



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING

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

Wednesday, March 4, 2020 at 8:30 a.m.

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

## AGENDA

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

#### 2. PLEDGE OF ALLEGIANCE

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

- Monterey Regional Fire District

#### 4. PUBLIC COMMENT PERIOD

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

#### 5. APPROVAL OF MEETING MINUTES

**ACTION**

- February 5 & 6, 2020 Meeting Minutes
- February 19, 2020 Meeting Minutes

#### 6. MARCH 12, 2020 BOARD MEETING AGENDA REVIEW

**INFORMATION**

#### 7. BUSINESS ITEMS

**INFORMATION/ACTION**

- Draft TPIA Discussion
  - MCWD Water Allocation Presentation
- Capital Improvement Program & Building Removal Budget Update
- Proposed 2018 Transition Plan Amendments

#### 8. ITEMS FROM MEMBERS

**INFORMATION**

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

#### 9. ADJOURNMENT

**NEXT MEETING: March 18, 2020**



## FORT ORD REUSE AUTHORITY

### ADMINISTRATIVE COMMITTEE MEETING MINUTES

8:30 a.m. Wednesday, February 5, 2020 and Continued to 10:30 a.m. Thursday, February 6, 2020  
FORA Conference Room| 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

#### 1. CALL TO ORDER

Co-Chair Joshua Metz called the meeting to order at 8:32 a.m.

The following members were present:

Steve Matarazzo (UCMBEST)  
Layne Long\* (City of Marina)  
Mike Zeller (TAMC)  
Patrick Breen (MCWD)  
Vicki Nakamura (MPC)  
Anya Spear (CSUMB)

Hans Usler\* (City of Monterey)  
Melanie Beretti\* (County of Monterey)  
Craig Malin\* (City of Seaside)  
Dino Pick\* (City of Del Rey Oaks)  
Michelle Overmeyer (MST)  
\*Voting Member

#### 2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Carlos Urrutia of Carlos Urrutia Consulting.

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

- Senior Program Manager Stan Cook announced the initial Environmental Services Cooperative Agreement ("ESCA") Long Term Obligations Management meeting will be held immediately following the Administrative Committee meeting.
- Executive Officer Joshua Metz announced that the agencies must submit for reimbursement of caretaker costs by the end of May to receive payment by FORA's dissolution date of June 30, 2020.
- Mr. Metz reported the Drone, Automation, & Robotics Technology ("DART") Symposium will take place at CSUMB June 25-26, 2020. Visit [www.montereybaydart.org](http://www.montereybaydart.org) for more information.

#### 4. PUBLIC COMMENT PERIOD

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

No public comments were received.

#### 5. APPROVAL OF MEETING MINUTES

#### ACTION

- a. January 15, 2020 Meeting Minutes

**MOTION:** On motion by Committee member Malin, seconded by Committee member Beretti and carried by the following vote, the Administrative Committee moved to approve the January 15, 2020 meeting minutes.

**MOTION PASSED UNANIMOUSLY**

*\*Chair Dino Pick requested in the interest of time the Administrative Committee hear Business Item 7a prior to the February 13, 2020 Board meeting agenda review if the committee has no objections.*

## **6. February 13, 2020 Board Meeting Agenda Review**

### **a. Building Removal Bond Status**

Mr. Metz reported building removal bond validation action was filed on January 28, 2020, initiating a 30-day review period during which agencies served may answer. An answer to the action could set in motion litigation which would significantly delay the bond issuance timeline. Mr. Metz noted Monterey County Regional Fire District ("MCRFD") has submitted a email in response to the validation action, stating MCRFD will not support the bond issue until revenue loss issues are resolved. Economic Planning Systems, Inc. ("EPS") consultants and staff are working with MCRFD to compile an in-depth fiscal analysis. Committee members discussed timeline issues and set a special Administrative Committee meeting for Monday, February 24, 2020 at 8:30 a.m. to focus on building removal bond documents.

### **b. Habitat Working Group ("HWG") Update**

Consultant contract amendments are necessary to provide support to HWG. The Board will be asked to vote to direct the Executive Officer to approve these contract amendments. Denise Duffy & Associates ("DDA") consultant Erin Harwayne noted DDA's contract amendments specifically relate to response to comments for Environmental Impact Report certification. Staff and consultants heard questions and comments from members.

### **c. Draft Transition Plan Implementing Agreement ("TPIA") Review**

Per the Committee's request, this item was postponed for discussion at the February 19, 2020 regular Administrative Committee meeting. The Draft TPIA will be distributed to the Board of Directors at the February 13, 2020 meeting as an informational update.

## **7. BUSINESS**

### **a. ESCA/LRA Update**

Executive Officer Joshua Metz introduced the item and Regional Government Services ("RGS") consultant Kendall Flint advised the Committee that she and Mr. Metz have met with representatives from member agencies to identify issues/concerns. Ms. Flint led the Committee members through a section-by-section review of the draft ESCA/LRA agreement, soliciting questions, comments or concerns. After a robust discussion among the Committee members it was suggested this item be further vetted amongst the Administrative Committee and their respective legal counsels in a continuance of the item on Thursday, February 6, 2020 at 10:30am. Staff and consultants responded to questions and comments from the Committee.

**MOTION:** On motion by Committee member Beretti, seconded by Committee member Pick and carried by the following vote, the Administrative Committee moved to continue discussion of item 7a; ESCA/LRA Update on February 6, 2020 at 10:30 a.m.

**MOTION PASSED UNANIMOUSLY**

The following members were present at the continued meeting on February 6, 2020:

Steve Matarazzo (UCMBEST)  
Layne Long\* (City of Marina)  
\*Voting Member

Hans Uslar\* (City of Monterey)  
Patrick Breen (MCWD)  
Craig Malin\* (City of Seaside)

The Administrative Committee reconvened to review in detail the clarifications made to the agreement in the following sections:

3.0 Insurance Policies;

8.4 No Obligation of other Entities;

9.0 Water Rights Allocations, Wastewater Discharge Rights; Creates No Land-use Authority, and language that Seaside shall not require payment of any sale or lease proceeds or revenues (or the equivalent use of property such as licenses, permits, concession agreements etc.) from other entities for the transfer of property, water rights, or wastewater discharge rights received from the Army pursuant to the Memorandum of Agreement and;

22. Third-Party Rights, updating the language.

Staff and consultants responded to questions and comments from the Committee.

**MOTION:** On motion by Committee member Malin, seconded by Committee member Uslar and carried by the following vote, the Administrative Committee moved to recommend approval of the draft ESCA/LRA Agreement as revised to the FORA Board of Directors, with one no vote by Committee member Long.

**MOTION PASSED**

**8. ITEMS FROM MEMBERS**

None.

**9. ADJOURNMENT** at 10:34 a.m.

Minutes Prepared By:

Heidi Gaddy  
Deputy Clerk

Natalie Van Fleet  
Administrative Assistant



**FORT ORD REUSE AUTHORITY**  
**ADMINISTRATIVE COMMITTEE MEETING MINUTES**  
**8:30 a.m. Wednesday, February 19, 2020 | FORA Conference Room**  
920<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

**1. CALL TO ORDER**

Co-Chair Joshua Metz called the meeting to order at 8:33 a.m.

The following were present:

Steve Matarazzo (UCMBEST)  
Layne Long\* (City of Marina)  
Anya Spear (CSUMB)  
Patrick Breen (MCWD)  
Vicki Nakamura (MPC)

Hans Uslar\* (City of Monterey)  
Craig Malin\* (City of Seaside)  
Nick Chiulos\* (County of Monterey)  
Todd Muck (TAMC)  
\*Voting Member

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Anya Spear.

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

- Senior Program Manager Stan Cook announced the Department of Toxic Substances Control ("DTSC") distributed an agreement to member jurisdictions to modify the original DTSC Memorandum of Agreement ("MOA"). To submit the executed MOA please contact Monterey County Health Department Assistant Bureau Chief Ric Encarnacion at [encarnacionr@co.monterey.ca.us](mailto:encarnacionr@co.monterey.ca.us).
- Mr. Cook announced the Environmental Services Cooperative Agreement ("ESCA") Long Term Obligation Management Program Meeting will take place on March 4, 2020 at 10:00 a.m. Police, planners, and property managers are encouraged to attend.
- Shea Homes developer Doug Yount announced that preparations have begun for removal of former Fort Ord buildings directly north of FORA's office.

**4. PUBLIC COMMENT PERIOD**

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

No public comments were received.

**5. APPROVAL OF MEETING MINUTES**

**ACTION**

- a. February 5 & 6, 2020 Meeting Minutes

**MOTION:** On motion by Committee member Malin, seconded by Committee member Uslar and carried by the following vote, the Administrative Committee moved to approve the February 5 & 6, 2020 minutes with proposed corrections.

**MOTION PASSED UNANIMOUSLY**

*\*Committee member Long stated the minutes had incorrectly recorded an abstention to approve the draft ESCA/Local Reuse Authority ("LRA") Agreement. Member Long noted he had in fact voted no.*

**MOTION:** On motion by Committee member Uslar, seconded by Committee member Malin and carried by the following vote, the Administrative Committee moved to withdraw approval of the February 5 & 6, 2020 meeting minutes.

**MOTION PASSED UNANIMOUSLY**

*\*The February 5 & 6, 2020 minutes will be brought back with the proposed corrections for approval at the next Administrative Committee meeting.*

**6. February 13, 2020 Board Meeting Follow-Up**

Mr. Metz reviewed the items discussed at the February 13, 2020 Board meeting. He noted the Board approved ESCA/LRA Agreement Version 8 by majority and will bring it back for a second vote at the February 21, 2020 special Board meeting.

**7. BUSINESS**

**a. Draft Transition Plan Implementing Agreement ("TPIA") Review**

Mr. Metz introduced the item and Regional Government Services ("RGS") consultant Kendall Flint reviewed the draft TPIA section-by-section and heard questions and comments from the Committee. Ms. Flint noted staff is requesting written comments regarding the TPIA from agencies' legal counsels by March 15, 2020 in order to incorporate suggested revisions into the final version. The Committee engaged in robust discussion and modified the following sections:

1.0; 2001 Implementation Agreements Superseded,  
5.0; Records Retention and Management,  
6.0; Communities Facilities District Revenues,  
7.0; Outstanding Debt.

Section 3.0; Roadway Projects was removed from the Agreement in favor of a separate agreement between jurisdictions and developers. The Committee agreed to postpone discussion regarding section 2.0; Water Allocations and section 4.0; Habitat Management, to the March 4, 2020 regular Administrative Committee meeting.

**8. ITEMS FROM MEMBERS**

None.

**9. ADJOURNMENT** at 10:32 a.m.

Minutes Prepared By:

Natalie Van Fleet  
Administrative Assistant

## TRANSITION PLAN IMPLEMENTING AGREEMENT

This Transition Plan Implementing Agreement (this “Agreement”) is dated for reference purposes \_\_\_\_\_, 2020 and is entered into by and among:

- (a) County of Monterey (“County”),
- (b) City of Marina (“Marina”),
- (c) City of Seaside (“Seaside”),
- (d) City of Del Rey Oaks (“Del Rey Oaks”), and
- (e) City of Monterey (“Monterey”),
- (f) California Department of Parks and Recreation (“State Parks”),
- (g) Regents of the University of California (“UC”), and
- (h) Board of Trustees of the California State University on behalf of the Monterey Bay campus (“CSUMB” and collectively with County, Marina, Seaside, Del Rey Oaks, Monterey, State Parks, and UC, the “Parties”).

**Commented [DW1]:** David Willoughby observed that if the section dealing with water allocations is removed from this agreement, there may be no need for these entities to remain parties.

## RECITALS

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

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

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

## AGREEMENT

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

### 1.0 2001 IMPLEMENTATION AGREEMENTS SUPERSEDED.

Effective as of July 1, 2020, this Agreement supersedes each of the following agreements, which shall be of no further force or effect:



Implementation Agreement between FORA and County dated May 8, 2001 and recorded October 18, 2001 as Document 2001088380 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Del Rey Oaks dated May 31, 2001 and recorded October 18, 2001 as Document 2001088379 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Marina dated May 1, 2001 and recorded October 18, 2001 as Document 2001088377 in the Official Records of the Recorder of the County of Monterey as amended by Amendment #1 dated September 13, 2012 and recorded September 14, 2012 as Document 2012054071 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Monterey dated August 10, 2001 and recorded October 18, 2001 as Document 2001088378 in the Official Records of the Recorder of the County of Monterey.

Implementation Agreement between FORA and Seaside dated May 31, 2001 and recorded October 18, 2001 as Document 2001088381 in the Official Records of the Recorder of the County of Monterey.

## 2.0 WATER ALLOCATIONS [ENTIRE SECTION MAY BE REMOVED]

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

## 3.0 ROADWAY PROJECTS [ENTIRE SECTION MAY BE REMOVED]

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

**Commented [DW2]:** Wendy Strimling proposed to add the following words here:

“, including any and all amendments thereto.”

FORA staff concurs with her recommendation.

**Commented [DW3]:** Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all amendments thereto.”

**Commented [DW4]:** Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all further amendments thereto.”

**Commented [DW5]:** Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all amendments thereto.”

**Commented [DW6]:** Consistent with Wendy Strimling's proposal described above, FORA staff recommends that the following wording be included here:

“, including any and all amendments thereto.”

**Commented [DW7]:** Wendy Strimling questioned whether MCWD is proposing a separate agreement on this issue.

Kendall Flint reported that MCWD is expected to be present at the March 4 meeting of FORA's Administrative Committee to report on the prospects of entering into ...

**Commented [DW8]:** Karin Salameh proposed that this be reworded as follows: ...

**Commented [DW9]:** Wendy Strimling proposed that this be reworded as follows: ...

**Commented [DW10]:** Wendy Strimling commented that Exhibit A needs revision to include recycled water. ...

**Commented [DW11]:** Wendy Strimling commented that there is a need to clarify this wording. She also questioned who is making any decision as to future allocation? ...

**Commented [DW12]:** David Willoughby commented that based on the discussion that occurred at the last meeting it seems appropriate to remove Section 3 in its entirety. ...

**Commented [DW13]:** Wendy Strimling commented that there is a need to define "local road" vs "regional road." ...

**Commented [DW14]:** Wendy Strimling proposed that these words be removed. ...

**Commented [DW15]:** Wendy Strimling proposed that this be reworded as follows: ...



**3.2 Regional Roads.** It is anticipated that effective July 1, 2020, the Transportation Agency for Monterey County will be responsible for the collection of Regional Development Impact Fees for the FORA Zone (Zone 5). Thereafter, for developments within the boundaries of the former Fort Ord that are entitled but not required to pay community facilities district charges after FORA's Dissolution, the Party with permitting authority over such development will either assess the Regional Development Impact Fee or collect a comparable development impact fee equal to the amount of the Regional Development Impact Fee and remit that amount to the Transportation Agency for Monterey County as mitigation for impacts to regional roads.

#### 4.0 HABITAT MANAGEMENT [ENTIRE SECTION MAY BE REMOVED]

After FORA's Dissolution, no further funding will be available from FORA for implementation of the Fort Ord Multispecies Habitat Conservation Plan ("HCP"). All funds accumulated before FORA's Dissolution for the purpose of habitat mitigation shall be transferred in the following order of priority. If before April 1, 2020 a Habitat Conservation Plan Cooperative (the "HCP Cooperative") has been established, all the habitat mitigation funds held by FORA immediately prior to FORA's Dissolution shall be transferred in their entirety to the HCP Cooperative for use in connection with the HCP being administered by the HCP Cooperative. If no HCP Cooperative is in existence, then FORA will prepare a program to distribute the habitat mitigation funds to one or more recipients for long-term management of the area located within the habitat reserve areas, the habitat corridors, and the restricted development parcels pursuant to the revised "Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord" issued by the U.S. Army Corps of Engineers in April 1997.

#### 5.0 RECORDS RETENTION AND MANAGEMENT [ENTIRE SECTION MAY BE REMOVED]

Except for records transferred to (a) FORA's successor-in-interest under Environmental Services Cooperative Agreement W9128F 07 2-0162, as amended, entered into between FORA and the Army or (b) to the local redevelopment authority designated as FORA's successor in connection with that economic development conveyance Memorandum of Agreement entered into between FORA and the Army dated June 23, 2000, as amended, all FORA records, including personnel files, documents, and meeting records will be transferred to County for retention and management.

#### 6.0 COMMUNITY FACILITIES DISTRICT REVENUES

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

**Commented [DW16]:** Wendy Strimling commented that legally, land use agencies cannot commit to imposition of new charges on entitled development (unless the developer has already agreed). She also proposed that this be reworded as follows:

"Thereafter, for proposed developments within the boundaries of the former Fort Ord that are not yet entitled as of June 30, 2020, but not required to pay community facilities district charges after FORA's Dissolution, the Party with permitting authority over such development will either assess the Regional Development Impact Fee for Zone 5 or collect a comparable development impact fee equal to the amount of the Regional Development Impact Fee to mitigate the proposed development's impact to regional roads and remit that amount to the Transportation Agency for

**Commented [DW17]:** Karin Salameh commented that it is premature to finalize Section 4.0 related to Habitat Management as the parties continue to discuss a path forward, including modifying the Transition Plan language that this draft includes. As such, she did not propose any markups on this section at this time, but notes that it will likely need to be revised.

**Commented [DW18]:** Wendy Strimling proposed that this be reworded as follows:

"After FORA's Dissolution, no further funding will be available from FORA for management of habitat on the former Fort Ord, including but not limited to implementation

**Commented [DW19]:** Wendy Strimling proposed that this be reworded as follows:

"All funds accumulated before FORA's Dissolution for the purpose of habitat mitigation shall be transferred in the following order of priority. If before April 1, 2020, a Habitat Conservation Plan Cooperative Joint Powers Agreement

**Commented [DW20]:** Wendy Strimling that there is a need to specify distribution of funds if there is no JPA, rather than giving broad authority to FORA. She suggested that this wording be made consistent with the Habitat Working Group recommendation/FORA decision on this issue.

**Commented [DW21]:** Wendy Strimling proposed that this be reworded as follows:

"... EDC economic development conveyance Memorandum of Agreement ...."

**Commented [DW22]:** Wendy Strimling proposed adding the following sentence:

"FORA shall allocate \$ \_\_\_ to defray the initial costs to the County of this records management."

**Commented [DW23]:** Wendy Strimling commented that there is a need to specify parameters for disbursement. Expenditure of CFD funds is constrained by CFD legislation, so add those parameters. Also suggest performance standards as to the distribution among the signatories. Need to add indemnity/hold harmless provision for County (or a

## 7.0 OUTSTANDING DEBT [ENTIRE SECTION MAY BE REMOVED]

If FORA has any remaining outstanding debt at the time of FORA's Dissolution, property tax revenues shall continue to be paid to County in accordance with subparagraph (D) of paragraph (1) of subdivision (c) of Section 33492.71 of the Health and Safety Code in an amount necessary to pay the principal and interest or other amounts on that debt. Upon the retirement of the debt, any remaining property tax revenues shall be transferred to the auditor-controller of County for appropriate distribution. County may, before disbursing revenues as provided in this section, deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues to be disbursed.

**Commented [DW24]:** Wendy Strimling commented that the distribution of tax increment is governed by H and S Code sec. 33492.71 and is not governed by this contract. For that reason, she questioned whether Section 7 should be omitted.

## 8.0 SEVERABILITY

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

## 9.0 DISPUTE RESOLUTION [ENTIRE SECTION MAY BE REMOVED]

If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 9.

**Commented [DW25]:** Karin Salameh suggested that the mediation requirement be made a little less onerous (and suggested making that optional to the parties), similar to the arbitration provision.

Wendy Strimling suggested the addition of a mutual indemnity and hold harmless provision.

David Willoughby observed that if the dispute resolution process will be entirely voluntary, there is no need to include any of Section 9 at all.

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

**Commented [DW26]:** Karin Salameh proposed that this be reworded as follows:

“... ~~demand mediation~~ proceed as follows:”

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

**Commented [DW27]:** Karin Salameh proposed that this be renumbered Section 9.1.

FORA staff recommends that, if Section 9 remains part of this agreement, this should remain numbered as Section 9.2.

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

**Commented [DW28]:** Karin Salameh that the words “and if all disputing Parties wish to pursue mediation,” be added.

(i) Any potential arbitrator must affirmatively disclose all of his or her potential conflicts of interest, and a description of the nature of his or her past and current law practice (if applicable), before the Parties select the arbitrator. A Party may disqualify any potential arbitrator whom the Party subjectively perceives to have a conflict or bias. Any potential arbitrator

must be a qualified professional with expertise in the area that is the subject of the dispute, unless the disputing Parties otherwise agree. The disputing Parties shall jointly select a single arbitrator.

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

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

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

**9.5 Judicial Resolution.** If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the disputing Parties to pursue arbitration, then any disputing Party may commence an action in the Superior Court of Monterey County. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party. For purposes this Section 9.5, "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

## 10.0 MISCELLANEOUS

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

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

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

**Commented [DW29]:** Karin Salameh commented that the City would prefer that the attorney's fees provision be entirely removed, if not, at a minimum its scope should be limited. She provided language limiting the scope, but also suggested the entire paragraph be removed.

**Commented [DW30]:** Karin Salameh proposed that, if this section is not removed entirely, the word "**such**" be substituted for the word "the" here.

**Commented [DW31]:** Wendy Strimling commented that when all of the parties are governmental entities, it is more appropriate for each party to bear its own fees and costs and suggested that this provision be reworded as follows:

~~"... each Party shall bear its own attorneys' fees and costs. the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorneys' fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party."~~

**Commented [DW32]:** Karin Salameh proposed that the following sentence be added here:

~~"Notwithstanding anything to the contrary herein, this section (sic) 9.4 will not apply to any dispute between the Parties regarding water rights, water infrastructure and/or Section 2.0; in any such dispute, the Parties will bear their own fees and costs."~~

**Commented [DW33]:** Wendy Strimling commented that when all of the parties are governmental entities, it is more appropriate for each party to bear its own fees and costs and suggested that this provision be reworded as follows:

~~"Each Party shall bear its own attorneys' fees and costs. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party. For purposes this Section 9.5, "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding."~~

Although not specifically addressed in Karin Salameh's comments on behalf of the City of Monterey, removal of these provisions would be consistent with the City's preference that the attorneys' fees provision be removed entirely.

**Commented [DW34]:** Karin Salameh that the City is concerned that this is too broad and may inadvertently supersede agreements not listed in Section 1.0. She believes all parties would benefit from more precise drafting on this point.

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

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

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

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

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

*[signatures appear on following pages]*

**Commented [DW35]:** Wendy Strimling suggested that the following topics should be added if they are not covered by other agreements:

Funding and management of litigation against or brought by FORA that is pending at time of FORA Dissolution

CALPERS liability, retirement reserve funds

Any remaining funds held by FORA – how distributed? (sec 2.16 of Transition Plan)

Does FORA hold any insurance policy not connected to ESCA or EDC (e.g., prof liability?)

Disposition of FORA furniture and equipment. Address, and, add: County may, before disbursing revenues as provided in this section, deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues to be disbursed.

FORA staff reported that it is anticipated that the CALPERS liability will be satisfied at or before FORA’s dissolution and that it unlikely that there will be any substantial funds remaining at the time of FORA’s dissolution.

David Willoughby commented that to the extent that litigation will be handled, in whole or in part, by LAFCO, any added provisions addressing litigation would need to be addressed with LAFCO (which may be reluctant to become a party to this agreement).

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

Dated: \_\_\_\_\_, 2020

COUNTY OF MONTEREY

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2020

CITY OF MARINA

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2020

CITY OF SEASIDE

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2020

CITY OF DEL REY OAKS

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2020

CITY OF MONTEREY

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

Approved as to form:

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

Dated: \_\_\_\_\_, 2020

UNIVERSITY OF CALIFORNIA

By: \_\_\_\_\_  
Secretary to the Regents

Approved as to form:

By: \_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2020

CALIFORNIA STATE UNIVERSITY

By: \_\_\_\_\_  
President

Approved as to form:

By: \_\_\_\_\_  
General Counsel

Dated: \_\_\_\_\_, 2020

CALIFORNIA DEPARTMENT OF PARKS AND  
RECREATION

By: \_\_\_\_\_  
Regional Manager

Approved as to form:

By: \_\_\_\_\_  
General Counsel



**EXHIBIT A**

## Water Allocations by Percentage for Additional Army Supply\*

	Current Potable Water Allocation in Acre Feet	Future Water Allocation Based on Percentage of Current Water Allocation	Current Recycled Water in Acre Feet	Future Recycled Water Allocation Based on Percentage of Current Recycled Water Allocation
City of Marina	1340	29%	345	25%
City of Monterey	65	1%	0	0%
City of Seaside	1012.5	22%	453	33%
County of Monterey	720	15%	134	10%
CSUMB	1035	22%	87	6%
City of Del Rey Oaks	242.5	5%	280	21%
CA State Parks	44.5	1%	0	0%
UCMBEST	230	5%	60	4%

\*In the unlikely event of availability of additional water from the US Army it would be distributed following the percentage-based allocation provide above. These allocations reflect previously agreed water distribution as per FORA Board Resolution No. 07-1 (potable water) and No. 07-10 (recycled water) (2007) and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).

**Commented [DW36]:** Wendy Strimling commented on Exhibit A as follows:

Correct Exhibit A to show recycled water in second column. Does this agreement address future water? If not, remove the column regarding future water allocation.

FORA staff believes that she reviewed and commented on an older and superseded copy of Exhibit A (which now addresses both potable and recycled water).

**- START -**

**DRAFT  
BOARD PACKET**



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING

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

Thursday, March 12, 2020 at 2:00 p.m. | 910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenters Union Hall)

## AGENDA

**ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON MARCH 11, 2020.**

#### 1. CALL TO ORDER

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

#### 3. CLOSED SESSION

- a. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
- b. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Fort Ord Reuse Authority v. All Persons Interested in the Matter of the Issuance and Sale of Bonds by the Fort Ord Reuse Authority and the Tax Increment Revenue Pledged To, and to be Used for, the Repayment of Such Bonds. Monterey County Superior Court Case No.: 20CV000381, Pending Litigation
- c. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, one potential case

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

#### 5. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

#### 6. ROLL CALL

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

#### 7. CONSENT AGENDA

#### INFORMATION/ACTION

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

- a. Approve February 13, 2020 Meeting Minutes  
**Recommendation:** Approve February 13, 2020 Meeting Minutes.
- b. Approve February 13, 2020 Special Meeting Minutes  
**Recommendation:** Approve February 13, 2020 Special Meeting Minutes
- c. Approve February 21, 2020 Special Meeting Minutes  
**Recommendation:** Approve February 21, 2020 Special Meeting Minutes
- d. Administrative Committee  
**Recommendation:** Receive a report from the Administrative Committee.
- e. Veterans Issues Advisory Committee  
**Recommendation:** Receive a report from the Veterans Issues Advisory Committee.
- f. Habitat Working Group Ad-Hoc Committee  
**Recommendation:** Receive a report from the Habitat Working Group Ad-Hoc Committee.

- g. Reassignment of Escrow Holding Company – South Boundary Road Project

**Recommendation:**

1. Reassign escrow holding company from National Builders Control, Inc. to Fidelity National Title, Inc. for the two escrow accounts to fund construction of projects FO14 South Boundary Road Upgrade (\$5,000,000) and FO9C General Jim Moore Boulevard/South Boundary Road Intersection (\$1,056,168) post June 30, 2020 as approved by the FORA Board on May 10, 2019.
2. Accept Term Sheet modifications reflecting name change as approved by FORA Board on May 10, 2019.
3. Transfer remaining South Boundary Road Upgrade funds (\$2,269,813) as approved in the 2019-20 CIP to the South Boundary Road Escrow Account after the 2019-20 FORA Mid-Year Budget has been approved.

- h. Public Correspondence to the Board

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

**8. BUSINESS ITEMS**

**INFORMATION/ACTION**

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

- a. Habitat Conservation Plan (“HCP”) / Environmental Impact Report (“EIR”) Options **2nd Vote**

**Recommendation:**

- i. Receive a report on factors affecting Board HCP/EIR considerations.
- ii. Provide direction to the Executive Officer on HCP/EIR next steps

- b. 2018 Transition Plan Proposed Amendments

**Recommendation:**

- c. Capital Improvement Program & Budget Verbal Update

**Recommendation:** Receive a verbal update on the Capital Improvement Program & Budget.

**9. PUBLIC COMMENT PERIOD**

**INFORMATION**

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

**10. ITEMS FROM MEMBERS**

**INFORMATION**

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

**11. ADJOURNMENT**

**NEXT SPECIAL MEETING: Friday, March 20, 2020 AT 1:00 P.M.**

**NEXT REGULAR MEETING: Thursday, April 9, 2020 AT 2:00 P.M.**

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

# **Placeholder for Item 7a**

**Regular Board Meeting Minutes February 13, 2020**

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

# **Placeholder for Item 7b**

**Special Board Meeting Minutes February 13, 2020**

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

# **Placeholder for Item 7c**

**Special Board Meeting Minutes February 21, 2020**

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



# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Administrative Committee

**Meeting Date:** March 12, 2020

**Agenda Number:** 7d

**INFORMATION/ACTION**

### **RECOMMENDATION:**

Receive a report from the Administrative Committee.

### **BACKGROUND/DISCUSSION:**

The Administrative Committee held meetings on February 5 & 6, 2020 and February 19, 2020. The approved minutes for these meetings are provided as **Attachments A and B.**

### **FISCAL IMPACT:**

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

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

### **COORDINATION:**

Administrative Committee

Prepared by \_\_\_\_\_ Approved by \_\_\_\_\_  
Natalie Van Fleet Joshua Metz

# **Placeholder for Attachment A to Item 7d**

**Regular Administrative Meeting Minutes February 5&6, 2020**

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

# **Placeholder for Attachment B to Item 7d**

**Regular Administrative Meeting Minutes February 19, 2020**

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

FORT ORD REUSE AUTHORITY BOARD REPORT		
CONSENT AGENDA		
<b>Subject:</b>	Veterans Issues Advisory Committee	
<b>Meeting Date:</b>	March 12, 2020	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	7e	

**RECOMMENDATION:**

Receive a report from the Veterans Issues Advisory Committee (VIAC).

**BACKGROUND/DISCUSSION:**

The VIAC met on February 27, 2020 and approved the January 23, 2020 minutes. The approved minutes are provided as **Attachment A**.

**FISCAL IMPACT:**

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

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

**COORDINATION:**

VIAC

Prepared by \_\_\_\_\_  
Natalie Van Fleet

Approved by \_\_\_\_\_  
Joshua Metz



APPROVED

**FORT ORD REUSE AUTHORITY  
VETERANS ISSUES ADVISORY COMMITTEE (VIAC) MEETING MINUTES  
3:00 P.M. January 23, 2020 | FORA Conference Room  
920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933**

1. **CALL TO ORDER:** Acting Chair Joshua Metz called the meeting to order at 3:03 p.m.

**Committee Members Present:**

Richard Garza, CCVCF Foundation  
Sid Williams, Monterey County Military and Veteran Advisory Commission  
Jack Stewart, Fort Ord Veterans Cemetery Advisory Committee  
Jason Cameron, Monterey County

2. **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Jason Cameron.

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

- Military & Veterans Affairs Office (“MVAO”) Director Jason Cameron announced disabled veterans of any rating level are now allowed access to MWR, Commissary, and Post Exchange services. Non-disabled veterans seeking access to these benefits are directed to MVAO for claims filing.

4. **PUBLIC COMMENT PERIOD**

None.

**APPROVAL OF MEETING MINUTES**

**ACTION**

- a. October 24, 2019 Regular Meeting Minutes

**MOTION:** On motion by member Stewart and seconded by member Murphy, the Veterans Issues Advisory Committee moved to approve the October 24, 2019 Regular Meeting Minutes.

**MOTION PASSED UNANIMOUSLY**

5. **BUSINESS ITEMS**

**INFORMATION/ACTION**

- a. **Affordable Housing**

- i. **Veterans Transition Center (“VTC”) Housing Development**

VTC Deputy Executive Director Jack Murphy reported VTC will collect public bids for a Hayes Circle duplex project in the coming months. Mr. Murphy stated \$3.9M in No Place Like Home funding was awarded for VTC’s 71-unit Lightfighter Village affordable housing project. Mr. Murphy reported continued coordination with the Veterans Affairs Office (“VA”) regarding the former Marina VA clinic Enhanced Use Lease and noted VTC is exploring possible alternative developers and partners.

- b. **Post-FORA VIAC Committee**

Executive Officer Joshua Metz reported FORA’s mid-year budget will be presented at the March 12, 2020 Board Meeting, and will inform discussion regarding Post-FORA VIAC funding. Mr. Metz heard

questions and comments from members.

**c. California Central Coast Veterans Cemetery (“CCCVC”) Status Report**

CCCVC Manager Erica Chaney reported a total of 1,510 decedents (comprised of 1,212 veterans and 298 dependants) have been interred since the Cemetery opened in 2016. Ms. Chaney reported the Monuments and Memorials Advisory Committee met on December 10, 2020 and the next meeting date is yet to be determined. Notice to Proceed on CCCVC Phase II development was approved January 20, 2020 and tree removal may begin as early as the following week.

**d. Ord Military Community**

No report.

**e. Fundraising Status**

**i. Central Coast Veterans Cemetery Foundation (“CCVCF”) Status Report**

Committee member Richard Garza reported CCVCF is focused on assisting CCCVC groundbreaking preparations. Mr. Garza stated CCVCF is considering how to become directly involved in assisting the United Veterans Council Heroes Open Golf Tournament, as well as options for extending CCVCF's assistance to additional organizations.

**f. VA-DOD Clinic**

No report.

**g. Military & Veterans Affairs Office (“MVAO”) – Monthly Report**

MVAO Director Jason Cameron reviewed a December 2019 Monthly Activity Report, noting the Office was closed for holidays, resulting in decreased activity. Mr. Cameron reported MVAO now offers video conference appointments assisted by two representatives. MVAO is working with the County to implement this service in public libraries regionally.

**h. Calendar of Events**

- Mr. Murphy reported the first 2020 Monterey County Stand Down for Homeless Veterans Committee meeting will take place every fourth Saturday from 10:00 a.m.–12:00 p.m. at Marinez Hall beginning January. The Standown will be held August 7-9, 2020 at the Monterey County Fairgrounds. Mr. Murphy reported the AT&T Pro-Am at Pebble Beach will take place February 4-9, 2020. Visit [www.vtcmonterey.org](http://www.vtcmonterey.org) for volunteering information.
- Mr. Metz reported the Drones Automation & Robotics Technologies (“DART”) DroneCamp and Symposium will be held at CSUMB June 22-26, 2020. Visit [www.montereybaydart.org](http://www.montereybaydart.org) for additional details.

**i. Proposed 2020 Committee Meeting Schedule**

The Committee reviewed the proposed 2020 Committee Meeting Schedule and amended February's meeting date to February 27, 2020, to correctly reflect the regular meeting frequency of every 4<sup>th</sup> Thursday at 3:00 p.m.

**6. ITEMS FROM MEMBERS**

None.

**7. ADJOURNMENT** at 3:44 p.m.

Minutes Prepared by:  
Natalie Van Fleet

# **Placeholder for Item 7f**

**Habitat Working Group Ad-Hoc Committee Report**

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



# **FORT ORD REUSE AUTHORITY BOARD REPORT**

## **CONSENT AGENDA**

**Subject:** Reassignment of Escrow Holding Company – South Boundary Road Project

**Meeting Date:** March 12, 2020

**Agenda Number:** 7g

### **INFORMATION/ACTION**

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

Authorize the Executive Officer:

1. Reassign escrow holding company from National Builders Control, Inc. to Fidelity National Title, Inc. for the two escrow accounts to fund construction of projects FO14 South Boundary Road Upgrade (\$5,000,000) and FO9C General Jim Moore Boulevard/South Boundary Road Intersection (\$1,056,168) post June 30, 2020 as approved by the FORA Board on May 10, 2019.
2. Accept Term Sheet modifications reflecting name change as approved by FORA Board on May 10, 2019.
3. Transfer remaining South Boundary Road Upgrade funds (\$2,269,813) as approved in the 2019-20 CIP to the South Boundary Road Escrow Account after the 2019-20 FORA Mid-Year Budget has been approved.

### **BACKGROUND/DISCUSSION:**

At the May 10, 2019 FORA Board Meeting, Staff made a presentation concerning transitioning FORA on-site transportation improvements which included the request for approval that FORA should complete or fund FO14 South Boundary Road Upgrade and FO9C General Jim Moore Boulevard/South Boundary Road Intersection, while the underlying City would take on the remaining on-site transportation improvements. As documented, FORA allocated CFD/development fee funds in the FY 18-19 budget to mostly fund South Boundary Road Upgrade and to fully fund General Jim Moore Boulevard/South Boundary Road Intersection. The unanimously approved action authorized the Executive Officer to fund escrow accounts to assure completion of these transportation improvements, to be disbursed by Del Rey Oaks and/or Monterey escrow account signatories, post FORA dissolution. As stated in the resolution, National Building Control, Inc. (NBC) was named as the escrow holding company.

FORA staff tried to work with NBC during the remainder of 2019 to execute the transfer of the approved funds into the two escrow accounts. However, it became evident that the requirements of NBC did not match the current status of the project, as they required 100% design completion and approval. The SBR project is still in the final design phase and using NBC as the escrow holding company is no longer a viable option.

In the first quarter of 2020, FORA Staff has meet with both the Cities of Del Rey Oaks and Monterey concerning this issue and a new escrow holding company of Fidelity National Title, Inc. has been identified with the help from Chicago Title Company as a viable company that best meets the needs of the escrow holding company.

As the approved monies have not yet been transferred to NBC, the FORA Staff is requesting that FORA Board approve the reassignment of the escrow holding company from National Builders Control Inc. to Fidelity National Title, Inc. as reflected in the updated Term sheet; which will allow for the transfer of funds to two escrow accounts to fund construction of projects FO14 South Boundary Road Upgrade (\$5,000,000) and FO9C General Jim Moore Boulevard/South Boundary Road Intersection (\$1,056,168) post June 30, 2020 previously approved by the FORA Board on May 10, 2019.

As the name change of the escrow holding company affects the Term Sheet that was approved by the FORA Board on May 10, 2019, updates to the Term Sheet were required. (**Attachment A**) As referenced in the previously approved Term Sheet and included in the attachment, remaining monies (\$2,269,813) were scheduled to be transferred to the escrow account as approved in the 2019-20 CIP to the South Boundary Road project, conditional on verification of CFD funds as noted in the Board Meeting Minutes for May 10, 2019. FORA staff requests that the Board wait to approve the transfer of these remaining funds allocated in the approved 2019-20 CIP until after the 2019-20 FORA Mid-Year Budget has been approved by the FORA Board.

**FISCAL IMPACT:**

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

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

**COORDINATION:**

Authority Counsel, Administrative and Executive Committees, and land use jurisdictions.

Prepared by \_\_\_\_\_  
Jon Giffen, FORA Legal Counsel

Approved by \_\_\_\_\_  
Josh Metz, Executive Officer

**TERM SHEET**  
**CONCERNING FORT ORD REUSE AUTHORITY'S (FORA's) DEPOSIT OF**  
**CONSTRUCTION FUNDING IN TWO ESCROW ACCOUNTS MANAGED BY**  
**FIDELITY NATIONAL TITLE, INC.**

This Term Sheet summarizes the principal terms or escrow instructions upon establishment of escrow accounts managed by Fidelity National Title, Inc. for the construction of South Boundary Road and General Jim Moore Boulevard/South Boundary Road intersection.

**South Boundary Road Escrow Account**

<b>Terms</b>	
FORA's initial deposit in 2018-2019 into interest- bearing escrow account	\$5,000,000
FORA's second and final deposit in 2019- 2020 into interest- bearing escrow account	\$2,269,813
Authorized signatories for release of funds from escrow account	<ol style="list-style-type: none"> <li>1. Until FORA dissolution, FORA Executive Officer</li> <li>2. Post FORA dissolution, City of Monterey City Manager and/or City of Del Rey Oaks City Manager</li> </ol>
Eligible uses of funds	<ol style="list-style-type: none"> <li>1. Costs related to completion of bid documents including plans, specifications, and estimates describing all the elements of construction of South Boundary Road upgrade, defined as a roadway improvement from General Jim Moore Boulevard to 200 feet east of Rancho Saucito Road.</li> <li>2. Costs related to issuing and completing a public bid process for South Boundary Road upgrade, which may include but is not limited to: newspaper noticing, website posting, construction or project manager reviews, legal reviews, constructability reviews, construction staking, and administrative staff costs.</li> <li>3. Costs related to South Boundary Road upgrade construction, which may include but is not limited to: construction contract payments, approved construction change orders, project manager, construction manager, and/or construction inspector services, legal services,</li> </ol>

	<p>construction support services such as UXO specialist monitoring services, close out costs such as as-builts and surveys, construction dispute resolution or claims, Mitigation and Monitoring Plan implementation costs, cost associated with obtaining easements or rights of way, insurance costs, on-call engineering services, testing services, and administrative staff costs.</p> <p>4. If construction does not begin within ten years of the creation of this escrow account or if funds remain post-construction (defined as the period of time after issuance of a Notice of Completion by FORA, City of Del Rey Oaks, and/or City of Monterey), then Fidelity National Title shall distribute escrow account funds to the amount of 20% to each of the following jurisdictions: County of Monterey, Cities of Del Rey Oaks, Monterey, Seaside, and Marina.</p>
Fidelity National Title's verification of authorized signatories and eligible uses of funds	<p>1. Authorized signatories shall meet with a Fidelity National Title representative in-person to verify identities, position titles, and signatures prior to release of funds.</p> <p>2. When authorized signatories incur costs meeting the description of eligible uses of funds, the signatories shall make monthly requests for disbursement of funds. Signatories shall provide Fidelity National Title with copies of relevant construction and services contracts. Each request shall include copies of invoices, allocations of administrative staff costs, accounting of construction contract funding retention, and a point of contact should any questions arise.</p> <p>3. Fidelity National Title shall base its decisions on eligible uses of funds upon the documents submitted to it by the authorized signatory or his or her designee.</p> <p>4. Fidelity National Title shall disburse requested funds to signatories within 30 days of receiving a request.</p>
Termination:	10-years or until terms of the above referenced items are satisfied.
Caveat:	These terms will be subject to Authority Counsel's final review as to form and Fidelity National Title's review.

## General Jim Moore Blvd./South Boundary Rd. Intersection Escrow Account

Terms	
FORA's initial and final deposit in 2018-2019 into interest-escrow bearing account.	\$1,056,168
Authorized signatories for release of funds from escrow account	<ol style="list-style-type: none"> <li>1. Until FORA dissolution, FORA Executive Officer</li> <li>2. Post FORA dissolution, City of Del Rey Oaks City Manager</li> </ol>
Eligible uses of funds	<ol style="list-style-type: none"> <li>1. Costs related to completion of bid documents including plans, specifications, and estimates describing all the elements of construction of the General Jim Moore Blvd./South Boundary Rd. Intersection (project), defined as widen from 2 to 4 lanes from south of Coe Ave. to South Boundary Rd.</li> <li>2. Costs related to issuing and completing a public bid process for the project, which may include but is not limited to: newspaper noticing, website posting, construction or project manager reviews, legal reviews, constructability reviews, construction staking, and administrative staff costs.</li> <li>3. Costs related to project construction, which may include but is not limited to: construction contract payments, approved construction change orders, project manager, construction manager, and/or construction inspector services, legal services, construction support services such as UXO specialist monitoring services, close out costs such as as-builts and surveys, construction dispute resolution or claims, Mitigation and Monitoring Plan implementation costs, cost associated with obtaining easements or rights of way, insurance costs, on-call engineering services, testing services, and administrative staff costs.</li> <li>4. If construction does not begin within ten years of the creation of this escrow account or if funds remain post-construction (defined as the period of time after issuance of a Notice of Completion by FORA or City of Del Rey Oaks), then Fidelity National Title shall distribute escrow account funds to the amount of 20% to each of the following jurisdictions: County of Monterey, Cities of Del Rey Oaks, Monterey, Seaside, and Marina.</li> </ol>

<p>Fidelity National Title's verification of authorized signatories and eligible uses of funds</p>	<ol style="list-style-type: none"> <li>1. Authorized signatories shall meet with a Fidelity National Title representative in-person to verify identities, position titles, and signatures prior to release of funds.</li> <li>2. When authorized signatories incur costs meeting the description of eligible uses of funds, the signatories shall make monthly requests for disbursement of funds. Signatories shall provide Fidelity National Title with copies of relevant construction and services contracts. Each request shall include copies of invoices, allocations of administrative staff costs, accounting of construction contract funding retention, and a point of contact should any questions arise.</li> <li>3. Fidelity National Title shall base its decisions on eligible uses of funds upon the documents submitted to it</li> <li>4. by the authorized signatory or his or her designee.</li> <li>5. Fidelity National Title shall disburse requested funds to signatories within 30 days of receiving a request.</li> </ol>
<p>Termination:</p>	<p>10-years or until terms of the above referenced items are satisfied.</p>
<p>Caveat:</p>	<p>These terms will be subject to Authority Counsel's final review as to form and Fidelity National Title's review.</p>

FORT ORD REUSE AUTHORITY BOARD REPORT		
CONSENT AGENDA		
<b>Subject:</b>	Public Correspondence to the Board	
<b>Meeting Date:</b>	March 12, 2020	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	7h	

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

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

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



FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEMS		
<b>Subject:</b>	Habitat Conservation Plan ("HCP") / Environmental Impact Report ("EIR") Options <b>2<sup>nd</sup> VOTE</b>	
<b>Meeting Date:</b>	March 12, 2020	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	8a	

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

- i. Receive a report on factors affecting Board HCP/EIR considerations.
- ii. Provide direction to the Executive Officer on HCP/EIR next steps.

### **BACKGROUND/DISCUSSION:**

A joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") was been prepared on behalf of the Fort Ord Reuse Authority ("FORA") to analyze the effects of the Proposed Action, which is the issuance of Federal and State incidental take permits (ITPs) by the U.S. Fish and Wildlife Service ("USFWS") under Section 10(a)(1)(B) of the Federal Endangered Species Act ("ESA"), and by the California Department of Fish and Wildlife ("CDFW") under Section 2081 of the California Fish and Game Code in compliance with the California Endangered Species Act ("CESA"). The Draft EIS/EIR analyzes the potential environmental effects of the adoption and implementation of the Draft Fort Ord Multi-Species Habitat Conservation Plan ("HCP") and the issuance of Federal and State ITPs. The Draft HCP provides measures to mitigate and avoid/minimize impacts to eight Federal and State listed species within a 28,000-acre Plan Area under a reasonable range of alternatives. This is a comprehensive, base-wide plan that would provide conservation and management of sensitive species and their habitat. The Draft HCP was prepared to support the application for the Federal ITP. FORA is requesting a permit term of 50 years to authorize take of covered species associated with the covered activities described in the Draft HCP.

A total of three alternatives were considered in the environmental analysis:

#### **1. Alternative 1: Redevelopment of Existing Developed Areas and Habitat Management Area ("HMA") Management Activities**

This alternative would limit development activities to redevelopment of existing developed areas within the designated development areas and HMAs and include implementation of required Habitat Management Plan ("HMP") habitat management in HMAs (see Draft HCP Chapter 3, Covered Activities, for a description of the locations of these activities). This alternative would result in a decrease in the extent of HCP covered activities, as it assumes no take would occur in existing developed areas within the designated development areas and HMAs associated with redevelopment activities, and very little take in HMAs as a result of HMA management activities and conservation strategy implementation. This alternative would reduce direct impacts to HCP species habitat by 93–99% on non-Federal lands.

## **2. Alternative 2: Prohibit Development in HMAs and Increase Development Density in Designated Development Areas**

This alternative would restrict development to existing developed areas within HMAs (i.e., where no HCP species habitat occurs) and within designated development areas (i.e., existing developed areas and natural lands areas designated for development) and allow for take in HMAs only where and when it results from HMA management. Direct impacts would be limited to HCP species that have habitat in designated development parcels, and those impacts expected from HMA management activity implementation.

## **3. Alternative 3: No Action**

Under this alternative, the Permittees would not form the HCP JPA, not receive base-wide permits for take, and not implement the HCP. Underlying agreements and land use plans would move ahead at a modified level during the 50 years of the proposed HCP term. Project-by-project development activities, habitat management activities, and mitigation strategies are anticipated.

The 45-day public review period began on November 1, 2019 and ended on December 16, 2019. A total of 32 comment letters were received.

Since that time the FORA Board formed the Habitat Working Group (“HWG”) as an ad-hoc committee comprised of Board representatives from the FORA land use jurisdictions and potential HCP permittees. The HWG and the Administrative Committee have been holding jointly noticed weekly meetings to discuss and address questions and concerns regarding long-term habitat management options on the former Fort Ord. These Committees have made considerable progress on understanding and evaluating options and are continuing to work towards a consensus Board recommendation. Key steps towards that recommendation include:

- Considering and providing 15-, 25- and 50-years development projections/phasing scenarios to the HCP consultant team as potential refinements/revisions to the Draft HCP;
- Considering and drafting a Joint Powers Authority (“JPA”) agreement structure as a mechanism to continue HMP, HCP, and/or other options for environmental compliance discussions as a group post-FORA;
- Evaluating costs associated with these proposed actions and developing a funding request to the FORA Board; and
- Obtaining a CEQA Attorney opinion on risks and rewards of HCP approval and EIR certification options.

Table 1 summarizes EIR/HCP certification and adoption considerations for the Board. Staff will bring other items from the HWG noted above for Board consideration at later dates.

**Table 1. EIR/HCP Certification & Adoption Considerations**

	<b>Lead Agency</b>	<b>Benefit</b>	<b>Challenges</b>
1. Prepare and Certify EIR/ Adopt HCP	<b>FORA</b>	<p>Certified EIR.</p> <p>Adopted HCP which may be amended at a later date by permittees subject to State and Federal approval.</p>	<p>Significant exposure to litigation based on incompatibility of the current HCP and revised development projections.</p> <p>Approximately \$200,000+ additional consultant costs.</p>
2. Prepare and Certify EIR w/ No Project Alternative/ Do not adopt HCP	<b>FORA</b>	<p>Certified EIR based on “no build” scenario.</p>	<p>Reduced exposure to litigation based on incompatibility of the current HCP and revised development projections from agencies circa 2020.</p> <p>Approximately \$200,000+ additional consultant costs.</p>
3. Prepare and Certify EIR w/ Revised Project Alternative(s) Based on Phased Development/ Do not adopt HCP	<b>FORA</b>	<p>More closely aligns EIR with current development projections circa 2020.</p>	<p>Lack of opportunity for public review of proposed alternative, which, although not a requirement under CEQA, may result in potential litigation exposure.</p>
4. Do not complete EIR/ Provide Funds to JPA to Explore Options for Phasing the HCP	<b>FORA</b>	<p>Limited legal exposure to FORA</p>	<p>JPA would require funding</p>
5. Determine Viability of Phased HCP Implementation and Determine Value of Completing EIR and/or Revising and Recirculating the Document	<b>JPA</b>	<p>Ability to align HCP with agency development projections, assess specific cost/benefit by agency for HCP vs HMP.</p> <p>Provides time for revision and/or amendment and recirculation of EIR.</p> <p>Leaves decision for adoption to JPA.</p>	<p>Would Incur additional cost for HCP refinement and financial models.</p> <p>May require substantial funds for revisions and completion of EIR.</p>

**FISCAL IMPACT:**

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

Approve \$130,942 for Dennis Duffy & Associates and \$68,470 for ICF Jones & Stokes for a total of \$199,412 to complete the Final Environmental Impact Report;

or

Consider a possible future budget allocation for work by the proposed JPA should it be formed prior to FORA sunset.

**COORDINATION:**

Executive Officer

Prepared by \_\_\_\_\_

Joshua Metz

# **Placeholder for Item 8b**

**2018 Transition Plan Proposed Amendments Report**

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

**- END -**

**DRAFT  
BOARD PACKET**