



## **Fort Ord Reuse Authority**

920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

Phone: (831) 883-3672 • Fax: (831) 883-3675 • [www.fora.org](http://www.fora.org)

### **ADMINISTRATIVE COMMITTEE MEETING**

**8:15 A.M. WEDNESDAY, OCTOBER 17, 2012**

910 2<sup>nd</sup> Avenue, Marina CA 93933 (on the former Fort Ord)

### **AGENDA**

**1. CALL TO ORDER AT 8:15 AM**

**2. PLEDGE OF ALLEGIANCE**

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

**4. PUBLIC COMMENT PERIOD:**

Members of the audience wishing to address the Fort Ord Reuse Authority (FORA) Administrative Committee on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes. Public comments on specific agenda items will be heard at the time the matter is under Committee consideration.

**5. APPROVAL OF MEETING MINUTES**

a. October 3, 2012 Administrative Committee Minutes ACTION

**6. OCTOBER 12, 2012 FORA BOARD MEETING FOLLOW-UP** INFORMATION/ACTION

**7. OLD BUSINESS**

a. Master Resolution/Settlement Agreement Compliance –  
Deed Notifications Update INFORMATION/ACTION

**8. NEW BUSINESS**

a. CSUMB Request to Prioritize 8<sup>th</sup> Street Funding in the FY 2013/14 FORA Capital Improvement Program INFORMATION/ACTION

b. Bay View Community Water Service – Potential FORA Board Appeal INFORMATION

**9. ADJOURNMENT**

**NEXT SCHEDULED MEETING: NOVEMBER 7, 2012**

*Information about items on this agenda or persons requesting disability related modifications and/or accommodations can contact the Deputy Clerk at: 831-883-3672 \* 920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933 by 5:00 p.m. one business day prior to the meeting. Agendas can also be found on the FORA website: [www.fora.org](http://www.fora.org).*



# Fort Ord Reuse Authority

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## ADMINISTRATIVE COMMITTEE MEETING

8:15 A.M. WEDNESDAY, OCTOBER 3, 2012

910 2<sup>nd</sup> Avenue, Marina CA 93933 (on the former Fort Ord)

### MINUTES

#### 1. CALL TO ORDER

Co-Chair Michael Houlemard called the meeting to order at 8:17 a.m. The following were present, as indicated by signatures on the roll sheet:

John Dunn, City of Seaside\*  
Elizabeth Caraker, City of Monterey\*  
Doug Yount, City of Marina\*  
Carl Holm, County of Monterey\*  
Tim O'Halloran, City of Seaside  
Sid Williams, United Veteran's Council  
Pat Ward, Bestor Engineers, Inc.  
Mike Zeller, TAMC  
Beth Palmer, Monterey Downs  
Patrick Breen, MCWD  
Kelly Cadiente, MCWD  
Bob Schaeffer, MCP  
Bob Rench, CSUMB

Vicki Nakamura, MPC  
Bill Collins, BRAC  
Michael Groves, EMC Planning  
Kathleen Lee, Sup. Potter's Office  
Graham Bice, UCSC

Michael Houlemard, FORA  
Steve Endsley, FORA  
Stan Cook, FORA  
Jim Arnold, FORA  
Crissy Maras, FORA  
Lena Spilman, FORA

\* Voting Members

#### 2. PLEDGE OF ALLEGIANCE

Sid Williams led the Pledge of Allegiance.

#### 3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Mr. Houlemard announced that Governor Brown had signed AB 1614 and AB 1842 into law. Bill Collins stated the Army BRAC Office completed its third 5-year review, which had been signed by the Environmental Protection Agency. Vicki Nakamura announced that Monterey Peninsula College planned to host an open house Saturday, October 6, 2012, in honor of the institution's 65<sup>th</sup> Anniversary. Michael Groves reviewed the timeline for the Reassessment process, which included a special Board workshop to be held October 30, 2012.

##### a. **September 20, 2012 Letter to Marina Coast Water District regarding Budget Reductions**

Assistant Executive Officer Steve Endsley discussed the purpose of the letter and summarized the previous Board action relating to the FY 2012/13 MCWD budget and rates. He noted that the MCWD Board of Directors had requested a joint Board meeting to facilitate further coordination between the agencies regarding the matter.

#### 4. PUBLIC COMMENT PERIOD

Sid Williams, United Veterans Council, submitted a written request for inclusion of the United Veterans Council on the FORA Board (attached).

#### 5. APPROVAL OF SEPTEMBER 5, 2012 MEETING MINUTES

**MOTION:** John Dunn moved, seconded by Carl Holm, and the motion passed unanimously to approve the September 19, 2012 Administrative Committee meeting minutes as presented.

**6. OCTOBER 12, 2012 FORA BOARD MEETING AGENDA REVIEW**

Mr. Houlemard led a review of the items on the October 12, 2012 FORA Board agenda. He noted that Assemblymember Monning had requested to provide a brief update regarding AB 1614 and AB 1842 and that the Item 5b had been moved to the Old Business section of the agenda. The Committee recommended to the Executive Committee that the United Veterans Council request be agendaized as correspondence on October 12, 2012 Board agenda.

**7. OLD BUSINESS**

**a. Master Resolution/Settlement Agreement Compliance – Deed Notifications Update**

Real Property and Facilities Manager Stan Cook provided a status update regarding outstanding deed notifications required to be completed by the jurisdictions.

**8. ADJOURNMENT**

Mr. Houlemard adjourned the meeting at 8:52 a.m.

Minutes Prepared by Lena Spilman, Deputy Clerk

Approved by:

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Michael A. Houlemard, Jr., Executive Officer

**ANTHONY LOMBARDO & ASSOCIATES**

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO  
KELLY MCCARTHY SUTHERLAND  
DEBRA GEMGNANI TIPTON



450 LINCOLN AVENUE, SUITE 101  
P.O BOX 2330  
SALINAS, CA 93902  
(831) 751-2330  
FAX (831) 751-2331

August 13, 2012

File No. 03138.001

Mr. Michael Houlemard  
Fort Ord Reuse Authority  
920 Second Avenue, Suite A  
Marina, CA 93933

Re: **Marina Coast Water District Issues/Bay View Mobile Home Park**

Dear Michael:

Per our conversation of last week, please find enclosed copies of my correspondence with Lloyd Lowrey and Jim Heitzman. Please call me after you have had a chance to review these.

Sincerely,

A handwritten signature in cursive script that reads "Tony".

Anthony L. Lombardo

ALL:ncs

Enclosures

**Tony Lombardo**

---

2138.1

**From:** Tony Lombardo  
**Sent:** Thursday, July 19, 2012 10:33 AM  
**To:** Lowrey, Lloyd (lloy@nheh.com); jheitzman@mcwd.org  
**Cc:** rr@rincorg.com  
**Subject:** BAY VIEW COMMUNITY

Lloyd and Jim:

I am writing to inform you that Marina Coast's most recent billing on Account No. 000990-000 of \$6,276.63 has been deposited in my trust account in addition to the amount previously deposited pending resolution of the dispute over the ownership and maintenance of the water system within the Bay View project.

Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
450 Lincoln Avenue, Suite 101  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
Email [tony@alombardolaw.com](mailto:tony@alombardolaw.com)

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3817

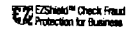
**BAY VIEW COMMUNITY DE LLC-AP**

GENERAL ACCOUNT  
5100 COE AVENUE  
SEASIDE, CA 93955  
(831) 899-9900



CARMEL OFFICE  
**FREMONT BANK**  
26356 CARMEL RANCHO LANE, CARMEL, CA 93923

90-788-1211



7/16/2012

PAY TO THE ORDER OF Anthony Lombardo & Associates

\$ \*\*6,276.63

Six Thousand Two Hundred Seventy-Six and 63/100\*\*\*\*\*

DOLLARS

Anthony Lombardo & Associates  
450 Lincoln Ave, Suite 103  
Salinas, Ca. 93901

AUTHORIZED SIGNATURE

MEMO Marina Coast Water - Acct: 000990-000

⑈003817⑈ ⑆121107882⑆ 14⑈90250⑈8⑈

Security features. Details on back.



**BAY VIEW COMMUNITY DE LLC-AP**

3817

Anthony Lombardo & Associates

Date	Type	Reference	Original Amt.	Balance Due	7/16/2012 Discount	Payment
7/10/2012	Bill		6,276.63	6,276.63		6,276.63
				Check Amount		6,276.63

BVC - AP

Marina Coast Water - Acct: 000990-000

6,276.63

**Tony Lombardo**

---

3138.1

**From:** Tony Lombardo  
**Sent:** Wednesday, July 11, 2012 3:31 PM  
**To:** jheitzman@mcwd.org; Lowrey, Lloyd (lloyre@nheh.com)  
**Cc:** rr@rincorg.com  
**Subject:** BAY VIEW COMMUNITY

Jim and Lloyd:

I am following up on my letter of June 29<sup>th</sup> regarding the water system serving the Bay View Mobile Home Park. In light of the dispute between Bay View and the Marina Coast Water District over Marina Coast's responsibility to operate the system, my client has made payment to my trust account of \$5,229.90 which is the last month's billing to the master meter in addition to the billings which you were sending to the individual accounts in Bay View. I have deposited those amounts in my trust account for the benefit of Marina Coast Water District and will hold the monthly amounts of those billings in my trust account pending the resolution of this dispute.

I look forward to your reply to my previous correspondence.

Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
450 Lincoln Avenue, Suite 101  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
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S

**ANTHONY LOMBARDO & ASSOCIATES**

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ANTHONY L. LOMBARDO  
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LINDA NEFF SUNDE

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(831) 751-2330  
FAX (831) 751-2331

June 29, 2012

File No. 03138.001

Mr. Jim Heitzman  
General Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933-2099

Lloyd W. Lowrey, Esq.  
Noland, Hamerly  
333 Salinas Street  
Salinas, CA 93901

Re: **Bay View Community Water Service**

Dear Jim and Lloyd:

Thank you for sending me the information you referenced during our last meeting. I have also done some additional research regarding agreements between FORA and the Marina Coast Water District related to the Bay View property.

I am enclosing copies of the relevant documents from my research which seem to indicate that the District does have an obligation to accept the responsibility for the ownership and maintenance of the system.

Attached as Exhibit A is Amendment No. 1 to the MOA between the United States Army and FORA.

Article 1, paragraph f. of that Agreement states that Bay View Community is to receive service under the same terms and conditions as any other existing residential development in the City of Seaside. The language of this document is clearly inconsistent with the District's interpretation that the Bay View Community is to be held to a different standard than the remaining existing residential development in the City of Seaside and treated as if it were a multi-unit residential development in Marina. It appears clear to me from the unequivocal language of this document that Bay View is entitled to have the water system turned over to Marina Coast and have Marina Coast read and bill the meters just as they do with every other residential property owner in the City of Seaside.

Attached as Exhibit B is correspondence from the former Mayor of Seaside, former General Manager of the Marina Coast Water District and the Executive Director of FORA confirming that fact to the owner of Bay View, which again reiterates and amplifies the fact that Marina Coast is going to provide the same level of service as it does to other existing residential housing units within the City and FORA development area. As we discussed at our meeting last week, it



Mr. Jim Heitzman  
Lloyd W. Lowrey, Esq.  
June 29, 2012  
Page 2

appears that all of those developments are individually metered as has been requested by Bay View.

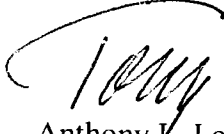
I have also reviewed the In-Tract Water and Wastewater Collection System Infrastructure Policy dated January, 2004 from Marina Coast Water District and nowhere in that policy does it describe a situation where any capital improvement is required of a water system within Fort Ord absent the redevelopment of the site by the property owner. Since this portion of the Bay View development is neither scheduled for development nor redevelopment, there is nothing in this property which would mandate any changes to the existing water system which Marina Coast should have taken ownership and control of many years ago.

The document Lloyd was kind enough to send me, which is entitled Water/Wastewater Facilities Agreement between the Fort Ord Reuse Authority and Marina Coast reiterates in paragraph 5.5.1 that it will operate the facilities in Fort Ord consistent with the rules, regulations and policies established by the FORA Board and District which, as they relate to this property, are clearly set forth in the previous correspondence I referenced.

I also noted in paragraph 5.13 of the same Agreement that it references decisions of the General Manager being appealed to the FORA Board, not to the Marina Coast Board as it relates to this water system. It also, therefore, appears that the appeal of the General Manager's decision should potentially be to the FORA Board, not to the Marina Coast Board.

Please give me a call after you have had a chance to review this so we can determine how we need to proceed.

Sincerely,



Anthony L. Lombardo

ALL:ncs

Enclosures

cc: Mr. Ray Roeder

# EXHIBIT A

KR LLP DRAFT  
7/26/01

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**AMENDMENT NO. 1  
TO THE  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
ACTING BY AND THROUGH  
THE SECRETARY OF THE ARMY  
UNITED STATES DEPARTMENT OF THE ARMY  
AND  
THE FORT ORD REUSE AUTHORITY  
FOR THE SALE OF  
PORTIONS OF THE FORMER FORT ORD  
LOCATED IN MONTEREY COUNTY, CALIFORNIA**

THIS AMENDMENT NO. 1 to the *Memorandum of Agreement between the United States of America acting by and through the Secretary of the Army, United States Department of the Army, and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord Located in Monterey County, California dated June 20, 2000* (“Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_ 2001 by and between **THE UNITED STATES OF AMERICA**, acting by and through the Department of the Army (“Government”), and **THE FORT ORD REUSE AUTHORITY** (“Authority”), recognized as the local redevelopment authority by the Office of Economic Adjustment on behalf of the Secretary of Defense. Government and Authority are sometimes referred to herein collectively as the “Parties.”

## RECITALS

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**WHEREAS**, the Parties did enter into the Agreement for the “No Cost” Economic Development Conveyance (“EDC”) to the Authority of a portion of the former Fort Ord, California (“Property”) pursuant to Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, as amended, and the implementing regulations of the Department of Defense (32 CFR Part 175);

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**WHEREAS**, subsequent to the execution and delivery of the Agreement, the Parties determined that in accordance with the Reuse Plan and in order to facilitate the economic redevelopment of the Property, it is desirable and necessary to include within the scope of the Agreement the Water and Wastewater Systems at the former Fort Ord (“Water Systems”), more particularly described in the Quitclaim Deed attached as Exhibit A to this Amendment No. 1, for transfer through the Authority to the Marina Coast Water District (“District”) in lieu of a direct transfer of the Water Systems from the Government to the District under a Public Benefit Conveyance (“PBC”);



## FORT ORD MOA AMENDMENT NO. 1

1 e. The Authority, through allocation instructions to the District, the Authority  
2 selected water purveyor, agrees to provide water service to the SunBay Housing Area  
3 ("SunBay"), in an amount up to 120 afy in the same fashion as water service is provided to other  
4 users on the former Fort Ord.  
5

6 f. The Authority, through allocation instructions to the District, the Authority  
7 selected water purveyor, agrees to provide water service to the Bay View Community/Brostrom  
8 Housing Area ("Bay View"), in an amount equal to .21 afy per residential housing unit times 223  
9 residential housing units, and 38 afy (.21 afy X 223 + 38 afy) as follows:  
10

- 11 1. Under the same terms and conditions of any other existing residential  
12 development in the City of Seaside, California ("Seaside").
- 13 2. Bay View residents will have three years to reduce consumption at Bay View to  
14 meet Seaside's .21 afy per unit conservation requirement without penalty.
- 15 3. Bay View residents will be charged at the then District rate as any other former  
16 Fort Ord user will be charged for similar water services.
- 17 4. The same level of water service (.21 afy per residential housing unit times 223  
18 residential housing units, and 38 afy) shall be available for future residential  
19 development on the Bay View site when and if a project is approved in  
20 conformity with Seaside's General Plan and Zoning requirements.
- 21 5. If a future development on the Bay View site can achieve a more efficient use of  
22 this amount of water service, credit for such conservation may be applied to an  
23 increase in units on the Bay View property in conformity with Seaside's General  
24 Plan and Zoning requirements if and when a project is approved.  
25

### 26 **Article 2. Reporting Period**

27  
28 In accordance with Section 2821 of the National Defense Authorization Act for Fiscal  
29 Year 2001 (Pub. L. No. 106-398) and the Agreement, the Agreement is hereby amended as  
30 follows:  
31

32 a. In paragraph 1.20 of the Agreement, delete the definition of Reporting Period in  
33 its entirety and substitute the following:  
34

35 "A period of time, beginning with the recordation of the Deed or Lease in  
36 Furtherance of Conveyance ("LIFOC") for the initial transfer of property and  
37 ending seven (7) years thereafter, within which the Authority will submit annual  
38 statements as described in paragraph 2.01(F) of this Agreement."  
39

40 b. In paragraph 2.01(F) of the Agreement delete the first sentence and substitute the  
41 following:  
42

**FORT ORD MOA AMENDMENT NO. 1**

1 “The Authority shall prepare and submit to the Government an annual financial  
2 statement certified by an independent certified public accountant. The statement  
3 shall cover the Authority's use of proceeds it receives from the sale, lease, or  
4 equivalent use of the Property. The first such statement shall cover the 12 month  
5 period beginning on the date of recordation of the first Deed or LIFO and shall  
6 be delivered to Government within 60 days of the end of that period and annually  
7 thereafter. The seven-year period will commence with the recordation of the  
8 Deed or LIFO for the initial transfer of property. The last such statement shall  
9 cover the 12 month period beginning on the date seven years following the  
10 recordation of the Deed or LIFO for the initial transfer of property. The  
11 financial statements shall cover all parcels of property that have been conveyed  
12 during the seven-year period.”  
13

14 **Article 3. Survival and Benefit**

15  
16 a. Unless defined separately, the terms used in this Amendment No. One shall be the  
17 same as used and defined in the Agreement.  
18

19 b. Except as set forth herein, and unless modified specifically by this Amendment  
20 No. 1, the terms and conditions contained in the Agreement shall remain binding upon the  
21 Parties and their respective successors and assigns as set forth in the Agreement.  
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23 **In Witness whereof**, the Parties, intending to be legally bound, have caused their duly  
24 authorized representatives to execute and deliver this Amendment No. 1 as of the date first above  
25 written.  
26

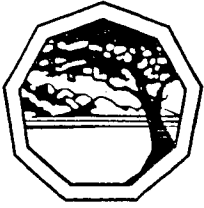
27 **UNITED STATES OF AMERICA,**  
28 **Acting by and through the Department of the Army**  
29  
30

31 **By:** \_\_\_\_\_  
32 **PAUL W. JOHNSON**  
33 **Deputy Assistant Secretary of the Army (I&H)**  
34  
35

36 **FORT ORD REUSE AUTHORITY**  
37 **LOCAL REDEVELOPMENT AUTHORITY**  
38  
39

40 **By:** \_\_\_\_\_  
41 **JIM PERRINE**  
42 **Chair**

# EXHIBIT B



## FORT ORD REUSE AUTHORITY

100 12TH STREET, BUILDING 2880, MARINA, CALIFORNIA 93933  
PHONE: (831) 883-3672 - FAX: (831) 883-3675  
WEBSITE: [www.fora.org](http://www.fora.org)

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January 4, 2002

Bay View/Brostrom  
ATTN: Ray Roeder  
c/o The RINC Organization  
5100 Coe Avenue  
Seaside, CA 93955

RE: Bay View/Brostrom - Commitment Regarding Provision of Water Resources and Services

Dear Mr. Roeder:

This letter offers a specific commitment from the City of Seaside ("the City"), the Fort Ord Reuse Authority ("FORA") and the Marina Coast Water District ("MCWD") regarding the provision of water resources and services for the Bay View Community/Brostrom Housing Area ("Bay View/Brostrom") at the former Fort Ord.

FORA has adopted a policy that all existing and future developments on the former Fort Ord will be treated on an equitable basis. In order to implement this policy, and to comply with other provisions of the Final Fort Ord Base Reuse Plan, FORA has adopted a water resources and services distribution program that includes requirements for water conservation and use. The distribution program is formally acknowledged in agreements with the MCWD, the United States Army, and the underlying jurisdictions, including the City, to guide the supply of water resources and services to properties within the former Fort Ord geographic envelope.

As the State empowered redevelopment entity for the former Fort Ord, and in compliance with the approved distribution program, FORA recognizes the water resource and service needs for Bay View and assures the provision of water resources and services to these existing residential housing units under the same terms and conditions as other existing developments within the City and the FORA development area. Specifically, and pursuant to Amendment No. 1 dated October 23, 2001 to the Fort Ord Economic Development Memorandum of Agreement, FORA, through allocation instructions to MCWD, agrees to provide water resources and services to Bay View, in an amount equal to .21 acre feet per year ("afy") per residential housing unit times 223 residential housing units, and 38 afy (.21 afy X 223 + 38 afy) as follows:


1. Under the same terms and conditions of any other existing residential development in the City.
2. Bay View residents will have three years to reduce consumption at Bay View to meet the City's .21 afy per unit conservation requirement without penalty.
3. Bay View residents will be charged at the then MCWD rate as any other former Fort Ord user will be charged for similar water services.
4. The same level of water service (.21 afy per residential housing unit times 223 residential housing units, and 38 afy) shall be available for future residential development on the Bay View site when and if a project is approved in conformity with the City's General Plan and Zoning requirements.

RECEIVED JAN 10 2002

5. If a future development can achieve a more efficient use of this amount of water service, credit for such conservation will be applied to an increase in units on the Bay View property in conformity with the City's General Plan and Zoning requirements.

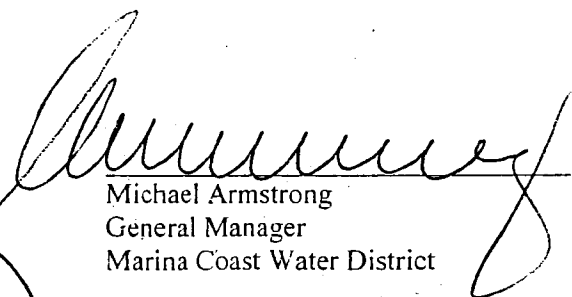
MCWD, as the FORA selected water purveyor for the former Fort Ord, accepts responsibility for providing the above-described level of water resources and services to Bay View consistent with the provision of water resources and services for all other projects and in compliance with the policies for conservation required throughout the former Fort Ord.

Yours truly,



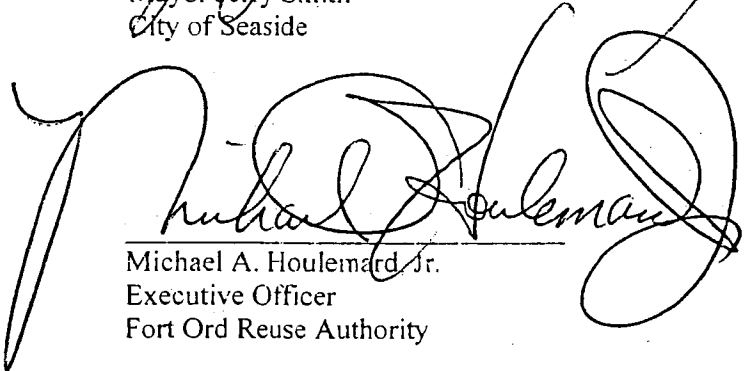
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Mayor Jerry Smith  
City of Seaside



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Michael Armstrong  
General Manager  
Marina Coast Water District



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Michael A. Houlemard Jr.  
Executive Officer  
Fort Ord Reuse Authority

c: George Schlossberg, Esq., Kutak Rock  
Jim Feeny, FORA

## Nancy Stafford

---

**From:** Nancy Stafford  
**Sent:** Friday, June 29, 2012 11:57 AM  
**To:** jheitzman@mcwd.org; Lowrey, Lloyd (llowrey@nheh.com)  
**Cc:** rr@rincorg.com  
**Subject:** BAY VIEW COMMUNITY WATER SERVICE  
**Attachments:** L-HEITZMAN, LOWREY.06.29.12.pdf

Good morning, Mr. Heitzman and Mr. Lowrey:

Please find attached a letter to you from Mr. Lombardo regarding the above referenced subject. The originals have been placed in today's mail.

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Nancy Stafford  
Secretary to Anthony L. Lombardo and Dale Ellis  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
450 Lincoln Avenue, Suite 101  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
Email [nancy@alombardolaw.com](mailto:nancy@alombardolaw.com)



## Tony Lombardo

---

**From:** Tony Lombardo  
**Sent:** Friday, June 01, 2012 2:28 PM  
**To:** Lowrey, Lloyd (lloyre@nheh.com)  
**Cc:** rr@rincorg.com; 'Dave Fuller (dfuller@wwdengineering.com)'; jheitzman@mcwd.org  
**Subject:** BAY VIEW/MCWD

Lloyd:

Thank you for scheduling yesterday's meeting.

I am writing to follow up on our discussions.

My client would like to first investigate the issues raised in our discussions prior to scheduling the appeal hearing. Please accept this as a request by appellant to not set the hearing for the appeal until such time as we have had a chance to review the information we discussed yesterday. We can pick a date to set the hearing on the appeal (if necessary) once we have had an opportunity to further discuss the information you are going to provide.

In that regard, it is my understanding that the District is going to provide a copy of their Master Metering/Multi-Unit Residential Metering Ordinance as well as a copy of the Water/Wastewater Facilities Agreement between the District and Ft. Ord.

It would also be helpful, I believe, if the District could provide information on its ownership of the water system within the former Ft. Ord particularly those which were constructed prior to Base closure and are not consistent with the current construction standards for Marina Coast. As I mentioned yesterday, we could do this by Public Records Act request, but I assume we can work cooperatively to obtain this information.

I have also requested more information from my client on his future plans for the property and the status of the property as a mobile home park.

Thank you for your assistance. I look forward to receiving the information from you and will probably set up a subsequent meeting at that time.

Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
450 Lincoln Avenue, Suite 101  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
Email [tony@alombardolaw.com](mailto:tony@alombardolaw.com)

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**ANTHONY LOMBARDO & ASSOCIATES**

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO  
KELLY MCCARTHY SUTHERLAND  
LINDA NEFF SUNDE

450 LINCOLN AVENUE, SUITE 101  
P.O BOX 2330  
SALINAS, CA 93902  
(831) 751-2330  
FAX (831) 751-2331

May 17, 2012

File No. 03138.001

MAY 18 2012

Mr. Jim Heitzman  
General Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933-2099

Re: **Bay View Community**

Dear Mr. Heitzman:

Our firm represents the owners of the Bay View Community located in the former Fort Ord area.

Please accept this letter as an appeal of the May 10, 2012 decision of the General Manager of the Marina Coast Water District ("MCWD") refusing to assume ownership and operational responsibility of the water distribution system located within the Bay View Community. The fifteen dollar (\$15.00) filing fee is enclosed.

The May 10<sup>th</sup> letter provides no explanation for the reason the District is refusing to accept the system. Bay View Community is entitled to receive water service on the same basis as all other properties within the former Fort Ord.

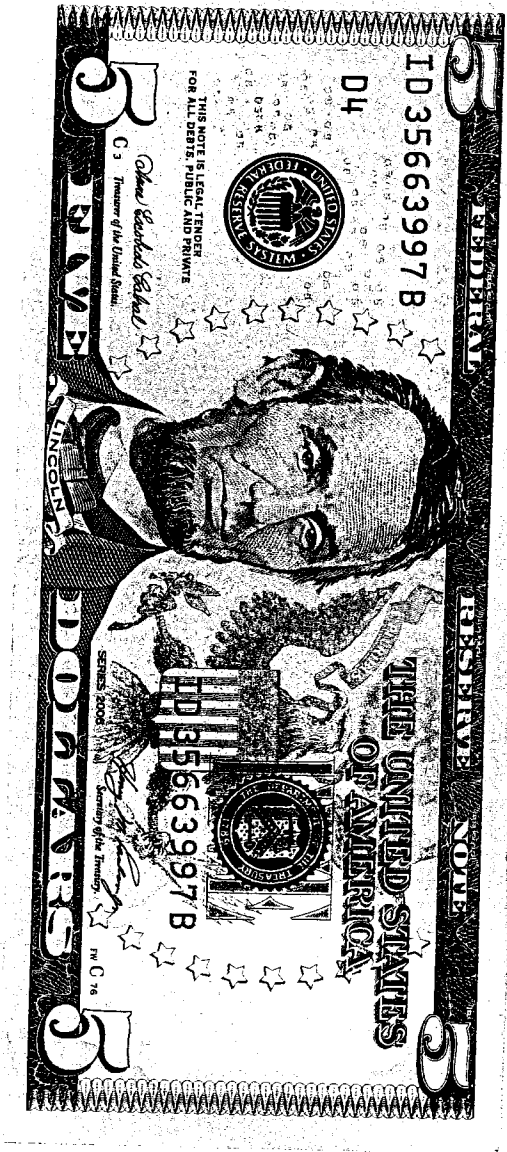
Respectfully submitted,

Anthony L. Lombardo

ALL:ncs

Enclosure

cc: Mr. Ray Roeder (without Enclosure)  
Lloyd W. Lowrey, Esq. (without Enclosure)



3138.001

**ANTHONY LOMBARDO & ASSOCIATES**

A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO  
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450 LINCOLN AVENUE, SUITE 101  
P.O. Box 2330  
SALINAS, CA 93902  
(831) 751-2330  
FAX (831) 751-2331

May 15, 2012

Lloyd Lowery, Esq.  
Noland, Hamerly, Etienne & Hoss  
Post Office Box 2510  
Salinas, California 93902-2510

Re: **Marina Coast Water District**

Dear Lloyd:

We represent the Bay View Community in Seaside. On May 10, 2012, our client received a letter from your client, the Marina Coast Water District ("MCWD"), indicating that the MCWD staff had declined to "assume ownership and operational responsibility" for the water and sewer systems currently providing water to the Bay View Community. Can you please let me know what the process is that we need to follow to appeal the staff's decision?

Thank you.

Sincerely,

  
Anthony L. Lombardo

ALL/gp

cc: client

**Tony Lombardo**

3138.1

---

**From:** Tony Lombardo  
**Sent:** Monday, May 14, 2012 4:33 PM  
**To:** jheitzman@mcwd.org; Lowrey, Lloyd (lloyre@nheh.com)  
**Cc:** rr@rincorg.com  
**Subject:** BAY VIEW COMMUNITY WATER SYSTEM

Gentlemen:

I received a copy of the letter that was sent to my client last week.

I would appreciate it if the District would provide specifics of why you are refusing to accept the system and provide me with information regarding whether or not there is any right of appeal of that determination to the District Board and when such an appeal would have to be made.

Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
450 Lincoln Avenue, Suite 101  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
Email [tony@alombardolaw.com](mailto:tony@alombardolaw.com)

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**Tony Lombardo**

3138.1

**From:** Tony Lombardo  
**Sent:** Wednesday, May 02, 2012 4:13 PM  
**To:** jheitzman@mcwd.org  
**Cc:** rr@rincorg.com  
**Subject:** BAY VIEW

Jim:

I think I recall you telling me you were meeting with your staff last week on scheduling the hearing date. Do you have an update?

Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
450 Lincoln Avenue, Suite 101  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
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**Tony Lombardo**

---

3/38.1

**From:** Tony Lombardo  
**Sent:** Thursday, April 19, 2012 2:59 PM  
**To:** jheitzman@mcwd.org  
**Cc:** rr@rincorg.com  
**Subject:** BAY VIEW SYSTEM DEDICATION

Jim:

I left you a message yesterday regarding the Bay View water system acceptance.

It is my understanding that all of the technical issues have been resolved and the client would like to get this on an agenda for the District as soon as possible so this property would be able to have its water service treated the same as everyone else in your District.

Thank you for your assistance.

Anthony L. Lombardo  
ANTHONY LOMBARDO & ASSOCIATES  
A Professional Corporation  
450 Lincoln Avenue, Suite 101  
Salinas, CA 93901  
Phone (831) 751-2330  
Fax (831) 751-2331  
Email [tony@alombardolaw.com](mailto:tony@alombardolaw.com)

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**ANTHONY LOMBARDO & ASSOCIATES**

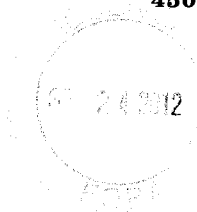
A PROFESSIONAL CORPORATION

MH  
STC  
SBS

ANTHONY L. LOMBARDO  
KELLY MCCARTHY SUTHERLAND  
DEBRA GEMGNANI TIPTON

450 LINCOLN AVENUE, SUITE 101  
P.O. BOX 2330  
SALINAS, CA 93902  
(831) 751-2330  
FAX (831) 751-2331

September 21, 2012



File No. 03138.001

Mr. Michael Houlemard, Jr.  
Fort Ord Reuse Authority  
100 12<sup>th</sup> Street, Building 2880  
Marina, CA 93933

Re: **Bay View Community**

Dear Mr. Houlemard:

Our firm represents the owners of the Bay View Community located in the former Fort Ord area.

Please accept this letter as an appeal to the Ford Ord Reuse Authority (FORA) of the May 10, 2012 decision of the Marina Coast Water District ("MCWD") General Manager refusing to assume ownership and operational responsibility of the water distribution system located within the Bay View Community.

The attached May 10<sup>th</sup> letter from MCWD provides no explanation for MCWD's refusal to accept the system. Bay View Community is entitled to receive water service on the same basis as all other properties within the former Fort Ord. I am also enclosing copies of the relevant documents from my research which seem to indicate that MCWD does have an obligation to accept the responsibility for the ownership and maintenance of the system.

Attached as Exhibit A is Amendment No. 1 to the MOA between the United States Army and FORA. Article 1, paragraph f of that Agreement states that Bay View Community is to receive service under the same terms and conditions as any other existing residential development in the City of Seaside. The language of this document is clearly inconsistent with MCWD's interpretation that the Bay View Community is to be held to a different standard than the remaining existing residential development in the City of Seaside and treated as if it were a multi-unit residential development in Marina. It appears clear to me from the unequivocal language of this document that Bay View is entitled to have the water system turned over to MCWD and have MCWD read and bill the meters just as they do with every other residential property owner in the City of Seaside.

Attached as Exhibit B is correspondence from the former Mayor of Seaside, former General Manager of the MCWD and the Executive Director of FORA confirming that fact to the owner of Bay View, which again reiterates and amplifies the fact that MCWD is going to provide the

3



Mr. Michael Houlemard, Jr.  
Fort Ord Reuse Authority  
September 21, 2012  
Page 2

same level of service as it does to other existing residential housing units within the City and FORA development area. Based on our research, it appears that all of those developments are individually metered as has been requested by Bay View.

I have also reviewed the In-Tract Water and Wastewater Collection System Infrastructure Policy dated January, 2004 from MCWD and nowhere in that policy does it describe a situation where any capital improvement is required of a water system within Fort Ord absent the redevelopment of the site by the property owner. Since this portion of the Bay View development is neither scheduled for development nor redevelopment, there is nothing in this property which would mandate any changes to the existing water system which MCWD should have taken ownership and control of many years ago.

Further, the Water/Wastewater Facilities Agreement between the Fort Ord Reuse Authority and MCWD reiterates in paragraph 5.5.1 that it will operate the facilities in Fort Ord consistent with the rules, regulations and policies established by the FORA Board and MCWD which, as they relate to this property, are clearly set forth in the correspondence I referenced previously.

Since paragraph 5.13 of that Agreement makes decisions of the General Manager of the MCWD appealable to the FORA Board, we are hereby filing that appeal.

Please let me know if there is any additional information you need to process this appeal.

Sincerely,



Anthony L. Lombardo

ALL:GHC;ncs

Enclosures

cc: Mr. Ray Roeder  
Jerry Bowden, Esq.  
Terra Chaffee, Esq.



## MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099

Home Page: [www.mcwd.org](http://www.mcwd.org)

TEL: (831) 384-6131 FAX: (831) 883-5995

### DIRECTORS

DAN BURNS  
*President*

HOWARD GUSTAFSON  
*Vice President*

KENNETH K. NISHI  
JAN SHRINER  
WILLIAM Y. LEE

May 10, 2012

Mr. Ray Roeder  
RINC Diversified  
5100 Coe Avenue  
Seaside, CA 93955

Subject: Bay View Community Water and Sewer Infrastructure

Dear Mr. Roeder,

The Marina Coast Water District (District) has reviewed your request for the District assuming ownership and operational responsibility for the potable water and sanitary sewer infrastructure that serves your Bay View Community in Seaside. The District staff has reviewed the submitted Bay View water and sewer system as-built drawings and has conducted a review of the infrastructure.

The results of the review indicate that the Bay View Community water and sewer systems do not conform to MCWD requirements and standards and would require substantial modification to achieve compliance. As such, it would not be in the best interest of the District to assume ownership and operational responsibility.

If you would like to meet to review our findings, please give me a call at (831) 883-5925. Thank you for your patience in this matter.

Sincerely,

Carl Niizawa, P.E.  
Deputy General Manager/District Engineer

Cc: James Derbin                      Jim Heitzman  
Lloyd Lowrey                         Brian True

# EXHIBIT A

KR LLP DRAFT  
7/26/01

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**AMENDMENT NO. 1  
TO THE  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
ACTING BY AND THROUGH  
THE SECRETARY OF THE ARMY  
UNITED STATES DEPARTMENT OF THE ARMY  
AND  
THE FORT ORD REUSE AUTHORITY  
FOR THE SALE OF  
PORTIONS OF THE FORMER FORT ORD  
LOCATED IN MONTEREY COUNTY, CALIFORNIA**

**THIS AMENDMENT NO. 1** to the *Memorandum of Agreement between the United States of America acting by and through the Secretary of the Army, United States Department of the Army, and the Fort Ord Reuse Authority for the Sale of Portions of the Former Fort Ord Located in Monterey County, California dated June 20, 2000* (“Agreement”) is entered into on this \_\_\_ day of \_\_\_\_\_ 2001 by and between **THE UNITED STATES OF AMERICA**, acting by and through the Department of the Army (“Government”), and **THE FORT ORD REUSE AUTHORITY** (“Authority”), recognized as the local redevelopment authority by the Office of Economic Adjustment on behalf of the Secretary of Defense. Government and Authority are sometimes referred to herein collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Parties did enter into the Agreement for the “No Cost” Economic Development Conveyance (“EDC”) to the Authority of a portion of the former Fort Ord, California (“Property”) pursuant to Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, as amended, and the implementing regulations of the Department of Defense (32 CFR Part 175);

**WHEREAS**, subsequent to the execution and delivery of the Agreement, the Parties determined that in accordance with the Reuse Plan and in order to facilitate the economic redevelopment of the Property, it is desirable and necessary to include within the scope of the Agreement the Water and Wastewater Systems at the former Fort Ord (“Water Systems”), more particularly described in the Quitclaim Deed attached as Exhibit A to this Amendment No. 1, for transfer through the Authority to the Marina Coast Water District (“District”) in lieu of a direct transfer of the Water Systems from the Government to the District under a Public Benefit Conveyance (“PBC”);



## FORT ORD MOA AMENDMENT NO. 1

1 e. The Authority, through allocation instructions to the District, the Authority  
2 selected water purveyor, agrees to provide water service to the SunBay Housing Area  
3 ("SunBay"), in an amount up to 120 afy in the same fashion as water service is provided to other  
4 users on the former Fort Ord.  
5

6 f. The Authority, through allocation instructions to the District, the Authority  
7 selected water purveyor, agrees to provide water service to the Bay View Community/Brostrom  
8 Housing Area ("Bay View"), in an amount equal to .21 afy per residential housing unit times 223  
9 residential housing units, and 38 afy (.21 afy X 223 + 38 afy) as follows:  
10

- 11 1. Under the same terms and conditions of any other existing residential  
12 development in the City of Seaside, California ("Seaside").
- 13 2. Bay View residents will have three years to reduce consumption at Bay View to  
14 meet Seaside's .21 afy per unit conservation requirement without penalty.
- 15 3. Bay View residents will be charged at the then District rate as any other former  
16 Fort Ord user will be charged for similar water services.
- 17 4. The same level of water service (.21 afy per residential housing unit times 223  
18 residential housing units, and 38 afy) shall be available for future residential  
19 development on the Bay View site when and if a project is approved in  
20 conformity with Seaside's General Plan and Zoning requirements.
- 21 5. If a future development on the Bay View site can achieve a more efficient use of  
22 this amount of water service, credit for such conservation may be applied to an  
23 increase in units on the Bay View property in conformity with Seaside's General  
24 Plan and Zoning requirements if and when a project is approved.  
25

### 26 Article 2. Reporting Period

27  
28 In accordance with Section 2821 of the National Defense Authorization Act for Fiscal  
29 Year 2001 (Pub. L. No. 106-398) and the Agreement, the Agreement is hereby amended as  
30 follows:  
31

32 a. In paragraph 1.20 of the Agreement, delete the definition of Reporting Period in  
33 its entirety and substitute the following:  
34

35 "A period of time, beginning with the recordation of the Deed or Lease in  
36 Furtherance of Conveyance ("LIFOC") for the initial transfer of property and  
37 ending seven (7) years thereafter, within which the Authority will submit annual  
38 statements as described in paragraph 2.01(F) of this Agreement."  
39

40 b. In paragraph 2.01(F) of the Agreement delete the first sentence and substitute the  
41 following:  
42

**FORT ORD MOA AMENDMENT NO. 1**

1           “The Authority shall prepare and submit to the Government an annual financial  
2 statement certified by an independent certified public accountant. The statement  
3 shall cover the Authority's use of proceeds it receives from the sale, lease, or  
4 equivalent use of the Property. The first such statement shall cover the 12 month  
5 period beginning on the date of recordation of the first Deed or LIFOC and shall  
6 be delivered to Government within 60 days of the end of that period and annually  
7 thereafter. The seven-year period will commence with the recordation of the  
8 Deed or LIFOC for the initial transfer of property. The last such statement shall  
9 cover the 12 month period beginning on the date seven years following the  
10 recordation of the Deed or LIFOC for the initial transfer of property. The  
11 financial statements shall cover all parcels of property that have been conveyed  
12 during the seven-year period.”  
13

14           **Article 3. Survival and Benefit**  
15

16           a.       Unless defined separately, the terms used in this Amendment No. One shall be the  
17 same as used and defined in the Agreement.  
18

19           b.       Except as set forth herein, and unless modified specifically by this Amendment  
20 No. 1, the terms and conditions contained in the Agreement shall remain binding upon the  
21 Parties and their respective successors and assigns as set forth in the Agreement.  
22

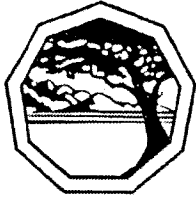
23           In Witness whereof, the Parties, intending to be legally bound, have caused their duly  
24 authorized representatives to execute and deliver this Amendment No. 1 as of the date first above  
25 written.  
26

27           **UNITED STATES OF AMERICA,**  
28 **Acting by and through the Department of the Army**  
29

30  
31           By: \_\_\_\_\_  
32           **PAUL W. JOHNSON**  
33           **Deputy Assistant Secretary of the Army (I&H)**  
34  
35

36           **FORT ORD REUSE AUTHORITY**  
37 **LOCAL REDEVELOPMENT AUTHORITY**  
38

39  
40           By: \_\_\_\_\_  
41           **JIM PERRINE**  
42           **Chair**



# EXHIBIT B

## FORT ORD REUSE AUTHORITY

100 12TH STREET, BUILDING 2880, MARINA, CALIFORNIA 93933  
PHONE: (831) 883-3672 · FAX: (831) 883-3675  
WEBSITE: [www.fora.org](http://www.fora.org)

---

January 4, 2002

Bay View/Brostrom  
ATTN: Ray Roeder  
c/o The RINC Organization  
5100 Coe Avenue  
Seaside, CA 93955

RE: Bay View/Brostrom - Commitment Regarding Provision of Water Resources and Services

Dear Mr. Roeder:

This letter offers a specific commitment from the City of Seaside ("the City"), the Fort Ord Reuse Authority ("FORA") and the Marina Coast Water District ("MCWD") regarding the provision of water resources and services for the Bay View Community/Brostrom Housing Area ("Bay View/Brostrom") at the former Fort Ord.

FORA has adopted a policy that all existing and future developments on the former Fort Ord will be treated on an equitable basis. In order to implement this policy, and to comply with other provisions of the Final Fort Ord Base Reuse Plan, FORA has adopted a water resources and services distribution program that includes requirements for water conservation and use. The distribution program is formally acknowledged in agreements with the MCWD, the United States Army, and the underlying jurisdictions, including the City, to guide the supply of water resources and services to properties within the former Fort Ord geographic envelope.

As the State empowered redevelopment entity for the former Fort Ord, and in compliance with the approved distribution program, FORA recognizes the water resource and service needs for Bay View and assures the provision of water resources and services to these existing residential housing units under the same terms and conditions as other existing developments within the City and the FORA development area. Specifically, and pursuant to Amendment No. 1 dated October 23, 2001 to the Fort Ord Economic Development Memorandum of Agreement, FORA, through allocation instructions to MCWD, agrees to provide water resources and services to Bay View, in an amount equal to .21 acre feet per year ("afy") per residential housing unit times 223 residential housing units, and 38 afy (.21 afy X 223 + 38 afy) as follows:

1. Under the same terms and conditions of any other existing residential development in the City.
2. Bay View residents will have three years to reduce consumption at Bay View to meet the City's .21 afy per unit conservation requirement without penalty.
3. Bay View residents will be charged at the then MCWD rate as any other former Fort Ord user will be charged for similar water services.
4. The same level of water service (.21 afy per residential housing unit times 223 residential housing units, and 38 afy) shall be available for future residential development on the Bay View site when and if a project is approved in conformity with the City's General Plan and Zoning requirements.

RECEIVED JAN 10 2002

Bay View/Brostrom: Commitment Re Water Resources & Service


January 4, 2002

Page 2

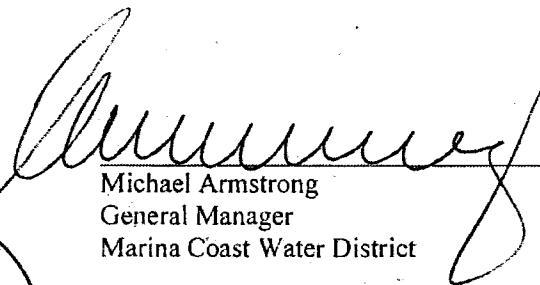
5. If a future development can achieve a more efficient use of this amount of water service, credit for such conservation will be applied to an increase in units on the Bay View property in conformity with the City's General Plan and Zoning requirements.

MCWD, as the FORA selected water purveyor for the former Fort Ord, accepts responsibility for providing the above-described level of water resources and services to Bay View consistent with the provision of water resources and services for all other projects and in compliance with the policies for conservation required throughout the former Fort Ord.

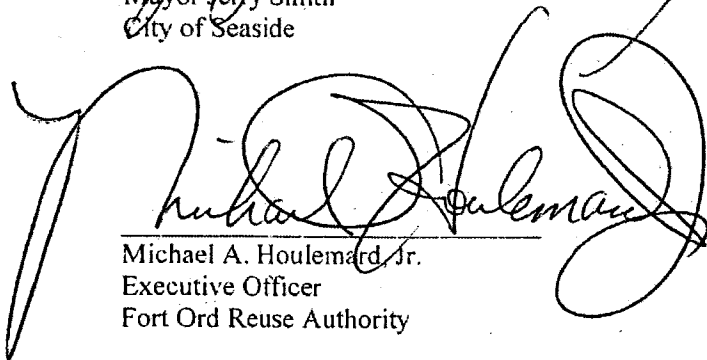
Yours truly,



\_\_\_\_\_  
Mayor Jerry Smith  
City of Seaside



\_\_\_\_\_  
Michael Armstrong  
General Manager  
Marina Coast Water District



\_\_\_\_\_  
Michael A. Houlemard, Jr.  
Executive Officer  
Fort Ord Reuse Authority

c: George Schlossberg, Esq., Kutak Rock  
Jim Feeney, FORA