

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	Fort Ord Reuse Authority (FORA) ACT (Gov Code 67650-67700)
SUMMARY	FORA Act is state law which will be repealed 1/1/21 and thus the powers and legislative enhancements made available to FORA will be eliminated.
DATE OF EXECUTION/ADOPTION	1994 amended 2012; repealed 1/1/2021
PARTIES	State of California
ASSETS	<ul style="list-style-type: none">• Establishes funding and powers.• Creates Board and voting structure.• Creates Consistency requirement.• Generates \$2.5M Property Tax Pass through per year.• Generates \$261K Membership Dues.
LIABILITIES	<ul style="list-style-type: none">• Planning, Consistency, Financing, Oversight obligations• Post 2020-Land Sale Revenues eliminated (est. \$25M)
ASSIGNABILITY	NO
PRE-REQUISITES TO ASSIGNABILITY	N/A
OUTSTANDING ISSUES	Act is repealed and thus additional powers for Fort Ord Reuse Authority expire/go away. Gov't Code does include a general Military Base Reuse Act (Govt Code section but there are prerequisites to applicability.)
POST FORA FUNDING	NO. \$2.5M, Membership dues eliminated.

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	FORT ORD REUSE PLAN (“Reuse Plan”)
SUMMARY	The Reuse Plan is a regional planning document utilized by federal and state government to implement military base reuse. The deeds, government clean-up, base-wide costs and mitigation measures all stem from this document.
DATE OF EXECUTION/ADOPTION	Adopted June 13, 1997
TERMINATION	6/30/2020
PARTIES	Fort Ord Reuse Authority (“FORA”)
ASSETS	<ul style="list-style-type: none">• Defines recovery program and constraints includes environmental impact report.• Addresses agency build out conflicts.• Identifies mitigations to implement program.• Identifies base-wide costs (BWC) and mitigation measures (BWMM).• Already litigated and subject to settlement agreement (<i>Sierra Club</i>).
LIABILITIES	BWC and BWMM require both funding and construction: <ul style="list-style-type: none">• TRANSPORTATION/TRANSIT: POST-2020 EST. \$40.4M could be as high as \$123M (BWMM).• WATER AUGMENTATION: POST-2020 EST. \$15.4M (BWMM) could be as high as \$24M.• HMP/HCP: POST-2020 EST. \$14M (BASED ON COLLECTION OF \$30M BY 2020) (BWMM).• BUILDING REMOVAL (MARINA/SEASIDE): EST. TO BE MET BY 2020, BUT \$0-9M IF NOT MET (BWC).
ASSIGNABILITY	NO
PRE-REQUISITES TO ASSIGNABILITY	N/A
OUTSTANDING ISSUES	<ul style="list-style-type: none">• Reuse Plan is incorporated into deeds and establishes clean up basis and build-out limits• Consider recording post-FORA; or alternatively permanently archiving as a public document.
POST FORA FUNDING	NO.

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	Community Facilities District (CFD)
SUMMARY	Creates comprehensive financing mechanism to implement BWC and BWMM. The financing district is beyond legal challenge on the establishment.
DATE OF EXECUTION/ADOPTION	Recorded 5/22/2002
TERMINATION	Termination of FORA or 2051 whichever first occurs
PARTIES	FORA
ASSETS	<ul style="list-style-type: none">• Creates financing mechanism to implement Base-wide Costs (BWC) and Base-wide Mitigation Measures (BWMM).• Statute of Limitations passed on challenging CFD.• District Boundaries already exist.• Mello Roos District (Gov §53321 <i>et seq</i>).• Generates \$70 M dollars until 2020 (Est.)¹.
LIABILITIES	Assessment approved through termination of FORA but not later than 2051 Post 2020-\$91M dollars per Buildout. (Est.)²
ASSIGNABILITY	UNLIKELY. The CFD says it terminates on FORA dissolution but tax extends to 2051. The Gov't Code §53368 states that CFD may be transferred by County to City. Multiple issues and would require special counsel for FORA and Cities/County to concur on interpretation and solutions.
PRE-REQUISITES TO ASSIGNABILITY	<ul style="list-style-type: none">• Needs agreements between FORA Board and each individual jurisdiction.• Needs revenue sharing and BWC/BWMM expenditure agreements among jurisdictions.• District map amendments; new Notices.
OUTSTANDING ISSUES	<ul style="list-style-type: none">• LAFCO does not have jurisdiction over CFD.• Extensive legal analysis and costs associated therewith.• May require jurisdiction to set up own district to collect.• May require approval of multiple land owners or voters within district.• Will require revenue sharing and/or cooperative agreements.• Unknown Litigation risk.
POST FORA FUNDING	No.

¹ Tax generation is based upon amount of development approved and permits pulled. Amount is based on CIP approved July 8, 2016.

² Tax generation is based upon amount of development post-2020. Thus, if development does not proceed as projected through 2020, the liability will be larger. Amount based on July 8, 2016 CIP.

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	Memorandum of Agreement – Economic Development Conveyance (EDC)
SUMMARY	The EDC is the overarching document which guides land transfers from the Army to the local redevelopment authority (LRA). It contains representations and warranties, many of which are also contained in the transfer deeds.
DATE OF EXECUTION/ADOPTION	June 20, 2000 (Recorded 6/23/2000) ³
PARTIES	FORA and U.S. America (Dept. of Army)
ASSETS	<ul style="list-style-type: none">• Establishes FORA as the LRA.• Establishes clean up requirements based on Reuse Plan.• Establishes No Cost EDC requirements.• Establishes water/wastewater allocations.• Establishes transfer of land process.
LIABILITIES	Requires FORA to take property from the US Army
ASSIGNABILITY	Yes
PRE-REQUISITES TO ASSIGNABILITY	<ul style="list-style-type: none">• Requires Army consent to LRA⁴.• May require state compliance with statute for establishment of LRA.
OUTSTANDING ISSUES	<ul style="list-style-type: none">• All property will not have transferred by 2020.• Who enforces warranties under MOA?• Army prefers a single successor and does not want to deal with multiple entities.• Water/wastewater allocations; first right of refusal to additional water rights.
POST FORA FUNDING	COMPLICATED. YES AND NO.

³ MOA Amended multiple times:
Amendment 1: 2002 – [Summary]
Amendment 2: 2006
Amendment 3: 2008
Amendment 4: 2009
Amendment 5: 2011
Amendment 6: 2012
Amendment 7: 2014

⁴ Army has contended with respect to ESCA it would only deal with one entity. It most likely will only want one subsequent LRA as well.

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	Habitat Management Plan (“HMP”)
SUMMARY	The HMP is the US Army’s base wide mitigation measure required by NEPA and Endangered Species Act (ESA) to mitigate the closure and subsequent development of Fort Ord. It has been followed since 1997. There is still a requirement that FORA take the Landfill parcel and maintain 75% of it as habitat. The Landfill parcel is not scheduled to transfer until 2023 after the expiration of the current Authority Act.
DATE OF EXECUTION/ADOPTION	April 1997 ⁵
TERMINATION	N/A
PARTIES	US ARMY, USFWS ⁶
ASSETS	Process for preserving Habitat to comply with ESA. Mitigation measure under NEPA and CEQA
LIABILITIES	Requires preparation of a Habitat Conservation Plan (HCP) Requires protection, maintenance of habitat areas Est. HCP implementing costs: \$44 M ⁷
ASSIGNABILITY	YES (if no HCP) If Base-wide HCP must have single successor entity ⁸
PRE-REQUISITES TO ASSIGNABILITY	<ul style="list-style-type: none">• Agency must sign HMP Implementing Agreement.• Project by project must get take permit (HCP) for project development if no base-wide HCP.• City or county will be required to take landfill parcel to satisfy habitat requirements for reuse plan.
OUTSTANDING ISSUES	<ul style="list-style-type: none">• Base-wide HCP not fully executed.• Unknown legal liabilities (Developer & City/Co).
POST FORA FUNDING	No.

⁵ HMP originally approved in 1994 by FWS and Army; amended 1997 and incorporated in Reuse Plan

⁶ Concurring and implementing agencies: FORA, CITY OF MARINA, COUNTY OF MONTEREY, MCWD, BLM, DEPT. OF TRANSPORTATION, YORK SCHOOL

⁷ Estimate based on Board approved Capital Improvement Program (CIP) July 8, 2016.

⁸ Single successor entity either a Joint Powers Agency OR extension of FORA

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	Implementation Agreement
SUMMARY	Contractual obligation of City/County to utilize and dispose property consistent with the governing documents for transfer of the base property including compliance with Federal law, FORA Act, Base Reuse Plan and Environmental documents, EDC transfer documents, Sierra Club settlement, ESCA and other documents. 2012 Amendment changes the calculation of fees.
DATE OF EXECUTION/ADOPTION	May 1, 2001 amended Sept. 13, 2012
PARTIES	FORA and Cities of Del Rey Oaks, Marina, Monterey and Seaside and the County of Monterey ⁹
TERMS/ASSETS	<ul style="list-style-type: none">• Compliance with other agreements (EDC, Reuse Plan, etc.).• Compliance with Water/Wastewater Allocation.• Requirements/Mechanism for paying for Base-wide Costs (BWC) and Base-wide Mitigation Measures (BWMM).• Provides FORA will implement BWC and BWMM.
LIABILITIES	<ul style="list-style-type: none">• Requires City/County to seek own financing mechanism to raise revenue to contribute to BWC and BWMM.• Ongoing compliance with EDC that runs with land.• City/County remains responsible for fair share of regional base-wide facilities.
ASSIGNABILITY	YES
PRE-REQUISITES TO ASSIGNABILITY	<i>SUBSEQUENT AGREEMENT OF PARTIES OR LAFCO TO IDENTIFY FORA SUCCESSOR - MOST LIKELY COUNTY.</i>
OUTSTANDING ISSUES	May also require CA Department of Finance review and approval. Other jurisdictions may be third party beneficiaries to enforce terms.
POST FORA FUNDING	NO.

⁹ Each jurisdiction has their own Implementation Agreement. The agreements are substantially the same, with differences unique to situations within each jurisdiction.

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	Clean Up Cost CAP Insurance Policy-ESCA (AIG)
SUMMARY	This is an insurance policy that covers the Army's cleanup costs FORA is completing under contract to the Army in exchange for a faster clean up schedule and funds from the Army. The policy protects FORA and its successors from cleanup costs which exceed the cost estimate up to \$128M.
DATE OF EXECUTION/ADOPTION	March 30, 2007 ¹⁰
TERMINATION	Coverage A ¹¹ : 3/30/2007-3/30/2022 Coverage B & C: 3/30/2007 – 3/30/2019
PARTIES	FORA and LFR Inc., Weston Solutions Inc. and Westcliffe Engineers, Inc. and AIG
ASSETS	Under Cost CAP provisions AIG pays invoices from FORA's consultants completing munitions removal. Provides shortfall protection up to \$128M Covers approx. 3300 acres of land.
LIABILITIES	<ul style="list-style-type: none">• Not a California Insurer.• If Insurance Co. goes bankrupt, it will not pay claims.• Munition discoveries post contract/post FORA.
ASSIGNABILITY	Army and Regulatory Agencies requiring a single successor entity to ESCA contract ¹² . [Joint Powers Agency or extension of FORA]
PRE-REQUISITES TO ASSIGNABILITY	Army and Regulatory approval under ESCA contract
OUTSTANDING ISSUES	<ul style="list-style-type: none">• Remediation Failure beyond Insurance: Who/What/How/When.• Federal and State Regulatory concurrence (e.g. Army/EPA/DTSC).
POST FORA FUNDING	No.

¹⁰ Amended/updated multiple times thru "Endorsements":

E1-6 Effective 3/30/2007.

E. 7, 8 & 9-9/27/2007- Policy Aggregate and Policy Premiums changed; accelerated cleanup on Gen. Jim Moore Blvd.

E.*NO-10-12

E. 13 & 14- 4/25/2008 Amendment of definition of Remediation Services Agreement and updated Master Cooperation and ESCA between LFR and Weston Solutions

E. 15 & 16- 12/18/2008 Updated Premium Installment and Notional Commutation Account

¹¹ Coverage A generally provides for a \$15M Incident Limit for On Site Cleanup of Pre-Existing Conditions

Coverage B & C generally provides for \$128M Limit for Known and Unknown Pollutants

¹² Post FORA issues related to ESCA contract: ESCA Contract extends to 2037; 5-year and annual reporting requirement; Regulatory review; Long term stewardship

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	Pollution Legal Liability Insurance (Chubb)
SUMMARY	This policy provides basic and extended Environmental Liability Insurance for an array of pollutants through 2024.
DATE OF EXECUTION/ADOPTION	December 31, 2014
TERMINATION	December 31, 2024
PARTIES	FORA and LFR Inc., Weston Solutions Inc. and Westcliffe Engineers, Inc. and AIG
ASSETS	<ul style="list-style-type: none">• Coverage A Pre-existing Pollution Incidents.• Coverage B New Pollution Incidents.• Coverage C Mold Incidents.• Coverage D Non-owned Disposal sites.• Coverage F: Transported Cargo.• \$50M Each Incident \$500K Deductible.• Base-wide coverage (<i>Approx. 6600 acres</i>).
LIABILITIES	\$500K deductible/per incident; Schedule of Max Benefit by Jurisdiction/Entity
ASSIGNABILITY	FORA/County of Monterey/City of Monterey/City of Seaside, Marina, Successor Agency to RDA of Monterey County, MPC, TAMC, MST all named insured
PRE-REQUISITES TO ASSIGNABILITY	County is identified as successor to FORA
OUTSTANDING ISSUES	N/A
POST FORA FUNDING	No.

GOVERNING DOCUMENT SYNOPSIS

GOVERNING DOCUMENT NAME	FORA-MCWD WATER WASTEWATER FACILITIES AGREEMENT
SUMMARY	The Water Wastewater Facilities Agreement creates an operating agreement to purvey, manage and allocate water/wastewater with oversight by FORA. This level of oversight, control and allocation would be eliminated on dissolution of FORA as MCWD shall own the facilities and water rights free and clear of the terms and conditions.
DATE OF EXECUTION/ADOPTION	3/13/98
TERMINATION	FORA Dissolution
PARTIES	FORA and MCWD
TERMS ASSETS	<ul style="list-style-type: none">• Franchise Fees (\$265 K/Yr).• Ex Officio Membership Fee.• Own and Operate Facilities under oversight and authorization from FORA.• Creation of a Water/Wastewater Oversight Committee advisory to FORA Board on enumerated issues.
LIABILITIES	If no annexation or substitute agreement how does MCWD serve areas outside of its PUC approved Service Area?
ASSIGNABILITY	No.
PRE-REQUISITES TO ASSIGNABILITY	N/A
OUTSTANDING ISSUES	<ul style="list-style-type: none">• If no annexation/substitute agreement - does MCWD serve areas outside of its PUC approved Service Area?• Franchise fees.
POST FORA FUNDING	No. Franchise Fees eliminated (-\$265K/YR)