a noticed hearing certifying that the portion of a legislative land use decision applicable to the Fort Ord Territory is intended to be carried out in a manner fully in conformity with the Reuse Plan and the Authority Act;
- (3) A copy of all staff reports and materials presented or made available to the legislative body approving the legislative decision, or any advisory agency relating to the legislative land use decision;
- (4) A copy of the completed environmental assessment related to the legislative land use decision;
- (5) A statement of findings and evidence supporting the findings that the legislative land use decision is

consistent with the Reuse Plan, the Authority's plans and policies, including the Master Resolution, and is otherwise consistent with the Authority Act; and

- (6) Such other materials as the Executive Officer deems necessary or appropriate and which have been identified within 15 days of the receipt of the items described in subsection (b) of this Section.

(c) Within ninety (90) days of the receipt of all of the items described in subsection (b) above, or from the date the Executive Officer accepts the submission as complete, whichever event occurs first, the Authority Board shall conduct a noticed public hearing, calendared and noticed by the Executive Officer, to certify or refuse to certify, in whole or in part, the portion of the legislative land use decision applicable to Fort Ord Territory. The Authority Board shall adopt a resolution making findings in support of its decision, such decision shall be rendered within the time frame described in this section, and such decision shall be final. In the event the Authority Board fails, within the time frames described in this section, to conduct a public hearing or take action on determining whether the land use decision is consistent with the Plan and the Authority Act, the land use agency may file, upon ten days notice, a request with the Executive Officer to have the matter placed on the next Board agenda for a noticed public hearing to take action to consider the consistency finding and the Board shall take action at such noticed public hearing and such decision shall be final.

(d) In the event the Authority Board finds, on the basis of substantial evidence supported on the record, that the legislative act is consistent with the Reuse Plan and this chapter, the Authority Board shall certify the legislative act pursuant to the provisions of the Authority Act.

(e) In the event the Authority Board refuses to certify the legislative land use decision in whole or in part, the Authority Board's resolution making findings shall include suggested modifications which, if adopted and transmitted to the Authority Board by the affected land use agency, will allow the legislative land use decision to be certified. If such modifications are adopted by the affected land use agency as suggested, and the Executive Officer confirms such modifications have been made, the legislative land use decision shall be deemed certified. In the event the affected land use agency elects to meet the Authority Board's refusal or certification in a manner other than as suggested by the Authority Board, the legislative body of the affected land use agency shall resubmit its legislative land use decision to the Executive Officer and follow the procedures contained in this Section.

(f) No legislative land use decision shall be deemed final and complete, nor shall any land use entitlement be issued for property affected otherwise permitted by such legislative land use decision unless it has been certified pursuant to the procedures described in this section.

(g) The Authority Board may only refuse to certify zoning ordinances, zoning district maps, or other legislative land use decision on the grounds that such actions do not conform with, or are inadequate to carry out, the provisions of the general plan, certified as consistent with the Reuse Plan pursuant to the provisions of this Section, applicable to the affected property.

(h) Nothing in this Section or in this Chapter shall apply to be or construed as adversely affecting any consistency determination previously obtained by a land use agency and certified by the Authority Board pursuant to the Authority Act.

8.01.030. REVIEW OF DEVELOPMENT ENTITLEMENTS.

(a) After the portion of a general plan applicable to Fort Ord Territory has become effective, development review authority within such portion of territory shall be exercised by the land use agency with jurisdiction lying within the area to which the general plan applies. Each land use agency may issue or deny, or conditionally issue, development entitlements within their respective jurisdictions so long as the land use agency has a general plan certified pursuant to Section 8.01.020 and the decisions issuing, denying, or conditionally issuing development entitlements are consistent with the adopted and certified general plan, the Reuse Plan, and is in compliance with CEQA and all other applicable laws.

(b) All decisions on development entitlements of a land use agency affecting property within the territory of the Authority may be reviewed by the Authority Board on its own initiative, or may be appealed to the Authority Board, subject to the procedures specified in this Section. No development entitlement shall be deemed final and complete until the appeal and review procedures specified in this Section and Sections 8.01.040 and 8.01.050 of this Chapter have been exhausted.

(c) The land use agency approving a development entitlement within the jurisdiction of the Authority shall provide notice of approval or conditional approval to the Executive Officer. Notice of approval or conditional approval of a development entitlement shall include:

- (1) A complete copy of the approved development entitlement, including related or applicable text, maps, graphics, and studies.
- (2) A copy of all staff reports and materials presented or made available to any hearing body that reviewed the development entitlement.
- (3) A copy of the completed environmental assessment related to the development entitlement.

8.01.040. REVIEW OF DEVELOPMENT ENTITLEMENTS BY INITIATIVE OF THE AUTHORITY BOARD.

Within 35 days of the receipt of all of the notice materials described in Subsection (c) of Section 8.01.030, the Authority Board, on its own initiative, may consider a resolution setting a hearing on a development entitlement affecting Fort Ord Territory. The Authority Board may continue the matter of setting a hearing once for any

reason. In the event the Authority Board does not act to set the matter for hearing within the 35 day time period or at the continued meeting, whichever event is last, the decision of the land use agency approving the development entitlement shall be deemed final and shall not be subject to review by the Authority Board pursuant to this Section. Nothing in this section shall be construed as abrogating any rights that any person may have to appeal development entitlements to the Authority Board pursuant to Section 8.01.050. In the event the Authority Board sets the matter for hearing, such hearing shall commence at the first regular meeting of the Authority Board following the date the Authority Board passed its resolution setting the matter for hearing or at a special hearing date prior to such regular meeting. The Authority Board may continue the matter once. In the event the Authority Board fails to take action on the development entitlement within such time period, the development entitlement shall be deemed approved.

8.01.050. REVIEW OF DEVELOPMENT ENTITLEMENTS BY APPEAL TO AUTHORITY BOARD.

(a) Within 10 days of a land use agency approving a development entitlement, any person aggrieved by that approval and who participated either orally or in writing, in that agency's hearing on the matter, may file a written appeal of such approval with the Executive Officer, specifically setting forth the grounds for the appeal, which shall be limited to issues raised at the hearing before the land use agency. The person filing the appeal shall pay a filing fee in an amount equal to the average of the planning decision fees established by the nine member agencies of the Authority's Board, omitting the highest and the lowest fee, not to exceed the Authority's reasonable cost to prepare the appeal. The appeal fee shall be waived for an appellant who signs a declaration under penalty of perjury that she/he qualifies as very low income under low income eligibility standards set by the U.S. Department of Housing and Urban Development. The Authority Board must conduct a public hearing on the appeal within 60 days.

(b) At the time and place noticed by the Executive Officer, the Authority Board will conduct a hearing on the development entitlement. The Authority Board may continue the matter once for any reason.

(c) Said continued hearing must be rescheduled to a date that is not later than 35 days from the date of the initial hearing date. In the event the Authority Board determines the development entitlement is not consistent with the Reuse Plan, the development shall be denied and the Authority Board's decision shall be final. In the event the Authority Board determines the development entitlement is consistent with the Reuse Plan, the Authority Board shall approve the development entitlement.

8.01.060. SUPERCESSION.

In the event of a conflict or inconsistency between this Chapter of the Master Resolution and the Reuse Plan, the Development and Resource Plan, and other adopted FORA policies and procedures in regards to legislative land use decisions and/or development entitlements affecting lands within the affected territory, the provisions of this Chapter shall govern.

8.01.070. FORA AS RESPONSIBLE AGENCY UNDER CEQA.

In taking action on all legislative land decisions and for review of all development entitlements, the Authority Board shall act as a responsible agency under CEQA.

8.01.080. ADMINISTRATIVE APPEALS.

Any administrative decision made by the Executive Officer may be appealed to the Authority Board within 15 days by completing and filing a notice of appeal at the Office of the Executive Officer.

Article 8.02. CONSISTENCY DETERMINATION CRITERIA

8.02.010. LEGISLATIVE LAND USE DECISION CONSISTENCY.

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that

- (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
- (2) Provides for a development more dense than the density of use permitted in the Reuse Plan for the affected territory;
- (3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution.
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
- (5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision; and
- (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.

(b) FORA shall not preclude the transfer of intensity of land uses and/or density of development involving properties within the affected territory as long as the land use decision meets the overall intensity and density criteria of Sections 8.02.010(a)(1) and (2) above as long as the cumulative net density or intensity of the Fort Ord Territory is not increased.

(c) The Authority Board, in its discretion, may find a legislative land use decision is in substantial compliance with the Reuse Plan when the Authority Board finds that the applicant land use agency has demonstrated compliance with the provisions specified in this section and Section 8.020.020 of this Master Resolution.

8.02.020. SPECIFIC PROGRAMS AND MITIGATION MEASURES FOR INCLUSION IN LEGISLATIVE LAND USE DECISIONS.

(a) Prior to approving any development entitlements, each land use agency shall act to protect natural resources and open spaces on Fort Ord Territory by including the open space and conservation policies and programs of the Reuse Plan, applicable to the land use agency, into their respective general, area, and specific plans.

- (1) Each land use agency shall review each application for a development entitlement for compatibility with adjacent open space land uses and require suitable open space buffers to be incorporated into the development plans of any potentially incompatible land uses as a condition of project approval.
- (2) When buffers are required as a condition of approval adjacent to Habitat Management areas, the buffer shall be designed in a manner consistent with those guidelines set out in the Habitat Management Plan. Roads shall not be allowed within the buffer area adjacent to Habitat Management areas except for restricted access maintenance or emergency access roads.

(b) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will ensure consistency of future use of the property within the coastal zone through the master planning process of the California Department of Parks and Recreation, if applicable. All future use of such property shall comply with the requirements of the Coastal Zone Management Act and the California Coastal Act and the coastal consistency determination process.

(c) Monterey County shall include policies and programs in its applicable general, area, and specific plans that will ensure that future development projects at East Garrison are compatible with the historic context and associated land uses and development entitlements are appropriately conditioned prior to approval.

(d) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall limit recreation in environmentally sensitive areas, including, but not limited to, dunes and areas with rare, endangered, or threatened plant or animal communities to passive, low intensity recreation, dependent on the resource and compatible with its long term protection. Such policies and programs shall prohibit passive, low-density recreation if the Board finds that such passive, low-density recreation will compromise the ability to maintain an environmentally sensitive resource.

(e) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall encourage land uses that are compatible with the character of the surrounding districts or neighborhoods and discourage new land use activities which are potential nuisances and/or hazards within and in close proximity to residential areas. Reuse of property in the Army urbanized footprint should be encouraged.

(f) Each land use agency with jurisdiction over property in the Army urbanized footprint shall adopt the cultural resources policies and programs of the Reuse Plan concerning historic preservation, and shall provide appropriate incentives for historic preservation and reuse of historic property, as determined by the affected land use agency, in their respective applicable general, area, and specific plans.

(g) The County of Monterey shall amend the Greater Monterey Peninsula Area Plan and designate the Historic East Garrison Area as an historic district in the County Reservation Road Planning Area. The East Garrison shall be planned and zoned for planned development mixed uses consistent with the Reuse Plan. In order to implement this aspect of the plan, the County shall adopt at least one specific plan for the East Garrison area and such specific plan shall be approved before any development entitlement shall be approved for such area.

(h) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall support all actions necessary to ensure that sewage treatment facilities operate in compliance with waste discharge requirements adopted by the California Regional Water Quality Control Board.

(i) Each land use agency shall adopt the following policies and programs:

- (1) A solid waste reduction and recycling program applicable to Fort Ord Territory consistent with the provisions of the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.*
- (2) A program that will ensure that each land use agency carries out all action necessary to ensure that the installation of water supply wells comply with State of California Water Well Standards and well standards established by the Monterey County Health Department; and
- (3) A program that will ensure that each land use agency carries out all actions necessary to ensure that distribution and storage of potable and non-potable water comply with State Health Department regulations.

(j) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans to address water supply and water conservation. Such policies and programs shall include the following:

- (1) Identification of, with the assistance of the Monterey County Water Resources Agency and the Monterey Peninsula Water Management District, potential reservoir and water impoundment sites and zoning of such sites for watershed use, thereby precluding urban development;
- (2) Commence working with appropriate agencies to determine the feasibility of developing additional water supply sources, such as water importation and desalination, and actively participate in implementing the most viable option or options;
- (3) Adoption and enforcement of a water conservation ordinance which includes requirements for plumbing retrofits and is at least as stringent as Regulation 13 of the Monterey Peninsula Water Management District, to reduce both water demand and effluent generation.
- (4) Active participation in support of the development of "reclaimed" or "recycled" water supply sources by the water purveyor and the Monterey Regional Water Pollution Control Agency to ensure adequate water supplies for the territory within the jurisdiction of the Authority.
- (5) Promotion of the use of on-site water collection, incorporating measures such as cisterns or other appropriate improvements to collect surface water for in-tract irrigation and other non-potable use.
- (6) Adoption of policies and programs consistent with the Authority's Development and Resource Management Plan to establish programs and monitor development at territory within the jurisdiction of the Authority to assure that it does not exceed resource constraints posed by water supply.
- (7) Adoption of appropriate land use regulations that will ensure that development entitlements will not be approved until there is verification of an assured long-term water supply for such development entitlements.
- (8) Participation in the development and implementation of measures that will prevent seawater intrusion into the Salinas Valley and Seaside groundwater basins.
- (9) Implementation of feasible water conservation methods where and when determined appropriate by the land use agency, consistent with the Reuse Plan, including; dual plumbing using non-potable water for appropriate

functions; cistern systems for roof-top run-off; mandatory use of reclaimed water for any new golf courses; limitation on the use of potable water for golf courses; and publication of annual water reports disclosing water consumption by types of use.

(k) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will require new development to demonstrate that all measures will be taken to ensure that storm water runoff is minimized and infiltration maximized in groundwater recharge areas. Such policies and programs shall include:

- (1) Preparation, adoption, and enforcement of a storm water detention plan that identifies potential storm water detention design and implementation measures to be considered in all new development, in order to increase groundwater recharge and thereby reduce potential for further seawater intrusion and provide for an augmentation of future water supplies.
- (2) Preparation, adoption, and enforcement of a Master Drainage Plan to assess the existing natural and man-made drainage facilities, recommend area-wide improvements based on the approved Reuse Plan, and develop plans for the control of storm water runoff from future development. Such plans for control of storm water runoff shall consider and minimize any potential for groundwater degradation and provide for the long term monitoring and maintenance of all storm water retention ponds.

(l) Each land use agency shall adopt policies and programs that ensure that all proposed land uses on the Fort Ord Territory are consistent with the hazardous and toxic materials clean-up levels as specified by state and federal regulation.

(m) Each land use agency shall adopt and enforce an ordinance acceptable to the California Department of Toxic Substances Control ("DTSC") to control and restrict excavation or any soil movement on those parcels of the Fort Ord Territory, which were contaminated with unexploded ordnance, and explosives. Such ordinance shall prohibit any digging, excavation, development, or ground disturbance of any type to be caused or otherwise allowed to occur without compliance with the ordinance. A land use agency shall not make any substantive change to such ordinance without prior notice to and approval by DTSC.

(n) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will help ensure an efficient regional transportation network to access the territory under the jurisdiction of the

Authority, consistent with the standards of the Transportation Agency of Monterey County. Such policies and programs shall include:

- (1) Establishment and provision of a dedicated funding mechanism to pay for the "fair share" of the impact on the regional transportation system caused or contributed by development on territory within the jurisdiction of the Authority; and
- (2) Support and participate in regional and state planning efforts and funding programs to provide an efficient regional transportation effort to access Fort Ord Territory.

(o) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that ensure that the design and construction of all major arterials within the territory under the jurisdiction of the Authority will have direct connections to the regional network consistent with the Reuse Plan. Such plans and policies shall include:

- (1) Preparation and adoption of policies and programs consistent with the Authority's Development and Resource Management Plan to establish programs and monitor development to assure that it does not exceed resource constraints posed by transportation facilities;
- (2) Design and construction of an efficient system of arterials in order to connect to the regional transportation system; and
- (3) Designate local truck routes to have direct access to regional and national truck routes and to provide adequate movement of goods into and out of the territory under the jurisdiction of the Authority.

(p) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans to provide regional bus service and facilities to serve key activity centers and key corridors within the territory under the jurisdiction of the Authority in a manner consistent with the Reuse Plan.

(q) Each land use agency shall adopt policies and programs that ensure development and cooperation in a regional law enforcement program that promotes joint efficiencies in operations, identifies additional law enforcement needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services.

(r) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that ensure development of a regional fire protection program that promotes joint efficiencies in operations, identifies additional fire protection needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services.

(s) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that will ensure that native plants from on-site stock will be used in all landscaping except for turf areas, where practical and appropriate. In areas of native plant restoration, all cultivars, including, but not limited to, manzanita and ceanothus, shall be obtained from stock originating on Fort Ord Territory.

(t) Each land use agency shall include policies and programs in their general, area, and specific plans that will ensure compliance with the 1997 adopted FORA Reuse Plan jobs/housing balance provisions. The policies and programs for the provision of housing must include flexible targets that generally correspond with expected job creation on the former Fort Ord. It is recognized that, in addressing the Reuse Plan jobs/housing balance, such flexible targets will likely result in the availability of affordable housing in excess of the minimum 20% local jurisdictional inclusionary housing figure, which could result in a range of 21% - 40% below market housing. Each land use agency should describe how their local inclusionary housing policies, where applicable, address the Reuse Plan jobs/housing balance provisions.

- (1) Agencies submitting consistency determination requests to FORA should identify and describe, where applicable, any factors that impact production of housing. These factors may include, without limitation, public financing, water resources, land use regulations, and environmental conditions. Each jurisdiction should consider but not be limited to, the following in establishing its Reuse Plan jobs/housing balance policies and programs:
 - (a) Earmarking of tax increment housing set aside funds for housing programs, production, and/or preservation linked to jobs;
 - (b) Development and/or preservation of ownership or rental housing linked to jobs;
 - (c) Incorporation of job creation targets in project specifications;
 - (d) Linkage of existing housing resources with jobs created;
 - (e) Development of agreements with such jurisdictions for Reuse Plan-enhancing job creation or housing programs, production, and/or preservation; and
 - (f) Granting of incentives to increase additional below-market housing productions to meet job creation needs.
- (2) As a reference and guide for determining income limits and housing affordability levels, each land use agency should use measures established by the U.S.

Department of Housing and Urban Development, the California Department of Housing and Community Development, and/or the Association of Monterey Bay Area Governments when determining compliance for very low, low, median, moderate affordability and comparable affordability factors for below-market housing up to 180% of median as approved as FORA policy guidelines at the January 9, 2004 FORA Board meeting.

8.02.030. DEVELOPMENT ENTITLEMENT CONSISTENCY.

(a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section 8.01.030 of this Resolution, the Authority Board shall withhold a finding of consistency for any development entitlement that:

- (1) Provides an intensity of land use which is more intense than that provided for in the applicable legislative land use decisions, which the Authority Board has found consistent with the Reuse Plan;
- (2) Is more dense than the density of development permitted in the applicable legislative land use decisions which the Authority Board has found consistent with the Reuse Plan;
- (3) Is not conditioned upon providing, performing, funding, or making an agreement guaranteeing the provision, performance, or funding of all programs applicable to the development entitlement as specified in the Reuse Plan and in Section 8.02.020 of this Master Resolution and consistent with local determinations made pursuant to Section 8.02.040 of this Resolution.
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority.
- (5) Does not require or otherwise provide for the financing and installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the applicable legislative land use decision.
- (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.
- (7) Is not consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.

- (8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

8.02.040. ADOPTION OF REQUIRED PROGRAMS.

No development entitlement shall be approved or conditionally approved within the jurisdiction of any land use agency until the land use agency has taken appropriate action, in the discretion of the land use agency, to adopt the programs specified in the Reuse Plan, the Habitat Management Plan, the Development and Resource Management Plan, the Reuse Plan Environmental Impact Report Mitigation and Monitoring Plan and this Master Resolution applicable to such development entitlement.

Article 8.03. ENVIRONMENTAL QUALITY

8.03.010. ENVIRONMENTAL QUALITY AND PURPOSE.

The purposes of this Article are to provide guidelines for the study of proposed activities and the effect that such activities would have on the environment in accordance with the requirements of the California Environmental Quality Act ("CEQA").

8.03.020. DEFINITIONS.

Except as otherwise defined in this section, words and phrases used in this Article shall have the same meaning given them by Chapter 2.5 of the California Environmental Quality Act and by Article 20 of the State CEQA Guidelines.

8.03.030. STATE CEQA GUIDELINES ADOPTED.

The Authority hereby adopts the State CEQA Guidelines ("Guidelines") as set forth in Title 14, Section 15000 *et seq.* of the California Administrative Code and as may be amended from time to time. This adoption shall not be construed so as to limit the Authority's ability or authority to adopt additional implementing procedures in accordance with Section 15022 of such Guidelines, or to adopt other legislative enactments the Board may deem necessary or convenient for the protection of the environment.

8.03.040. EXECUTIVE OFFICER'S RESPONSIBILITY.

- (a) The Executive Officer shall, consistent with FORA obligations:
 - (1) Generate and keep a list of exempt projects and report such list to the Board.
 - (2) Conduct initial studies.
 - (3) Prepare negative declarations.
 - (4) Prepare draft and final environmental impact reports.
 - (5) Consult with and obtain comments from other public agencies and members of the public with regard to the environmental effect of projects, including "scoping" meetings when deemed necessary or advisable.

- (6) Assure adequate opportunity and time for public review and comment on a draft environmental impact report or negative declaration.
- (7) Evaluate the adequacy of an environmental impact report or negative declaration and make appropriate recommendations to the Board.
- (8) Submit the final appropriate environmental document to the Board who will approve or disapprove a project. The Board has the authority to certify the adequacy of the environmental document.
- (9) File documents required or authorized by CEQA and the State Guidelines.
- (10) Collect fees and charges necessary for the implementation of this Article in amounts as may be specified by the Board by resolution and as may be amended from time to time.
- (11) Formulate rules and regulations as the Executive Officer may determine are necessary or desirable to further the purposes of this Article.

8.03.050. COMPLETION DEADLINES.

(a) Time limits for completion of the various phases of the environmental review process shall be consistent with CEQA and Guidelines and those time limits are incorporated in this Article by reference. Reasonable extensions to these time limits shall be allowed upon consent by any applicant.

(b) Time limits set forth in this section shall not apply to legislative actions.

(c) Any time limits set forth in this section shall be suspended during an administrative appeal.

8.03.060. PUBLIC NOTICE OF ENVIRONMENTAL DECISION.

(a) Notice of the decision of whether to prepare an environmental impact report, negative declaration, or declare a project exempt shall be available for public review at the Office of the Executive Officer. Notices of decisions shall be provided in a manner consistent with CEQA and the Guidelines.

(b) Notice that the Authority proposes to adopt a negative declaration shall be provided to the public at least ten (10) days prior to the date of the meeting at which consideration of adoption of the negative declaration shall be given.

(c) Notice of decisions to prepare an environmental impact report, negative declaration, or project exemption shall be given to all organizations and individuals who have previously requested such notice. Notice shall also be given by publication one time in a newspaper of general circulation in Monterey County.

8.03.070. APPEAL OF ENVIRONMENTAL DECISION.

(a) Within fifteen (15) days after the Executive Officer provides notice of a decision, any interested person may appeal the decision to the Board by completing and filing a notice of appeal at the Office of the Executive Officer.

(b) The appellant shall pay a fee in the amount as specified in Section 8.01.050(a) of this Resolution.

(c) The Board shall hear all appeals of decisions on any environmental issue. The hearing shall be limited to considerations of the environmental or procedural issues raised by the appellant in the written notice of appeal. The decision of the Executive Officer shall be presumed correct and the burden of proof shall be on the appellant to establish otherwise. The Board may uphold or reverse the environmental decision, or remand the decision back to the Executive Officer if substantial evidence of procedural or significant new environmental issues is presented.

(d) The decision of the Board will be final.

8.03.080. CONFLICT DETERMINATIONS.

This Article establishes procedural guidelines for the evaluation of the environmental factors concerning activities within the jurisdiction of the Authority and in accordance with State Guidelines. Where conflicts exist between this Article and State Guidelines, the State Guidelines shall prevail except where this Article is more restrictive.

ATTACHMENT 5

Memorandum

Date: September 3, 2013
To: Fort Ord Reuse Authority
Board of Directors
Mayor Jerry Edelen, Board Chair
Michael Houlemard, Executive Officer
From: Alan Waltner, Esq.
RE: Evaluation of FORA Legislative Land Use Decisions and Development
Entitlement Consistency Determinations

I. INTRODUCTION

This memorandum describes the requirements applicable to legislative land use decisions and development entitlement consistency determinations made by the Fort Ord Reuse Authority (“FORA”) under the FORA Base Reuse Plan (“BRP”). It evaluates as examples two previous actions – the Seaside General Plan consistency certification, and approval of the East Garrison – Parker Flat “land swap.”

We conclude that FORA’s procedures for determining consistency correctly interpret and apply the Fort Ord Reuse Authority Act (“Authority Act”), Government Code Sections 67650-67700 and the FORA Master Resolution. Generally, so long as the overall development restrictions of the BRP (such as water use limits, housing units, etc.) are not exceeded, the resulting land uses on an overall basis are generally consistent with those in the BRP, specific requirements of the BRP and Master Resolution are satisfied, and substantial evidence supports these conclusions, FORA consistency determinations and other land use actions would likely be upheld by a reviewing court.¹

¹ We note that most of the actions taken by FORA to date can no longer be challenged in light of the applicable statutes of limitations. Challenges brought under the California Environmental Quality Act, Public Resources Code Section 21000 et seq. (“CEQA”), must be commenced within 30 days if a notice of determination has been filed, or within 180 days of the agency decision if no notice has been filed. CEQA Section 21167. Where no such action has been brought, the environmental document is conclusively presumed adequate for purposes of its use by responsible agencies, unless the provisions of CEQA Section 21166 apply. CEQA Section 21167.2. Under Section 8.01.070 of the Master Resolution, FORA is considered to be a responsible agency for most of these decisions, with the local member agency serving as lead agency. Other claims against FORA would need to be brought within four years of the action under the “catch all” statute of limitations in Civil Procedure Code Section 343. The two specific actions evaluated as examples in this memorandum were each taken over four years ago. Chapter 8 of the Master Resolution, and the existing BRP, were also adopted over 4 years ago and are not subject to challenge unless modified.

level of detail analogous to that of the zoning ordinances and zoning maps prepared by local jurisdictions under the Planning and Zoning Law. Instead, at the former Fort Ord, this more detailed planning is the responsibility of the local jurisdictions. Government Code Section 67675.5.

Following the adoption of the BRP, all of the local jurisdictions with territory in Fort Ord were required to submit both the then-current general plan as well as general plan amendments to the FORA Board, accompanied with a certification that the plan “applicable to the territory of Fort Ord is intended to be carried out in a manner fully in conformity with [the Authority Act].” Government Code Section 67675.2.⁴

The FORA Board then holds a noticed public hearing and approves and certifies the general plans and amendments applicable to the territory of Fort Ord if it finds that the plan “meets the requirements of [the Authority Act] and is consistent with the [BRP].” Government Code Section 67675.3. The approval and certification is mandatory under the Authority Act if these findings are made. *Id.* (“The board shall approve and certify . . .”).

Following that approval, zoning ordinances and “other implementing actions” are required to be submitted to the FORA Board, which the Board can only reject “on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified general plan applicable to the territory of Fort Ord.” Government Code Section 67675.5. Note that the benchmark for this review of local implementing actions is the certified general plan, not the BRP.⁵ Following the original general plan certification, amendments to that local plan only take effect upon certification by the FORA Board. Government Code Section 67675.7.

Section 8.02.010 of the Master Resolution elaborates on the criteria for legislative land use consistency determinations, as follows:

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board shall disapprove any legislative land use decision for which there is substantial evidence supported by the record, that

(1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan **for the affected territory**;

⁴ The corresponding section of the Master Resolution, Section 8.01.020(b)(3), adds a reference to the BRP to this conformity provision.

⁵ Section 8.01.060 of the Master Resolution includes a “supercession” provision making Chapter 8 of the Master Resolution “supreme” over the BRP and other FORA documents. However, this supercession clause does not purport to override the Authority Act. This is most likely in recognition of the fact that provisions inconsistent with the Authority Act would not be authorized or effective. Specifically, Section 67675.8(b)(1) of the Authority Act authorizes the Board **only** to adopt regulations “to ensure compliance with the provisions of this title.” (Emphasis added).

the Planning and Zoning Law and Section 67675(c)(1) of the Authority Act as discussed above.

Under the Planning and Zoning Law, general plans must be internally consistent, and subsequent land use actions, such as zoning ordinances and project entitlements, must be consistent with the general plan. Applying that standard, "A project is consistent with the general plan 'if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' 'A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan.'" *FUTURE v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336. See also *Orange Citizens for Parks and Recreation v. Superior Court*, (July 10, 2013) California Court of Appeal for the Fourth District, Slip Opinion, No. G047013 (city's interpretation of its general plan land use map given substantial deference, even where specific land uses differ).

"[S]tate law does not require precise conformity of a proposed project with the land use designation for a site, or an exact match between the project and the applicable general plan. [Citations.] Instead, a finding of consistency requires only that the proposed project be 'compatible with the objectives, policies, general land uses, and programs specified in' the applicable plan. [Citation.] The courts have interpreted this provision as requiring that a project be 'in agreement or harmony with' the terms of the applicable plan, not in rigid conformity with every detail thereof." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678.). "[A] given project need not be in perfect conformity with each and every [general plan] policy," and "no project could completely satisfy every policy stated in [a general plan]." *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719. The agency "has broad discretion to weigh and balance competing interests in formulating development policies, and a court cannot review the wisdom of those decisions under the guise of reviewing a general plan's internal consistency and correlation." *Federation of Hillside Associations v. Los Angeles* (2004) 126 Cal.App.4th 1180, 1196.

This is particularly true for broad plan provisions that do not set out specific requirements. *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 996. For example, in *Sequoyah*, there was substantial evidence that a subdivision project was consistent with 14 of 17 pertinent policies. The three remaining policies were amorphous in nature—they "encouraged" development "sensitive to natural land forms, and the natural and built environment." 23 Cal.App.4th at 719. The Board's consistency finding in that case was upheld.

This contrasts with situations such as that faced in *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal. App.3d 1212. There, where the applicable general plan required the local agency to incorporate specific nonmonetary school mitigation measures, the requirement of internal consistency required the adoption of such measures in a general plan amendment. Thus, "the nature of the policy and the

B. Appeals of Project-Level Entitlements

The certification of local general plans generally transfers land use entitlement authority to the local jurisdiction, subject to appeals to the FORA Board:

Except for appeals to the board, as provided in Section 67675.8, after the portion of a general plan applicable to Fort Ord has been certified and all implementing actions⁷ within the area affected have become effective⁸, the development review authority shall be exercised by the respective county or city over any development proposed within the area to which the general plan applies.

Government Code Section 67675.6(a). The Authority Act further provides:

Subject to the consistency determinations required pursuant to this title, each member agency with jurisdiction lying within the area of Fort Ord may plan for, zone, and issue or deny building permits and other development approvals within that area. Actions of the member agency pursuant to this paragraph may be reviewed by the board on its own initiative, or may be appealed to the board.

Government Code Section 67675.8(b)(2).

The corresponding provision in the Master Resolution, Section 8.01.030, states that:

After the portion of a general plan applicable to Fort Ord Territory has become effective, development review authority within such portion of territory shall be exercised by the land use agency with jurisdiction lying within the area to which the general plan applies. Each land use agency may issue or deny, or conditionally issue, development entitlements within their respective jurisdictions so long as the land use agency has a general plan certified pursuant to Section 8.01.020 and the decisions issuing, denying, or conditionally issuing development entitlements are consistent with the adopted and certified general plan, the Reuse Plan, and is in compliance with CEQA and all other applicable laws.

After the BRP has been adopted, “no local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is not consistent with the plan as adopted or revised pursuant to [the Authority Act].”

Government Code Section 67675.8(b). However, this project-level consistency review only occurs if an appeal is filed or the board reviews the action on its own initiative. *Id.*

The Master Resolution describes the standards to be applied to development entitlement consistency determinations in Section 8.02.030(a):

(a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section

⁷ The Authority Act does not define the term “implementing actions.” The Master Resolution likewise does not define or make reference to “implementing actions,” including in Section 8.01.030(a), which is the provision of the Master Resolution corresponding to this section of the Authority Act.

⁸ All that is required is that the implementing actions “have become effective” The term “effective” means “ready for service or action” or “being in effect.” Websters-Merriam Online Dictionary.

III. EVALUATION OF THE SEASIDE GENERAL PLAN CONSISTENCY CERTIFICATION AND EAST GARRISON – PARKER FLATS “LAND SWAP”

A. Seaside General Plan Consistency Certification

The Seaside General Plan was certified by the FORA Board in 2004 as being consistent with the BRP. The Seaside General Plan itself was supported by an Environmental Impact Report under CEQA, which the FORA Board utilized as a responsible agency under the Master Resolution. Detailed findings were also made by Seaside under CEQA. The FORA Board’s action was also supported by extensive additional documentation submitted by the City of Seaside, including a staff report evaluating consistency with the BRP and compliance with the Master Resolution. In certifying the Seaside General Plan as consistent with the BRP, the FORA Board appropriately relied on these submissions.

The FORA Staff Report on the Seaside General Plan action applied the appropriate legal standards under the Authority Act and the Master Resolution. November 19, 2004 Agenda, Item 7d. Specifically, the Staff Report recognized that: “there are thresholds set in the resource-constrained BRP that may not be exceeded, most notably 6101 new

No development shall be approved by FORA or any land use agency or local agency after the time specified in this subsection [i.e., no later than January 1, 2013] unless and until the water supplies, wastewater disposal, road capacity, and the infrastructure to supply these resources to serve such development have been identified, evaluated, assessed, and a plan for mitigation has been adopted as required by CEQA, the Authority Act, the Master Resolution, and all applicable environmental laws.

(Emphasis Added). Note that this provision does not require consideration of infrastructure beyond that needed for the particular project, and that it also does not require that the infrastructure have been completed at the time of the decision.

Master Resolution Sub-Section 8.02.020(a) states that:

Prior to approving any development entitlements, each land use agency shall act to protect natural resources and open spaces on Fort Ord territory by **including** the open space and conservation policies and programs of the Reuse Plan, applicable to the land use agency, **into their respective general, area, and specific plans.**

(Emphasis Added). Master Resolution Sub-Section 8.02.040 includes a similar but somewhat differently worded limitation:

No development entitlement shall be approved or conditionally approved within the jurisdiction of any land use agency until the land use agency has taken **appropriate action**, in the **discretion** of the land use agency, to adopt the programs specified in the Reuse Plan, the Habitat Management Plan, the Development and Resource Management Plan, the Reuse Plan Environmental Impact Report Mitigation and Monitoring Plan and this Master Resolution applicable to such development entitlement.

(Emphasis Added).

IV. PROSPECTIVE RECOMMENDATIONS, INCLUDING CEQA COMPLIANCE

FORA has not revised the BRP land use map to reflect the differences between that map and most of the certified general plans that have been considered to date. Similarly, the East Garrison – Parker Flats land swap and associated East Garrison Specific Plan consistency approval is not reflected in revisions to the BRP map. In the December, 2012 Final Reassessment Report, under “Category II,” a number of potential revisions to the BRP land use map were identified in order to update that map to reflect the uses and densities reflected in consistency certifications and other FORA actions such as the land swap that have occurred since the BRP was adopted. In order to provide a more usable document, FORA is considering updating the BRP’s land use map.

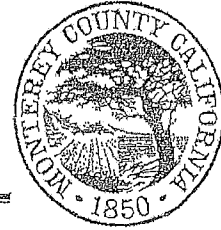
Our July 3, 2013 memorandum discussed the actions recommended in connection with potential BRP revisions. The recommendation in that memorandum still applies – that an initial study be prepared to evaluate the environmental effects of those revisions in comparison to the analysis in the BRP EIR (as well as other EIRs supporting FORA actions such as the consistency determinations). As stated in our July 3 memorandum, the ultimate CEQA compliance obligations will need to be based on the specifics of the BRP revisions adopted, which can best be evaluated through an initial study considering the resulting environmental effects in relation to the existing CEQA documentation.

ATTACHMENT 6

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Benny J. Young, Director
Carl P. Holm, AICP, Deputy Director

Michael A. Rodriguez, C.B.O., Chief Building Official
Michael Novo, AICP, Director of Planning
Robert K. Murdoch, P.E., Director of Public Works



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October 23, 2013

Fort Ord Reuse Authority
Jonathan Garcia, Senior Planner
920 2nd Avenue, Suite A
Marina, CA 93933

SUBJECT: 2010 Monterey County General Plan Consistency Determination.

Dear Mr. Garcia,

This letter is provided as the County's responses to comments received during the General Plan consistency determination process.

Overview

In 2001, Monterey County added the Fort Ord Master Plan to our General Plan, which the FORA Board found consistent with the Fort Ord Reuse Plan in 2002 (FORA Resolution #02-3). In 2010, the Fort Ord Master Plan (FOMP) was updated to recognize actions that the FORA Board had already taken. The changes included references to the Land Swap Agreement, the East Garrison approvals (both of which were found consistent with the Reuse Plan by the FORA Board) and other minor text changes made in consultation with FORA staff. There was no intent to change any policy or program.

It has come to our attention through the consistency determination process that the 2001 Master Plan and hence the 2010 Monterey County General Plan does not accurately copy word for word several Base Reuse Plan policies and programs. Policies and programs certified by FORA for the 2001 plan were not changed as part of the 2010 update. The County has stated its intent in the language of the FOMP and the subsequent resolution to carry out the General Plan in a manner fully in conformity with the Reuse Plan, which includes the FEIR, Implementation agreement and the Authority Act. The County submits for your consideration that fulfilling the intent of the policies and programs is more important than whether the language is identical between the FOMP and the Base Reuse Plan. In this case there is significant history in the Fort Ord Reuse Plan, and in the FEIR that shape and guide how the policies of the FOMP are interpreted and applied. The County submits that while the language is different, the implementation must be consistent with the intent of the Reuse Plan, as such the Fort Ord Master Plan should be found consistent with Reuse Plan. To demonstrate this, below are the County's responses to comments received during the consistency determination process describing how the plans are consistent.

Comments and Responses

Issue 1: Parts of the FOMP [Fort Ord Master Plan] reverse specific changes made in response to comments in the Fort Ord Reuse Plan Final EIR.

County's Response: As noted above it was not the County's intent to change anything as part of the 2010 General Plan that had not been acted on by FORA. The policies and programs do seem to be based upon the draft plan evaluated in the DEIR for the Reuse Plan. The question is whether these policies would be implemented in a manner consistent with the plan. Those policies identified are:

- *Recreation/Open Space Land Use Policy A-1.* The word change from "shall encourage the conservation and preservation" to "shall protect"

This word change in the FEIR was made as a result of potential Land Use Compatibility Impacts, specifically concerning the "Frog Pond" which is in Del Rey Oaks, the Police Officer Safety Training (POST) facility that was relocated by the Land Swap Agreement, and the Youth Camp/East Garrison development that has already been addressed through approvals of the East Garrison development and Youth Camp restrictions in the HMP. The concerns behind this language change have already been resolved through implementation.

- *Recreation/Open Space Land Use Program A-1.2* – program calling for Natural Ecosystem Basement Deeds on "identified open space lands" omitted.

This program also was the result of the potential Land Use Compatibility Impacts described above yet the County is committed to complying with this requirement through plan implementation. The item is included in the County's Long-range work program.

- *Hydrology and Water Quality Policy B-1 and Programs B-1.1 through B-1.7.*

The language of the FOMP is not identical to the Reuse Plan, but the language has been included in other policies and programs in an equivalent or more comprehensive manner.

- *Hydrology and Water Quality Program C-6.1* – Program requiring the County to work closely with other FORA jurisdictions and CDRP to develop and implement a plan for storm water disposal that will allow for the removal of ocean outfall structures.

The County is under order from the State Water Board to develop storm water requirements that meet current state standards. The County is nearing completion of those standards including eliminating ocean outfalls and will work closely with other FORA jurisdiction to accomplish the same in Fort Ord. The County is leading a storm water task force to address this issue.

- *Biological Resources Policy C-2 and Programs C-2.1, C-2.2, C-2.3 and C-2.5.* – Preservation of oak woodlands in the natural and built environments.

Oak woodlands are protected under the General Plan, state law, and within Current County code. The County reviews and requires each development to minimize impacts on native trees through siting, design, and other mitigations pursuant to policies within the Fort Ord Master Plan, the HMP, the Open Space Element of the General Plan (Policies OS-5.3, OS-5.4, OS-5.10, OS-5.11; OS-5.4, and OS-5.23), and the Land Use Element of the General Plan (Policies LU-1.6 and LU-

1.7). Appropriate protections are provided for Oak woodlands within the natural and built environments.

Issue 2: Fort Ord does not have a long-term sustainable Water Supply contrary to County General Plan Policy PS-3.1 [which establishes a rebuttable presumption that there is a long-term water supply in Zone 2C which includes Fort Ord Territory].

County's Response: Policy PS-3.1 requires a determination that there is a long-term sustainable water supply. An exception is given to development within Zone 2C; however, "This exception for Zone 2C shall be a rebuttable presumption that a Long Term Sustainable Water Supply exists within Zone 2C {...} Development in Zone 2C shall be subject to all other policies of the General Plan and applicable Area Plan" (emphasis added.) In the case of the Fort Ord Master Plan (an Area Plan), there are more specific area plan policies that give guidance on making a finding that a Long Term Sustainable Water Supply exists consistent with PS-3.1. The Determination of a Long Term Sustainable Water supply would rely on the Hydrology and Water Quality policies of the Reuse Plan including the requirement to comply with the Development Resource Management Plan (DRMP). The DRMP establishes a water allocation for the County. The Public Services Element and the Fort Ord Master Plan policies work in conjunction with each other in a manner that is consistent with the Reuse Plan.

Issue 3: The Fort Ord Master Plan does not comply with the Land Swap Agreement because the Land Swap Agreement traded residential density at Parker Flats for increased residential density at East Garrison. This trade made the Eastside Parkway no longer desirable as a primary travel route.

County's Response: The Fort Ord Master Plan reflects the action taken on the Land Swap Agreement in 2002 and 2003 by acknowledging the revised Habitat Lands under the HMP. The Land Swap Agreement did not include amendments to the Reuse Plan. The Land Swap Assessment that accompanied the Land Swap Agreement provided the biological evidence necessary to gain concurrence from HMP stakeholders that the "swap" was sufficient under the terms of the HMP. The Biological Assessment mentions changes being considered at the time of the Land Swap Agreement preparation¹, but those references within the biological assessment for an HMP amendment did not amend the Reuse Plan nor do they make the adopted General Plan inconsistent with adopted Reuse Plan since both documents have the same land use designations for the areas in question.

¹ The FORA Master Resolution states "FORA shall not preclude the transfer of intensity of land uses and/or density of development involving properties within the affected territory as long as the land use decision meets the overall intensity and density criteria of Sections 8.02.010(a)(1) and (2) above as long as the cumulative net density or intensity of the Fort Ord Territory is not increased."

Issue 4: The County Still has not complied with the Fort Ord Reuse Plan Policies after Fifteen (15 Years).

County's Response: The County has implemented some of the Reuse Plan policies and is actively working on others. Delays in implementation do not make the General Plan inconsistent with the Reuse Plan.

Issue 5: Is the County the lead agency under CEQA?

County's Response: Yes. The FORA Master Resolution describes FORA's role as a "Responsible Agency" under CEQA for review of legislative decisions and development projects (Section 8.01.070). The County has certified an EIR prior for the 2010 General Plan. The DEIR, FEIR, Supplemental Information, and subsequent addendums to the EIR have all been provided to FORA with the consistency determination submittal/request.

Conclusion

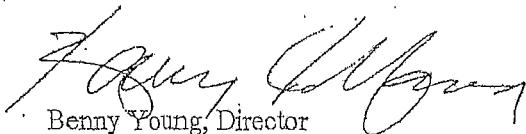
The Description of the Fort Ord Master Plan on pg FO-1 states "The purpose of this plan is to designate land uses and incorporate objectives, programs and policies to be consistent with the Fort Ord Reuse Plan (Reuse Plan) adopted by the Fort Ord Reuse Authority (FORA) in 1997." The County is implementing the Reuse Plan by adopting Reuse Plan Land Use Designations, enforcing the Habitat Management Plan, participating in the Base-wide Habitat Conservation Plan process, and coordinating with the public and private jurisdiction regarding development and open space in Fort Ord.

The County has supported the purpose statement of the Fort Ord Master Plan by adopting a resolution containing findings and certification that the 2010 General Plan is consistent with and intended to be carried out in a manner fully in conformity with the Reuse Plan (as required by the FORA Master Resolution). Attached to the findings is a table that outlines how the County's General Plan addresses all of the "Specific Programs and Mitigation Measures For Inclusion in Legislative Land Use Decisions" (Section 8.02.020 of the FORA Master Resolution).

None of the Findings requiring denial of the consistency determination, contained in 8.02.010 of the FORA Master Resolution can be made. The General Plan does not allow more intensity (1) or density (2) of Land Use than the Reuse Plan (see Land Use Designations), (3) Required programs and Mitigation Measures have been included and/or are being implemented as evidenced in the attachment to the County's consistency resolution and as further explained above, (4) The General Plan contains the same types of Land Uses that the Reuse Plan and the General Plan will not conflict or be incompatible with open space, recreational, or habitat management areas, (5) Financing and the provisions for adequate public services and facilities are required, and (6) implementation of the HMP is required.

The 2010 General Plan is consistent with the Fort Ord Reuse Plan.

Sincerely,



Benny Young, Director
Resource Management Agency
County of Monterey