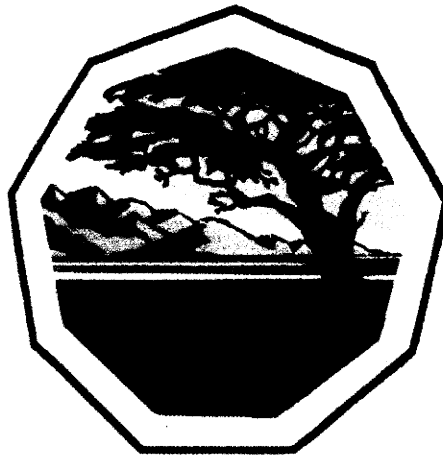


Fort Ord
Reuse Authority



Board Packet
For
Board Meeting
April 8, 2011



Fort Ord Reuse Authority

100 12th Street, Building 2880, Marina, CA 93933
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

BOARD OF DIRECTORS MEETING Friday, April 8, 2011 3:30 p.m. Carpenters Union Hall 910 2nd Ave, Marina (on the former Fort Ord)

AGENDA

1. CALL TO ORDER AND ROLL CALL
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") Board 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 Board consideration.
5. CONSENT AGENDA ACTION
 - a. March 11, 2011 FORA Board meeting minutes
 - b. Imjin Office Park - office furniture
 - c. Authorize extension of contract limits – Top Grade Construction, Inc.
6. OLD BUSINESS ACTION
 - a. Economic and Planning Systems, Inc. contract amendment #2 INFORMATION/ACTION
 - b. Capital Improvement Program Review INFORMATION/ACTION
 - i. Receive a presentation from Transportation Agency of Monterey County ("TAMC")
 - ii. Receive information from consultant, Economic & Planning Systems ("EPS")
 - iii. Receive information on potential benefits of stimulating development through a fee reduction
 - iv. Direct staff to prepare documents and/or policy revisions necessary to approve a fee reduction
 - v. Direct Staff to prepare an agreement amendment to implement Phase II analysis
 - c. Preston Park Management Agreement Modifications ACTION
7. NEW BUSINESS ACTION
 - a. Electronic Distribution of Board Packets
8. EXECUTIVE OFFICER'S REPORT INFORMATION/ACTION
 - a. Outstanding Receivables – update INFORMATION
 - b. Administrative Committee – report INFORMATION
 - c. Travel Report – Legislative Mission, D.C. INFORMATION
 - d. Habitat Conservation Plan – status report INFORMATION
9. ITEMS FROM MEMBERS INFORMATION
10. CLOSED SESSION - Real Property Negotiations: Preston Park sale
11. REPORT OUT OF CLOSED SESSION
12. ADJOURNMENT

FORT ORD REUSE AUTHORITY
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**MINUTES OF THE
FORT ORD REUSE AUTHORITY
BOARD OF DIRECTORS' MEETING**

**Carpenters Union Hall
April 8, 2011**

1. CALL TO ORDER

With a quorum present Chair Potter called the April 8, 2011 Board of Directors meeting to order at 3:31 p.m.

Voting members present:

Chair/Supervisor Potter (County of Monterey)
1st Vice Chair/Mayor Edelen (City of Del Rey Oaks)
Mayor Pendergrass (City of Sand City)
Mayor ProTem Kampe (City of Pacific Grove)
Councilmember Oglesby (City of Seaside)
Mayor Della Sala (City of Monterey)

2nd Vice Chair/Mayor Pro-Tem O'Connell
(City of Marina)
Councilmember Brown (City of Marina)
Mayor McCloud (City of Carmel-by-the-Sea)
Supervisor Parker (County of Monterey)
Jim Cook (County of Monterey)
Mayor Bachofner (City of Seaside)

Absent: Councilmember Barrera (City of Salinas). Arriving after the roll call was Councilmember Selfridge (City of Monterey).

Ex-Officio members present:

Dr. Margon (University of California Santa Cruz ("UCSC")), Kevin Saunders (California State University Monterey Bay ("CSUMB")), Dr. Garrison (Monterey Peninsula College ("MPC")), Dan Albert, Jr., (Monterey Peninsula Unified School District), Gail Youngblood (Base Realignment and Closure ("BRAC")), Debbie Hale (Transportation Agency of Monterey County ("TAMC")), Bill Lee (Marina Coast Water District ("MCWD")), David Meyerson (15th State Senate District), and Nicole Charles (27th State Assembly District).

Absent: Colonel Brewer (United States Army). Arriving after the roll call were: Alec Arago (17th Congressional District) and Hunter Harvath (Monterey Salinas Transit ("MST")).

2. PLEDGE OF ALLEGIANCE - Chair Potter led the Pledge of Allegiance.

3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, CORRESPONDENCE – Chair Potter acknowledged the return from medical leave, Assistant Executive Officer Jim Feeney. Executive Officer Michael Houlemard reminded members that the May 13 Board meeting would begin one half an hour earlier at 3:00 p.m. for the Legislative Session. He also reported on the impacts of a potential Federal shutdown and the effect it may have on FORA. Mr. Houlemard stated that FORA received a letter from Mike Weaver, Chair - The Highway 68 Coalition, dated April 8, 2011, a letter from Anthony Altfeld, City Manager - City of Marina dated April 4, 2011, and an e-mail correspondence from Richard Rosenthal, Save Our Peninsula Committee dated April 5, 2011.

4. PUBLIC COMMENT - none

5. CONSENT AGENDA - Mayor McCloud asked about the move-in date to the new Imjin Office Park and Mr. Houlemard confirmed a July 1, 2011 date. **Motion to approve the items 5a. (March 11, 2011 minutes) and 5b. (Imjin Office Park furniture) on the Consent Agenda, was made by Mayor Pro-Tem Kampe, seconded by Mayor McCloud, and carried with one abstention from Mayor Della Sala.**
Item 5c was trailed.

6. OLD BUSINESS - Item 6a. - Mr. Houlemard requested the Board authorize additional expenses for the Capital Improvement Program ("CIP") Economic and Planning Systems contract amendment #2, not to exceed \$10,000.00. **Motion to approve was made by Mayor Edelen seconded by Mayor McCloud and carried.**

Item 6b. i. - Receive a presentation from Transportation Agency of Monterey County.

Executive Officer Houlemard introduced Transportation Agency for Monterey County ("TAMC") Executive Director Debbie Hale who asked Project Delivery Manager/Principal Planner Todd Muck to give a presentation outlining the contingencies and impacts of the Economic Planning & Systems ("EPS") Option #2 and Option #2c. Mr. Muck provided a comprehensive and detailed presentation highlighting the revenue delays by year, revision to the project schedules, assumptions used, impacts of the fee reduction, and delayed projects. Questions regarding the presentation were posed by members and a discussion followed. (A copy of the presentation is Attachment "A" to these minutes.)

Mayor Pro-Tem O'Connell asked if there were any changes in scope of projects or if it was just the timing that changed? Mr. Muck responded that it was just the timing that changed with the exception of the Monterey Branchline Scope.

Supervisor Calcagno asked if there was an escalation clause to the FORA fee? Executive Officer Houlemard responded that the FORA fee was indexed each year by the annual increase in the Engineering News Record's Construction Cost Index.

Mayor Pro-Tem Kampe asked if there is no development that occurs, are the projections true? Mr. Muck responded that, without development, the projections are simply forecasts based development expectations from FORA jurisdictions. He also asked if the jurisdictions forecasts take into account what those forecasts would be for the higher fee versus a lower fee? Mr. Muck responded that this was not part of his work.

Mayor Sue McCloud asked how Mr. Muck would see FORA's CIP obligations transitioning in 2014? Mr. Muck responded that this question would have to be addressed during the Phase II CIP review study, and that he didn't have an answer at this time. Ms. Hale responded that it is clear that none of these options work without continued fees which were questionable if FORA is not extended.

Supervisor Parker asked, if development is delayed, would it cause delays to infrastructure? Executive Officer Houlemard responded affirmatively, noting that the Board decided to implement a "pay as you go" policy when they adopted the fees. As development occurs, the fees to implement CIP projects will be collected, which is concurrent with the impact.

Chair Potter opened public comment. Nick Weaver questioned how Eastside Parkway could be positioned for design and construction in the near-term. There were no other public comments.

Item 6b. ii. - Receive information from consultant Economic & Planning Systems ("EPS").

David Zehnder, Managing Principal at EPS, summarized previous options and new options to be explored relating to comments. Mr. Zehnder discussed the questions previously posed by the Board and introduced a new alternative proposed by UCSC, Option 2C for the Board's consideration. He said that Option 1 was the initial recommendation which took the CIP down 21.5% resulted in a rate of \$36,300 per single family residential unit. A further reduction was explored in February, Option 2, which reduced the contingency further and eliminated the HCP contingency (\$17.5M) and the FORA loan repayment line item (\$12.2M repayment to FORA on land sale revenue) to a fee of \$29,600. Option 2B – reinstated the FORA loan repayment which is more conservative and brings the rate up to \$31,200. Option 2C was the University of California Santa Cruz proposal, from March 30th, building on Option 2B (adding back in the \$17.5M HCP contingency item) bringing the single family residential rate up to \$33,700. Option 3 could initiate economic development lower than the \$29,600 however there would be more risks associated with such a decision. In addition, Mr. Zehnder distributed a document termed "Table 1 – DRAFT" regarding potential CFD Special Tax Revenue Adjustment – Various Options. (A copy of the presentation is Attachment "B" and Table - Attachment "C" to these minutes.)

Chair Potter thanked Mr. Zehnder for a thorough presentation and asked the Directors for questions.

Mayor Pro-Tem O'Connell asked Mr. Zehnder about the \$29,600 fee and if it provides \$35M for the HCP, and will it be studied in the 3rd contract amendment. Mr. Zehnder responded that the \$35M HCP endowment is included in the \$29,600 fee. However, the increased \$17.5 endowment cost is the difference between a 4.5% and 3% payout rate. He said under the Phase II scope (the suggested 3rd contract amendment), this issue would be researched and reported back to the Board. He further stated that ongoing negotiations with regulators would be necessary regarding an appropriate payout rate. He said that the 3rd contract amendment involves working with FORA staff, brainstorming, evaluating the options, preparing for Board discussions, phone conferences, meeting time, PowerPoint presentations, and memos. FORA Director of Planning and Finance, Steve Endsley stated that the Phase II scope included in the packet was an outline of Phase II activities that could be either performed by staff or consultants. The endowment research question was included so that there would be an idea of what it would cost to research and the Board could give direction. Mayor Pro-Tem O'Connell posed a question about the \$12.2M being reinstated under Option 2C and how those funds could be used. Mr. Houlemard commented, stating that the funds were land sales or tax increment revenues used for CFD mitigation obligations. He said these funds were carried as a loan in FORA's CIP, which was anticipated to be repaid and used for building removal, habitat conservation uses, or other obligations at the Board's discretion.

Supervisor Parker asked about the 4.5 – 3% pay out rate, return on investment possibilities commenting that some of the regulatory agencies were talking about figures of 1.2% and asked if a calculation had been conducted. Mr. Zehnder said 3% is a solid formula and the probability of operating at less than that would be low. Mr. Endsley stated that the California Department of Fish and Game ("CDFG") recently certified National Fish and Wildlife Foundation at the 3% number, which is why it was used. Current University of California Santa Cruz return on investment is higher level than 3% and FORA is hoping for the same.

Mayor Della Sala asked about the discrepancy between Option 2C \$33,200 and the Table provided \$33,700. Mr. Zehnder stated that in earlier discussions a \$17M was used as a "round number" vs. the actual \$17.5M. He said \$33,700 is the official number.

Mayor McCloud asked if the staff report was written prior to Option 2C and Option 3, and wanted to know staff's position. She further stated that a \$400,000 home is not affordable housing and asked for clarification on the 100-unit development hypothetical of below market rate housing and how the reductions in fees impacted those projects. Mr. Houlemard said that the Board would like to hear Options 2C and 3, which Mr. Zehnder provided and commented on the below market rate housing, stating that a cost burden analysis had been conducted and certain assumptions were made regarding below market rate housing and tax rates for the value of the unit. Mayor McCloud was concerned that the cost number per unit could jeopardize affordable housing. The cost burden for affordable housing could be 50% of the value. She further questioned the profit margin. Mr. Zehnder said that, for most projects, the affordable housing partner is a non-profit that produces affordable units to meet the developers' 20% state and local affordable housing requirements. Currently, only affordable units in addition to the 20% state and local affordable housing requirements are eligible for FORA's Tier 1, 2, and 3 incentives.

Chair Potter then opened the floor for public comment.

Chris Austin from the Development Planning & Financing Group (DPFG) stated that the \$29,600 fee supports the Administrative Committee and EPS recommendations and stated the additional numbers are speculative. Nick Weaver questioned whether the idea to lower the fee would promote development. Matt Huerta (representing South County Housing) said that he has been working with the housing developer (Marina Community Partners) since 2007 and has been successful in obtaining state funding for their affordable housing project within the Dunes on Monterey Bay project area. He said he is pleased to see progress being made and that their 108-unit affordable housing project may be in a position to proceed if a fee reduction is adopted.

Crisand Giles of the Northern California Building Industry Association commented about the slides shown for the Habitat Conservation Plan ("HCP"), and said that the \$35M is the best number to date however it does not include a detailed financial analysis and the discussion seems premature without that information. She asked if that would be better answered in Phase II and the FORA extension. Mr. Zehnder said that the payout of 3% does have some merit and the components of the \$35M would have to be answered by FORA staff. Chair Potter asked if there were any others wishing to speak and asked for Board comment. There being none, Chair Potter moved to the next item on the agenda.

Crisand Giles asked how large the endowment needed to be? Chair Potter stated that this was the public comment period and there was no debate.

Item 6b. iii. - Receive information on potential benefits of stimulating development through a fee reduction.

Chair Potter asked Crisand Giles to present the benefits of housing development in California. Crisand Giles described the general benefits, ongoing annual fiscal benefit, and jobs benefits produced by residential development projects.

Amy White of Land Watch asked "what does it cost the community to mitigate habitat?" She said she was not clear as to the cost to fund the HCP and not knowing EIR costs are problematic. Land Watch is concerned about the reduction in HCP fees and the project delays that could be created and what does that mean to projects using these transportation projects as mitigations. She said she would like the Board to consider these concerns and stated it is easy to reduce fees however it is harder to bring them back up. Ms. White then submitted a letter to the Deputy Clerk.

Henrietta Stern addressed the Board and stated she is a member of the Fort Ord Recreational Trail Friends, (FORT Friends). She commended about the benefits to new home owners and all residents in the area is the integrated Fort Ord Trails network. Ms. Stern informed the members about the County initiating an effort called the Fort Ord Recreation Habitat Area ("FORHA"). She said that she is concerned about the effects of reducing the fee and having adequate funding to manage the property which is roughly 1500 acres adjacent to those areas which is a benefit to homeowners to enjoy. She said that the management activities include

things like trail maintenance, parking access, signage, garbage cans, and restrooms. Ms. Stern urged the Board to choose an option that would help to preserve a sustainable community and presented a letter to the Deputy Clerk.

Don Wolfer Vice President of Shea Homes spoke in support of the lowering the fee as much as possible. In the few communities where his company is still building homes, everyone involved has had to sharpen their pencils to make the projects work.

Mark Kausing speaking for Centex Homes, a member of Marina Community Partners and a home builder, supported the fee reduction.

Scott Hilk stated that he appreciated staff and Board time and the work EPS has completed. He appreciates the consistency of the FORA "pay as you go" plan. He said that the fees need to be adequate but low enough for developers to move forward or there are no funds for the HCP and transportation.

Chair Potter – Closed public comment and asked the Board to pick an option.

Mayor Bachofner asked if he was correct in his understanding: It sounded like Ms. Giles said that 1-house creates 2.1 jobs? Ms. Giles responded that the 2.1 jobs figure comes from the California Department of Housing and Community Development (HCD).

Graham Bice, Manager of the UC MBEST Center commented regarding his concern with the \$29,600 figure saying that there were too many elements which are unfunded such as the HCP endowment and property management costs. He said that Option 2 assumes that CDFG will agree to a funding arrangement that will pay 4.5%, but that it is not allowed by its current endowment program, as is described on their website. He said that a payout rate of only 3% is available to FORA with the HCP as written and FORA committees have discussed revising the HCP to achieve more flexibility with endowment management, but he said that this would result in further costs and delays. He said that now is not the time to eliminate the \$17.5 million line item necessary to fully fund the habitat endowments. Otherwise, FORA will have to find an alternate way to fund these obligations. Mr. Bice proposed the Board adopt Option 2C, and return \$17.5M line item to the program which provides assurance that development will not be compromised.

Dan Albert read a letter from Monterey Peninsula Unified School District (MPUSD) stating that the City of Marina presented to the district their support in lowering the fees, which would spur development, provide increases in enrollment and taxes which benefits the community. MPUSD supports Option 2.

Chair Potter asked the Board to frame the actions around motions.

Dr. Margon stated he was concerned with the risk. Option 2C includes the HCP contingency, However, under Option 2, the \$17.5 M HCP contingency is not covered, which is gambling with the future since the 3% payout rate is the only payout rate currently approved by CDFG. Option 2C would only affect the sales price of a home by less than 1%. The Board and developers are unified in lowering the fee, which is a fiduciary responsibility. However, option 2C fully funds the HCP. He said that it is easier to lower the fee, if needed, in the future. Option 2C is the only prudent fiscal move the Board can make.

Mayor McCloud made a motion to support a fee reduction described as Option 2C noting that she felt this is the only option that would satisfy Department of Fish and Game requirements and seizes the opportunity to promote development. Mayor Pro-Tem Kampe seconded.

Mayor Pro-Tem O'Connell argued that lowering the fee gets development going and would be comfortable lowering the fee to \$29,600 and raising it after Phase II if necessary.

Dr. Margon stated that he would not support any fee number that does not include funding for the \$17.5 M HCP contingency.

Supervisor Parker stated she supports the desire to "right size" the fee, and suggested leaving it at \$46,000 or Option 1. Either of these options is the more prudent way to go; however, she would advocate for and consider Option 2C.

Mayor Edelen said that lowering the fee to \$29,600 wouldn't entail going to the community for an election. He asked how long would it take to increase the fee if needed in the future. Mr. Houlemard said that the process would likely take a year.

Councilmember Oglesby said that the decision needs to be in alignment with the Department of Fish and Game and it will be hard to "get back in." He said he supports Option 2C and reduce it later if needed. He further stated that he felt the Board needed to move "cautiously" as there could be a "false" economy. He said that there is a 9 – 12 month inventory now – 6 months is healthy and there may not be a demand for housing.

Mayor Bachofner stated that he had been on the other side in past, supporting fee reductions. However, he would support Supervisor Parker's statements, preferring Options 1 and 2C.

Chair Potter said that one common theme he heard through this discussion is that it would be difficult to raise the fees once they were lowered. He said that Option 2C does help fund the Highway 156 project, which is a much needed improvement for the people who live here. Chair Potter stated that the pending discussion is the future of FORA. He said that FORA should be extended to 2020 in order to complete projects and forming another level of government to take the place of FORA would not be productive.

Item 6b. iv. - Direct staff to prepare documents and/or policy revisions necessary to approve a fee reduction.

Chair Potter asked for a roll call vote of the motion to support Option 2C.

Ayes: Director McCloud, Director Edelen, Director O'Connell, Director Brown, Director Della Sala, Director Potter, Director Calcagno, Director Parker, Director Kampe, Director Pendergrass, Director Bachofner, Director Oglesby.

Noes: -0-

Abstentions: -0-

Item 6b. v. Direct Staff to prepare an agreement amendment to implement Phase II analysis.

Mr. Houlemard stated that, in order to maintain continuity between Phase I and Phase II, he requested approval to work with Authority Counsel in extending the existing contract with EPS without having to go through the bid process.

Chair Potter asked for a motion to proceed past 5:30 p.m. **The motion was made by Mayor McCloud, seconded by Councilmember Oglesby and carried unanimously.**

Chair Potter asked if there was a motion to direct staff to work with EPS on scoping a third contract amendment for the Phase II study to bring back to the Board at its May meeting. Supervisor Parker noted her concern that the consultant was more of an advocate than a professional advisor during the Phase I CIP review process. She asked that staff work with the consultant to ensure that this line is not crossed during the Phase II CIP review process. **The motion was made by Mayor Pro Tem Kampe and seconded by Mayor Edelen. The motion carried unanimously.**

Item 6c. - Preston Park Management Agreement Modifications. Senior Planner Jonathan Garcia discussed the Preston Park management agreement modifications stating that amendment #1 saved costs to allow a bi-annual audit in place of an annual audit, amendment #2 extended the contract termination date by one year, and amendment #3 clarified language on when Alliance's 6% construction management fee would apply, modified the grievance procedure, and made other minor changes. **Motion to approve was made by Mayor McCloud and seconded by Supervisor Parker and carried.**

Item 5c – Authorize extension of the Top Grade Construction, Inc., Mr. Houlemard discussed amending the contract limits and said the Board had previously taken action to approve recommendations by the EDA to use a portion of the ARRA (American Recovery and Reinvestment Act) funds for the General Jim Moore Boulevard project. He said these were change orders to amend the contract for project completion of Phase II. **Motion was made by Supervisor Parker, (with a comment that the information would have been helpful to see in the board report), seconded by Mayor Edelen and carried.**

7. NEW BUSINESS – Item 7a – Electronic Distribution of Board Packets. Mr. Houlemard said that there were members of the Board who requested electronic distribution of the board packets. He said that staff would implement a 60 day trial period. He introduced Controller Ivana Bednarik who discussed the Electronic Distribution of Board Packets. Ms. Bednarik stated that reports would be available Friday, one week prior on the FORA website and staff would notify Board with a link included in the text of an email. She said that for the May Board meeting, both an electronic and paper version will be available. Ms. Bednarik said that a demonstration would be made at the next Board meeting. **Motion to approve staff's recommendation was made by Mayor Edelen seconded by Councilmember Oglesby and carried.**

8. EXECUTIVE OFFICER'S REPORT – Executive Officer Houlemard stated that all of the items in the Executive Officer's Report Item 8a. - Outstanding Receivables, Item 8b.- Administrative Committee report, Item 8c.- Travel Report, and Item 8d.- Habitat Conservation Plan, stood as information items; however, he highlighted the following: Agreements have been made with the Cities of Del Rey Oaks and Seaside. Regarding unpaid fees, Marina staff was requesting direction to collect the FORA development fee for Neeson Road \$3,996.00. **Motion was made by Mayor Pro-Tem Kampe, seconded by Supervisor Parker and carried.**

9. ITEMS FROM MEMBERS – none

10. REPORT OUT OF CLOSED SESSION – The Board conferred with negotiators and heard from legal counsel. The Board directed staff to send a letter to the City of Marina acknowledging mediation of the Preston Park sale issue and agreed to meet and confer on April 15, 2011, at 4:30 p.m.

11. ADJOURNMENT – Chair Potter adjourned the meeting at 6:07 p.m.

Minutes prepared by Daylene Alliman, Deputy Clerk

Approved by _____


Michael A. Houlemard, Jr. Executive Officer/Clerk

FORT ORD REUSE AUTHORITY BOARD REPORT**CONSENT AGENDA****Subject:** Imjin Office Park - office furniture**Meeting Date:** April 8, 2011**Agenda Number:** 5b**ACTION****RECOMMENDATION:**

Authorize the Executive Officer to purchase office furniture for the Imjin Office Park ("IOP") FORA offices not to exceed \$65,000.00

BACKGROUND/DISCUSSION:

As the Fort Ord Reuse Authority ("FORA") prepares to move into the new offices in the IOP, staff issued a Request for Proposals ("RFP") on February 14, 2011 soliciting proposals from qualified vendors for the purchase and installation of office furniture. The deadline for submittals was March 14th. Staff received a total of five qualified proposals and a selection panel reviewed and ranked them using specific selection criteria. Every attempt will be made to use refurbished, recycled, and/or "green certified" furniture in an effort to maintain LEED (Leadership in Energy and Environmental Design) standards.

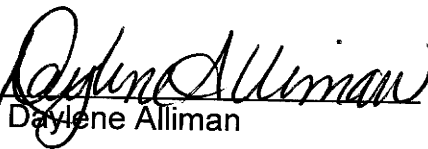
FISCAL IMPACT:Reviewed by FORA Controller 

This moving expenditure is included in the approved FY 10-11 budget.

COORDINATION:

FORA Move Committee

Prepared by


 Daylene Alliman

Approved by


 Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT**CONSENT AGENDA**

Subject:	Authorize extension of contract limits – Top Grade Construction, Inc.	
Meeting Date:	April 8, 2011	ACTION
Agenda Number:	5c	

RECOMMENDATION:

Authorize the extension of Top Grade Construction contract limits to incorporate the final contract change orders to the General Jim Moore Boulevard Phase V and Eucalyptus Road Phase II improvement project (the "Project").

BACKGROUND/DISCUSSION:

As a part of the construction project, change orders were prepared to accommodate additional work requested and/or authorized by the Project funding agency (the Economic Development Administration) in preparation for the next phase of work. This additional work has caused a cost overrun. FORA staff is requesting the Board authorize the extension of Top Grade Construction contract limits to fund \$450,000 of construction costs in excess of previous authorizations.

Separately, the FORA Board of Directors authorized filing the Notice of Completion ("NOC") for the Project at their December 2010 meeting. Due to change order invoices and outstanding punch list items, the NOC was filed March 8, 2011.

FISCAL IMPACT:

Reviewed by FORA Controller 

Top Grade contract summary:

12/09 Original award	\$7,247,367	(\$6,588,116 plus 10% contingency)
07/10 Funding added to restore previously approved construction components	\$532,649	(\$484,226 plus 10% contingency)
4/11 Funding added to incorporate final change orders	<u>\$450,000</u>	
Total revised contract	\$8,230,016	

The project is funded by American Recovery and Reinvestment Act grant funds, local match (50%) provided by the Preston Park loan, and Marina Coast Water District, who contributed about \$1.3 million for water/wastewater facilities installation.

COORDINATION:

Economic Development Administration, Administrative Committee, Executive Committee

Prepared by 

Crissy Maras

Reviewed by 

James M. Arnold

Approved by 

Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT**OLD BUSINESS**

Subject:	Economic and Planning Systems, Inc. contract amendment #2	
Meeting Date:	April 8, 2011	ACTION
Agenda Number:	6a	

RECOMMENDATION(S):

Authorize the Executive Officer to execute amendment number two (**Attachment A and Exhibit A**) to the Economic and Planning Systems, Inc. ("EPS") contract, not to exceed \$10,000 in additional contract expenses.

BACKGROUND/DISCUSSION:

In July 2010, the Fort Ord Reuse Authority ("FORA") Board directed staff to complete review of its Capital Improvement Program ("CIP") obligations and resources within six months. To conduct an independent CIP review, FORA issued a Request for Qualifications/Request for Proposals ("RFQ/RFP") for a financial consultant to perform this work. FORA selected EPS through the RFQ/RFP process. EPS completed their review and presented a report to the Board in January 2011. In January, the Board requested additional analysis from EPS and amended EPS's contract budget and scope to accommodate the request. EPS provided supplemental reports to the FORA Board in February and March after receiving feedback from the Administrative and CIP Committees. Contract amendment number two would amend EPS's contract budget and scope to respond to additional information requests.

FISCAL IMPACT:

Reviewed by FORA Controller 

CIP Review funding is included in the approved FY 10-11 budget and is derived from the FORA CFD Fee. Approval of amendment number two would increase EPS's contract budget by \$10,000 to a contract total of \$42,500.

COORDINATION:

Administrative Committee, CIP Committee, and Executive Committee.

Prepared by 
Jonathan Garcia

Reviewed by 
Steve Endsley

Approved by 
Michael A. Houlemard, Jr.

Agreement No. FC-100110 - 2

Agreement for Professional Services – Extension #2

This is an Extension #2 to Agreement No. FC-100110 (“AGREEMENT”) between the Fort Ord Reuse Authority, a political subdivision of the State of California (hereinafter referred to as “FORA”) and Economic & Planning Systems, Inc. (hereinafter referred to as “CONSULTANT”).

Except for the following adjustments, all terms and conditions in the AGREEMENT remain the same:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement and described in **Exhibit A** (attached), CONSULTANT shall provide to FORA the additional services.

2. COMPENSATION AND OUT OF POCKET EXPENSES. The AGREEMENT is increased by \$10,000 to compensate CONSULTANT for all of the additional services described in “SERVICES” section above and **Exhibit A** (attached). The overall maximum amount of FORA’s liability over the full term of the AGREEMENT is not to exceed \$42,500, including out of pocket expenses.

IN WITNESS WHEREOF, AUTHORITY and CONSULTANT execute this Agreement as follows:

FORA

CONSULTANT

By _____ Date
Michael A. Houlemard, Jr.
Executive Officer

By _____ Date
David Zehnder
Managing Principal

Approved as to form:

Gerald D. Bowden
Authority Counsel

By _____ Date
Jamie Gomes
Principal

March 22, 2011

Jonathan Garcia
Senior Planner
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, CA 93933

Subject: Second Amendment to the Scope of Work for Fort Ord Reuse Authority Capital Improvement Program Review Services; EPS #20510

Dear Mr. Garcia:

Thank you for selecting Economic & Planning Systems, Inc., (EPS) to prepare the Fort Ord Reuse Authority (FORA) Capital Improvement Program (CIP) review. EPS has enjoyed working with you, other FORA staff, and the FORA Administrative Committee and Board on this project.

The purpose of this letter is to request a second amendment to the scope of work to reflect additional work requested by FORA. The additional work and requested scope amendment are summarized below. EPS looks forward to continuing its significant progress on the project to bring the CIP and Community Facilities District (CFD) Special Tax analysis to completion.

Through its present work efforts and meeting attendance, EPS has fulfilled the obligations of the original scope of work and first amendment. In doing so, EPS has accrued expenses up to, and in excess of, the present budget authorization of **\$32,500**.

With this letter, EPS is requesting a contract amendment for an additional **\$10,000** (for a total of **\$42,500**) to complete the following technical analysis, meeting attendance, and final report preparation:

- Prepare a technical memorandum addressing questions from Administrative Committee and Board meetings.
- Present at one additional Administrative Committee meeting.
- Prepare technical analysis and additional materials (e.g., prepare an additional CFD Special Tax adjustment option) for upcoming FORA meetings.
- Present information at an upcoming FORA Board meeting.
- Prepare the final FORA CIP Review report following comments and recommendations from the FORA Board.

The Economics of Land Use



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It is important to note that this contract amendment amount will not be used to fund any existing EPS accruals that were above the present budget authorization.

Budget and Schedule

EPS requests an additional **\$10,000** to complete the additional tasks outlined in this letter. As stated earlier, if approved, this amendment would bring the total budget to **\$42,500**. This budget authorization is based on EPS's assumed attendance at two additional FORA Administrative Committee or Board meetings. EPS is available to attend additional meetings if required by FORA at a cost of **\$2,500** per meeting. EPS charges for its services on a direct-cost (hourly billing rates plus direct expenses), not-to-exceed basis; therefore, you will be billed only for the work completed up to the authorized budget amount.

If necessary, the amended contract should include an extension of the contract termination date to account for the additional FORA meetings scheduled.

Thank you for the opportunity to continue this work effort with FORA on this exciting and challenging project. If you have questions regarding this proposal, please call me at (916) 649-8010.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.



David Zehnder
Managing Principal

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	Capital Improvement Program Review	
Meeting Date:	April 8, 2011	INFORMATION/ACTION
Agenda Number:	6b	

RECOMMENDATION(S):

- i. Receive a presentation from the Transportation Agency for Monterey County ("TAMC") regarding their analysis of Fort Ord Reuse Authority's ("FORA") Transportation and Transit phasing (**Attachment A**).
- ii. Receive a presentation from Economic & Planning Systems, Inc. ("EPS"), responding to the FORA Board's questions from the March 11, 2011 – revised memo (**Attachment B**).
- iii. Receive information on potential benefits to stimulating development through a fee reduction (**Attachment C**).
- iv. Direct staff to prepare documents and/or policy revisions necessary to a) approve a fee reduction to \$29,600 through the life of FORA at the May Board meeting and b) implement accompanying policy adjustments. See also policy alternatives included under the "DISCUSSION" section of this report.
- v. Direct staff to work with EPS on a third contract amendment for the May Board meeting, which would implement a Phase II analysis as previously defined (**Attachment D and E**).

BACKGROUND:

On July 9, 2010, the FORA Board authorized a proposed Capital Improvement Program ("CIP") work plan timeline. The Board directed staff to conduct review of CIP obligations and resources during a six-month period and provide monthly updates. The project was successfully completed by the January 2011 target. However, at the January 14, 2011 Board meeting, the Board requested additional information and answers to certain questions. The Board adjusted the budgetary authority accordingly and reviewed the new material at its February 11, 2011 Board meeting. At this meeting and the March 11, 2011 meeting, the Board posed several new questions and requested additional information.

EPS has been the principal consultant from the inception of the project. David Zehnder is the Managing Principal and Jamie Gomes is the Principal. Each have recent experience with California municipalities and county organizations reviewing CIP obligations and fee structures. Previously, EPS presented updated development forecasts and preliminary CIP analysis to the Joint Administrative/CIP Committee in the form of a memorandum on November 17, 2010. On December 15, 2010, EPS presented a cost-burden analysis and a draft summary report on CIP obligations, cost estimates, and revenue forecasts. On January 5, 2011, EPS presented a draft final report on their CIP review to the FORA Administrative Committee. On January 14, 2011, staff gave the FORA Board an overview of the FORA CIP and EPS presented its draft report. The Board's actions in January included authorizing the Executive Officer to amend EPS's contract to provide a supplemental report and attend two additional FORA Board meetings: February 11, 2011 and March 11, 2011.

On March 23, 2011, the Joint FORA Administrative/CIP Committee reviewed EPS's March 23rd memo, gave feedback to FORA staff, and passed a motion making the above recommendations.

Concurrent with EPS's work, FORA staff reviewed its CIP funding sources to ensure accuracy and TAMC has reviewed phasing of FORA's CIP transportation project expenditures to coordinate regional transportation planning efforts.

DISCUSSION:

EPS previously recommended that the FORA Board consider three options for potential actions related to their CIP Review. These include Options 1, 2, and 2B below. The University of California Monterey Bay Education, Science, and Technology center ("UC MBEST") presented Option 2C to the Administrative and CIP Committees on March 30, 2011. Correspondence related to these potential options is included under **Attachment F**.

Option 1 – Reduce the Community Facilities District ("CFD") Special Tax from approximately \$46,200 to \$36,500 per new residential unit based on eliminating various contingencies no longer deemed essential (Please note that all of EPS's recommendations include the same percentage reduction to each CFD Special Tax fee category [new residential, existing residential, retail, office, industrial, and hotel]). The Board may reduce the FORA CFD Fee without calling for an election, but only if the same percentage reduction is applied to each fee category. The new residential fee is highlighted because it is the largest proportionate fee generator.)

Option 2 – In addition to Option 1, revise the "minimum" justifiable CFD Special Tax reduction, targeting three specific proposed adjustments to the CIP contingency, reducing the fee from \$36,500 per new residential unit to \$29,600 per new residential unit.

Option 2B – Based on Option 2, this recommendation would return the \$12.2 million FORA Reimbursement line item into the CIP contingency and make the CFD Special Tax adjustment effective through the life of FORA. The CFD Special Tax would equal \$31,200 per new residential unit under this option. The purpose of returning \$12.2 million to the CIP would be to repay FORA's land sales payments spent on CIP costs. The repaid \$12.2 million in land sales could be available to fund jurisdictions' property management costs should the need be demonstrated.

Option 2C – In addition to the above Options, Administrative Committee members requested that an additional alternative fee structure be included for Board consideration that would provide additional contingency for not yet concluded sizing of the Habitat Conservation Plan ("HCP") Endowment. This alternative adds \$17.5 million to the contingency line items and results in a cumulative fee of \$33,200.

FISCAL IMPACT:

Reviewed by FORA Controller 

CIP Review funding is included in the approved FY 10-11 budget and is derived from the FORA CFD Fee.

COORDINATION:

Administrative Committee, CIP Committee, Executive Committee, development teams, Building Industry Association of the Bay Area, Development Planning & Financing Group, Inc., TAMC, and EPS.

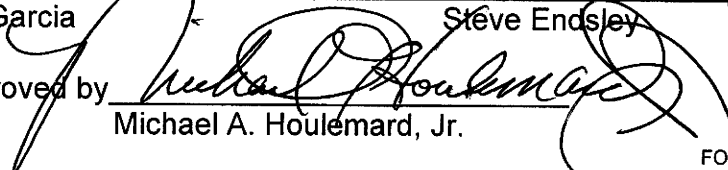
Prepared by



Jonathan Garcia

Reviewed by


Steve Endsley

Approved by


Michael A. Houlemard, Jr.

**Transportation Agency
for Monterey County** 

**CAPITAL IMPROVEMENT PROGRAM
REVISED PROJECT SCHEDULES**

INVESTING IN YOUR TRANSPORTATION FUTURE

Purpose


**Transportation Agency
Volunteered to Assist the CIP
Update Process Because:**

- o State and Federal funding match requirements
- o Better match funding to project phasing

Need for Update


• Consistency with:

- o Proposed fee reductions
- o Annual updates to development forecasts/revenue projections
- o Match CIP project implementation to cover impacts



Impacts of Fee Reductions

- **Option 2 (\$29,600/Residential Unit):**
 - Reduces fees by 36%
 - Total costs stays at \$115,725,927
 - Project implementation delayed in CIP



Contingency in the CIP

- **Total costs stays at \$115,725,927**
 - 20 Transportation projects in the FORA CIP
 - 15% contingency built-in for six FORA lead on-site projects
 - Remaining projects are lump-sum contributions or reimbursement agreements

Revisions to Project Schedules

- **Assumptions used:**
 - Fee reductions permanent
 - Input from lead agencies
 - No changes to project costs
 - No changes to non-trans expenditures or "Other Costs"

Additional CIP Modification

• **TAMC Requests:**

- Hwy 1 Widening replaced with:
 - ✕ Hwy 1 – Del Monte – Fremont Intersection
 - ✕ Monterey Branch Line – Light Rail

Impacts of Fee Reduction

• **Revenue Delay by year:**

Year	Adopted 2010 FORA CIP	Proposed Allocations	Difference
2010-2011	6,775,196	6,775,196	\$0
2011-2012	10,955,494	10,955,494	\$0
2012-2013	24,621,801	15,112,847	(\$9,508,954)
2013-2014	27,260,700	20,755,000	(\$6,505,700)
2014-2015	25,287,216	6,859,515	(\$18,427,701)
2015-2016	14,399,224	18,974,000	\$4,574,776
2016-2017	6,426,295	36,293,875	\$29,867,580
Total Allocations	115,725,927	115,725,927	\$0

Impacts of Fee Reduction

• **CIP Contributions Not Impacted:**

- General Jim Moore Blvd
- Eucalyptus Rd
- South Boundary Rd

Impacts of Fee Reduction

- **CIP Contributions Advanced:**
 - Eastside Parkway (2012-16 to 12-14)
 - Hwy 68 Operational Improvements (2013-16 to 12)
 - Crescent Ave extend to Abrams (2012-15 to 12)

Impacts of Fee Reduction

- **CIP Contributions Matched to Project Phase:**
 - Hwy 1 Widening replaced with:
 - × Hwy 1 – Del Monte – Fremont Intersection
 - × Monterey Branch Line – Light Rail
 - Abrams

Impacts of Fee Reduction

- **CIP Contributions Matched to Project Phase:**
 - Widen Reservation-4 lanes to WG
 - Widen Reservation, WG to Davis
 - Intergarrison
 - Intermodal Centers
 - Transit Vehicle Purchase/Replacement

Impacts of Fee Reduction

• **CIP Contributions In Later Years:**

- Hwy 1 – Monterey Rd Int (2013-17 to 17)
- Hwy 156 Widening (2013-17 to 16 - 17)
- Davis Rd north of Blanco (2013-16 to 17)
- Davis Rd south of Blanco (2012-15 to 15-16)
- 8th Street (2012-14 to 17)
- Gigling (2014-15 to 16-17)
- Salinas Ave (2012-15 to 16-17)

Transportation Agency for Monterey County



QUESTIONS?

INVESTING IN YOUR TRANSPORTATION FUTURE

MEMORANDUM

To: Fort Ord Reuse Authority

From: David Zehnder and Jamie Gomes

Subject: Response to Fort Ord Reuse Authority Questions on Capital Improvement Program Review and Community Facilities District Special Tax Rate Recommendations; EPS #20510

Date: March 28, 2011

The Economics of Land Use



On February 11, 2011, Economic & Planning Systems, Inc., (EPS) presented findings of the Fort Ord Capital Improvement Program (CIP) review to the Fort Ord Reuse Authority (FORA) Board (Board), based on the approach crafted over the prior months with Administrative Committee (AC) input, culminating in the Draft Report dated January 14, 2011, (hereafter, referred to as Draft Report). Subsequently, on separate occasions, the AC and Board (at their March 11, 2011, meeting) have met on this topic and have requested additional information be provided to answer outstanding questions.

Summary of CIP Review and Community Facilities District Special Tax Adjustment Options

CIP Review Summary

The CIP review methodological approach included both a comprehensive review of the FORA CIP and an examination of the infrastructure cost burdens faced by prototypical development projects that would be subject to the Community Facilities District (CFD) Special Tax. This approach addresses the dual goals of (1) ensuring that specific projects and related contingencies are clearly delineated, fully transparent, and deemed appropriate; and (2) ensuring that resulting infrastructure cost burdens (including CFD Special Taxes) are consistent with generally accepted thresholds.

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Results of the infrastructure cost burden analysis yielded the following conclusions:

- Infrastructure cost burdens along with other cost factors render planned residential development projects infeasible.
- The CFD Special Tax alone represents approximately 10 percent of the overall infrastructure cost burden of a typical new single-family unit.
- FORA projects do not have other extraordinary circumstances (e.g., atypically low land costs or low lot development costs) that would enable them to carry higher infrastructure cost burdens. In fact, the opposite might be concluded given many of the obstacles encountered by developers and builders with Fort Ord.
- Infrastructure cost burdens on nonresidential projects do not represent the same proportion of total project value as compared to residential projects. However, existing burdens are at the higher end of the range, and such nonresidential projects would benefit from CFD Special Tax reductions.

The conclusion reached from these findings is that without changes to the cost structure for new development projects, as well as general improvement in market conditions, new development at FORA will remain stalled for an indefinite period. Delayed implementation of the Base Reuse Plan has many negative implications.

At the outset of the CIP review, EPS developed a set of underlying principles (outlined in the Draft Report) that were used in reviewing the CIP and related one-time CFD Special Tax. The CFD Special Tax adjustment options summarized below adhere to the Draft Report principles.

CFD Special Tax Adjustment Options

As presented in the Draft Report and supported by responses to questions in subsequent memoranda, EPS believes that substantial reductions to project contingencies can be made, while still ensuring the CIP's costs can be covered. **Table 1** provides a summary of the CFD Special Tax adjustment options, including a new Option 2B that was provided for the March 11, 2011, Board meeting.

Table 1 includes the following options for a reduction of the CFD Special Tax:

1. **Option 1**—An immediate reduction contributing to a one-time CFD Special Tax payment of \$36,300 per single-family residential unit (SFR), down from the existing rate of \$46,200/SFR.¹
2. **Option 2**—A more significant immediate reduction to contingencies relating to transportation projects, habitat maintenance, and FORA Reimbursement line item. The SFR CFD Special Tax would equal \$29,600 under this option.

¹ For presentation purposes, comparative figures are presented for SFRs; any reductions would be applied on an equal percentage basis to all land uses contemplated for development on Fort Ord.

- Option 2B**—Equals Option 2 recommendation with the replacement of the \$12.2 million FORA Reimbursement line item into the CIP contingency and consideration of implementing the recommended CFD Special Tax adjustment to be effective through the life of FORA. The SFR CFD Special Tax would equal \$31,200 under this option.

Each of these options and related topics were presented and discussed at the March 11, 2011, Board meeting, during which, EPS and FORA staff also answered several questions previously raised by the AC and Board. The March 11 discussion generated a few remaining outstanding issues for which the Board was seeking additional clarification. Below are remaining questions and responses regarding the CIP review and CFD Special Tax adjustment options.

Questions and Responses

#1: Were comments representing TAMC positions correctly stated at the March 11, 2011 Board Meeting?

As indicated at the March 23, 2011, AC Meeting, TAMC staff indicated that there is alignment between TAMC, FORA staff, and FORA's consultants regarding the ability to implement the CIP under the scenarios presented. TAMC has been invited to present their analysis relating to this question at the March 30 AC meeting and subsequently at the April 8 Board meeting.

#2: Is the CIP line item for HCP costs in 2010 dollars and how long will it take to fund the HCP endowment given the CIP review cash flow assumptions?

The \$35 million in HCP costs included in the CIP review are from FORA's 2010 CIP update and are expressed in 2010 dollars. Both FORA and the resource agencies have been meeting on the HCP endowment, and the current \$35 million in targeted HCP endowment cost remains unchanged based on those meetings. FORA is actively working towards ensuring that the \$35 million is the maximum total amount of HCP endowment funding required.

The CIP review cash flow maintains the prior 2010 CIP review cash flow assumption that 25 percent of every CFD Special Tax dollar collected would be set aside to fund the HCP endowment. Depending on which CFD Special Tax adjustment option may be implemented by the Board, the cumulative HCP endowment revenues forecasted through 2013–14 range between \$16 million and \$19 million. The respective cash flows assumed that the difference between the total \$35 million and accrued amounts through 2013–14 would be payable in 2014–15. Those amounts ranged between \$15 million and \$19 million in 2014–15.

On March 23, 2011, the AC requested EPS provide additional description of the HCP endowment and former HCP contingency item. As a general framework, the purpose of the HCP endowment is to produce an annual pay-out each year to accomplish HCP-required activities. This annual pay-out, to be made in perpetuity, is approximately \$1,575,000 in 2010 dollars. FORA anticipates the HCP endowment could be professionally managed to achieve an annual pay-out rate of 4.5 percent, which means the endowment would have to be approximately \$35 million in size (this is the number included in the 2010–11 CIP).

The California Department of Fish and Game (CDFG) recently changed their policy of certifying non-CDFG HCP endowment holders. Because of recent investment concerns, CDFG is no longer certifying non-CDFG HCP endowment holders, with the exception of the National Fish and Wildlife

Foundation (NFWF) and a pilot program for non-HCP endowments. The HCP participants appear to be left with three choices: (1) Use CDFG as the endowment holder with a pay-out rate of approximately 3 percent, (2) Use NFWF as the endowment holder with a pay-out rate of approximately 3 percent, or (3) negotiate CDFG's acceptance of the JPA Cooperative, becoming the certified endowment holder to earn a higher pay-out rate than other alternatives.

The former HCP-related CIP contingency amount of \$17.5 million equaled the additional endowment investment required as calculated by FORA staff to cover the difference between an estimated 4.5-percent pay-out rate (\$35 million total endowment size) and an estimated 3-percent pay-out rate (\$52.5 million total endowment size).

#3: Please indicate the Board actions and/or other steps that would be required to implement a reduced CFD Special Tax? What implications will those actions have for the CFD Special Tax amount going forward?

The Board has the authority, by resolution, to levy less than or up to the maximum CFD Special Tax in any given tax year. Consequently, the Board could determine, by resolution, that it wants to levy a proportionally reduced CFD Special Tax in this and in subsequent tax years. Authority and District counsel would have to prepare the appropriate legal documents for the Board to take action on an adjusted CFD Special Tax. The process should take approximately 30 to 60 days. Following any Board action, the CFD Special Tax will continue to be indexed annually based on the CFD Special Tax Formula provisions.

FORA's special district counsel has prepared a letter addressed to Authority counsel outlining FORA options for future CFD Special Tax adjustments. In the letter, special district counsel concludes that "the Board could, by resolution, raise special tax rates that it previously reduced (by resolution) for a specific tax year or tax years without a need for an election in the CFD, so long as any such raise in special tax rates is not to rates that are in excess of the authorized maximum special tax rates in the RMA." The letter from FORA special district counsel is attached to this memorandum.

#4: Wouldn't a CFD Special Tax reduction be helpful to affordable housing?

It is EPS's opinion that a fee reduction would be helpful for affordable housing development. Mid-Peninsula Housing Coalition—one of the affordable housing developers on the base—read a letter into the record last month saying they supported the fee reduction because it would help their project. The CIP Review Report stated that developers will likely not build more low-moderate-income housing than they are required to build under state and local law and therefore it was justified to adjust the CFD Special Tax revenue assumption. The adjustment eliminated the assumption that CFD Special Tax revenues would be lower, assuming the development community would voluntarily over-build units for low- and moderate-income households.

The following example helps to quantify the potential impact to CFD Special Tax revenues if a developer was to construct greater than his or her required share of affordable housing. A 100-unit development of new market-rate residential units would pay approximately \$2.9 million in special tax revenue, assuming the Option 2 special tax reduction. If that same 100-unit project were to qualify for the affordable housing CFD special tax rates, the CFD special tax revenue would be approximately \$700,000. This revenue total assumes that each 1/3 of the

affordable housing units would fall into the three categories of affordable housing discounts (Tier 1, 2, and 3).² The difference in revenue of \$2.3 million equates to approximately 1.2 percent of the total CFD Special Tax revenue presently forecasted in the CIP model. Based on FORA's experience to date, this scenario is unlikely to occur.

#5: How does FORA differ from a normal California Redevelopment Agency? Would the potential State of California elimination of California Redevelopment Agencies apply to FORA?

FORA is not a California Redevelopment Agency. FORA was created by special California legislation as an independent special district acting as the Local Reuse Authority charged with implementing the Fort Ord Base Reuse Plan. Depending on discussions currently in progress, FORA tax increment revenues might be reduced or even eliminated. The FORA CIP cash flow does not depend on any tax increment revenues at this time. However, FORA has used tax increment as a "backstop" to both the operating and capital improvement budgets in the past.

² CFD Special Tax reductions are presently applicable under the following scenarios. Tier 1—100 percent of the dwelling units are below-market housing, containing at least 20 percent of the dwelling units as affordable housing with deed restrictions on where individuals can work. Tier 2—100 percent of the dwelling units are below-market housing, containing at least 75 percent of the dwelling units as affordable housing with no deed restrictions on where individuals can work. Tier 3—inclusion of market-rate housing. If the project includes market-rate housing, only those dwelling units that are in excess of the affordable dwelling units minimally required by state law and local policies would be subject to a reduced CFD special tax.

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March 24, 2011

VIA EMAIL

Jerry Bowden
FORA Authority Counsel
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Email: jerry@fora.org

Re: Fort Ord Reuse Authority Basewide Community Facilities District

Dear Jerry:

Based on the conference call on March 16th regarding the Fort Ord Reuse Authority Basewide Community Facilities District (the "CFD"), I understand that various questions have arisen with respect to the Rate and Method of Apportionment of Special Tax (the "RMA") for the CFD, and the special taxes levied pursuant thereto. In connection with the questions discussed on our call, I have now had a chance to review the RMA, the proceedings to establish the CFD and the Mello-Roos Community Facilities Act of 1982, constituting Sections 53311 and following of the Government Code (the "Act"), and have spoken with Bob Spencer, the primary draftsman of the RMA. Based on my document review and discussion with Mr. Spencer, I have the following responses to the questions set forth below. (Note that all references to Sections of the Act are to Sections of the Government Code.)

Question: Can the Board of Directors of FORA lower the maximum special tax rates in Section IV of the RMA without the need for an election involving the registered voters residing in the CFD?

Relevant Statutory Authority, Factual Circumstances: Section 53321(d) of the Act requires that the resolution of intention to form a community facilities district "...specify the rate, method of apportionment, and manner of collection of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the maximum amount that he or she will have to pay." Section IV of the RMA sets forth in Table 1 "Maximum Special Tax Rates" for various property classifications, and that Section of the RMA provides for annual increases in those maximum special tax rates.

Section 53325.3 of the Act provides that "...there is no requirement that the tax be apportioned on the basis of benefit to any property." That Section goes on to provide that a special tax may be based on "...some other reasonable basis as determined by the legislative body." The legislative body for the CFD is the Board of Directors (the "Board") of FORA (see Section 53317(g) and (h) of the Act). At the time the RMA was developed, the cost information for the facilities that were intended to be financed by the CFD involved estimates and, due to the inherent uncertainties in the estimates, significant contingency amounts. As a

result, the maximum special tax rates in the RMA were determined taking into account such contingencies and thereby resulting in maximum rates that may be in excess of what is needed to fund the true costs of the improvements.

Resolution No. 02-1 of Board adopted on January 18, 2002 (the "Resolution of Formation") approved the RMA for the CFD. Section 53330.5 of the Act provides that "...the special tax may be levied only at the rate and may be apportioned only in the manner specified in the resolution of formation...except that the legislative body may levy the special tax at a rate lower than that specified in the resolution." Section 53340(a) of the Act provides that, after a community facilities district has been formed, "...the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution adopted pursuant to Article 2..." (which is the resolution of formation). On November 18, 2005, the Board adopted Ordinance No. 05-01 levying the special taxes in the CFD "...in accordance with the rate and method of apportionment of special taxes...as approved by the Resolution of Formation, and as subsequently amended..." Section 53340(b) of the Act states that "The legislative body may provide, by resolution, for the levy of the special tax in the current tax year or future tax years at the same rate or at a lower rate than provided by the ordinance..."

Notwithstanding the foregoing, Section 53331(a) of the Act, in relevant part, states that "If the legislative body determines that the public convenience and necessity require ...that the rate or method of apportionment of a special tax should be changed...the legislative body may adopt a resolution of consideration...to alter the rate or method of apportionment of the special tax." The adoption of a resolution of consideration begins a process under the Act that then requires a public hearing (Section 53334(d) and 53336 of the Act), and a two-thirds vote of the registered voters residing within the boundaries of the CFD (Section 53338 of the Act) to effect the proposed change to the rate or method of apportionment of an existing special tax. Complicating the FORA CFD situation is that, to date, there have been a few property owners in the CFD that have paid the special tax at the maximum special tax rates specified in the RMA.

Conclusion: Based on the clear statutory authority in Sections 53330.5 and 53340(b) of the Act referred to above, the Board has the legal authority to adopt a resolution that levies the special tax for future tax years at rates lower than the maximum special tax rates in the RMA, without any need for an election of registered voters or property owners in the CFD. However, because Section 53325.3 of the Act implies that special taxes be apportioned on a reasonable basis, any resolution of the Board that allows for a levy of special taxes at rates lower than the maximum rates in the RMA for future tax years should have a factual underpinning, such as revised CFD facilities cost estimates, reduced contingencies or some other reasonable basis for lower special tax levies.

To avoid any argument that the provisions of Section 53331(a) of the Act referenced above (requiring a public hearing and election to alter the rate or method of apportionment of a special tax) apply to any such potential lower than maximum rates special tax levies by the Board in the CFD, it would be important that any reductions in special tax levies below the maximum rates in the RMA be proportional for each property classification in Table 1 in Section IV, and for the "Exceptions" in Section IV. If the reductions are not proportional, an argument could be raised to the effect that the disproportionate reductions effectively altered the method of apportionment of the special taxes to the property in the CFD. Note that the use of the word "rate" in Section 53331(a) of the Act can only mean a change that would increase a maximum special tax rate over that authorized by a resolution of formation for a

community facilities district, otherwise the provisions of Section 53330.5 and 53340(a) discussed above would have no operative effect.

Finally, it should be noted that, while some property owners in the CFD may already have paid special taxes at the current maximum special tax rates, if the Board adopts a resolution lowering the maximum special tax rates for one or more future fiscal years, there should be no resulting financial exposure to those who previously paid at higher rates. The lack of exposure is because the Act clearly allows for the Board to levy at less than the authorized maximum special tax rates in any year, without in any way requiring any rebate or other financial consideration to any who may have previously paid at a higher authorized special tax rate. Also, note that Section IV of the RMA provides for an increasing maximum special tax rate (minimum 5% yearly increases), so even without any action by the Board, property owners paying special tax levies in different fiscal years would be obligated to pay different amounts for the same classification of property. Finally, Section 53341 of the Act provides that "Any action or proceeding to attack, review, set aside, void, or annul the levy of a special tax or an increase in a special tax...shall be commenced within 30 days after the special tax is approved by the voters." The voters approved the special tax years ago, so the Board could use Section 53341 of the Act as a defense to any claim that could arise from someone who already has paid the special tax. However, it should be noted that any or all of the foregoing may not prevent property owners that already have paid special taxes from complaining that the Board has "unfairly" lowered special tax rates for subsequent years, and otherwise raising political concerns and even making legally unsupportable claims for refunds of portions of special taxes previously paid.

Question: Could the Board take action to lower the maximum special tax rates for a particular year, and then in a later year determine to once again levy special taxes at the maximum special tax rates specified in the RMA?

Relevant Statutory Authority, Factual Circumstances: Section 53340(b) of the Act referred to above clearly contemplates that the legislative body of the CFD could levy the special tax in future tax years at lower rates than the maximum special tax rates allowed by the ordinance levying special taxes on property in the CFD, or at the maximum special tax rates otherwise specified in the RMA. If the Board adopted a resolution allowing for the levy of special taxes in a tax year or years lower than the maximum special tax rates in the RMA, the Board would need to adopt a resolution reinstating the maximum special tax rates allowed by the RMA for any applicable future tax year, or otherwise increasing them to some other rates that are more than any reduced rates then in effect but lower than the maximum rates. Again, however, remember that Section 53325.3 of the Act implies that special taxes be apportioned on a reasonable basis.

Note that the Notice of Special Tax Lien recorded in the County Recorder's Office and encumbering all of the property in the CFD disclose the full RMA, including the maximum special tax rates set forth therein, so property owners are on notice that special taxes can be levied at those maximum rates, should the Board (as the legislative body for the CFD) so determine. Also, Section 53341.5 of the Act, which requires that notices be provided by a subdivider to purchasers of property in a community facilities district, also requires only disclosure of maximum authorized special tax rates. Given the foregoing, any person owning or acquiring property in the CFD is on notice that the Board has the legal authority to levy special taxes at rates up to the maximum special tax rates in the RMA.

Conclusion: The Board could, by resolution, raise special tax rates that it previously reduced (by resolution) for a specific tax year or tax years without a need for an election in the CFD, so long as any such raise in special tax rates is not to rates that are in excess of the authorized maximum special tax rates in the RMA. As with the conclusion to the preceding question, however, any such Board resolution raising the special tax rates should have an expressed reasonable basis for any such increase, and the rates should be increased proportionately for each property classification in Table 1 in Section IV of the RMA. Raising special tax rates in such manner should avoid any argument that the change in rates altered the method of apportionment of the special taxes (which would require a public hearing and election).

Question: Could the Board, with the approval of the registered voters in the CFD at an election, approve a change in the RMA to reduce the maximum special taxes on a temporary basis or otherwise?

Relevant Statutory Analysis: Sections 53330 and following of the Act provides a procedure whereby the Board could alter the rate or method of apportionment of a special tax upon satisfaction of certain requirements, including the conduct of a public hearing and a two-thirds affirmative vote of the registered voters who reside in the CFD. Section 53325.3 of the Act implies that the special tax be apportioned on a reasonable basis.

Conclusion: If the Board is willing to undertake the proceedings necessary to alter the RMA as specified in Section 53330 *et seq.* of the Act (including the conduct of an election), and two-thirds of the persons registered to vote in the CFD that actually vote on the proposition approve it, the Board could alter the RMA to allow reduced maximum special taxes in specified circumstances. The change to the RMA to allow the temporary reduction should have a reasonable basis, and should work mechanically so that trigger events to raise or lower the maximum special tax levy should be clearly set forth and should not be subject to any judgmental or interpretive action by FORA.

Question: Could FORA extend the period in which the special taxes may be levied?

Relevant Statutory Authority, Factual Circumstances: Section 53321(d) of the Act provides that "In the case of any special tax to pay for public facilities and to be levied against any parcel used for private residential purposes, ...the resolution [of intention to form the CFD] shall specify a tax year after which no further special tax...shall be levied or collected..." Section IV of the RMA provides that "Per Section 53321(d) of the Act, Special Taxes shall not be levied after Fiscal Year 2013-14 or the termination of FORA, whichever is later, but in no circumstances shall the Special Tax be levied later than calendar year 2051." Any change to the foregoing provision of the RMA that would result in the levy of a special tax in the CFD beyond the termination of FORA would be a fundamental change in the authority to levy the special tax to the extent that the change proceedings required by Section 53330 *et seq.* of the Act would apply (necessitating a public hearing and a two-thirds vote of the registered voters in the CFD), because the Resolution of Formation and the Notice of Special Tax Lien for the CFD (both of which are referenced above) provided notice to property owners and those that originally voted for the establishment of the CFD that any obligation to pay the special tax would end if FORA was terminated.

Conclusion: FORA could extend the period in which the special taxes may be levied, but any such change would require FORA to hold a public hearing and hold an election of the

Jerry Bowden
FORA Authority Counsel
March 24, 2011
Page 5 of 5

registered votes in the CFD where two-thirds of those casting ballots would need to be in favor of the extension.

Hopefully the foregoing is responsive to your questions regarding the CFD. Please let me know if you need any further assistance from me.

Very truly yours,

A handwritten signature in black ink that reads "Paul J. Thimmig/cra". The signature is written in a cursive style.

Paul J. Thimmig

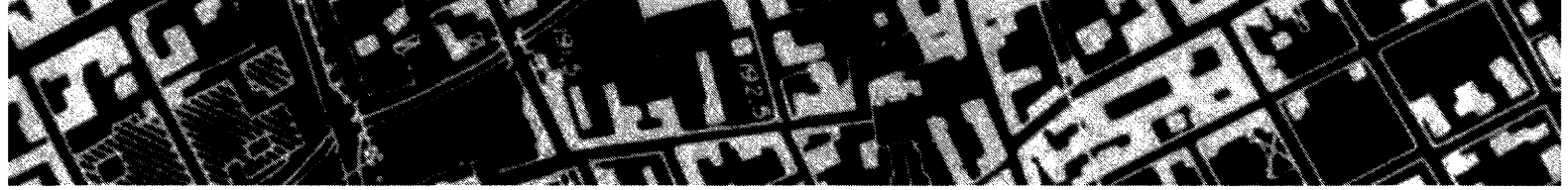
PJT:cra
Enclosures

cc: *(via email only)*
Jamie Gomes

BUILDING CALIFORNIA'S FUTURE

Attachment C to item 6b
FORA Board Meeting 4/8/11

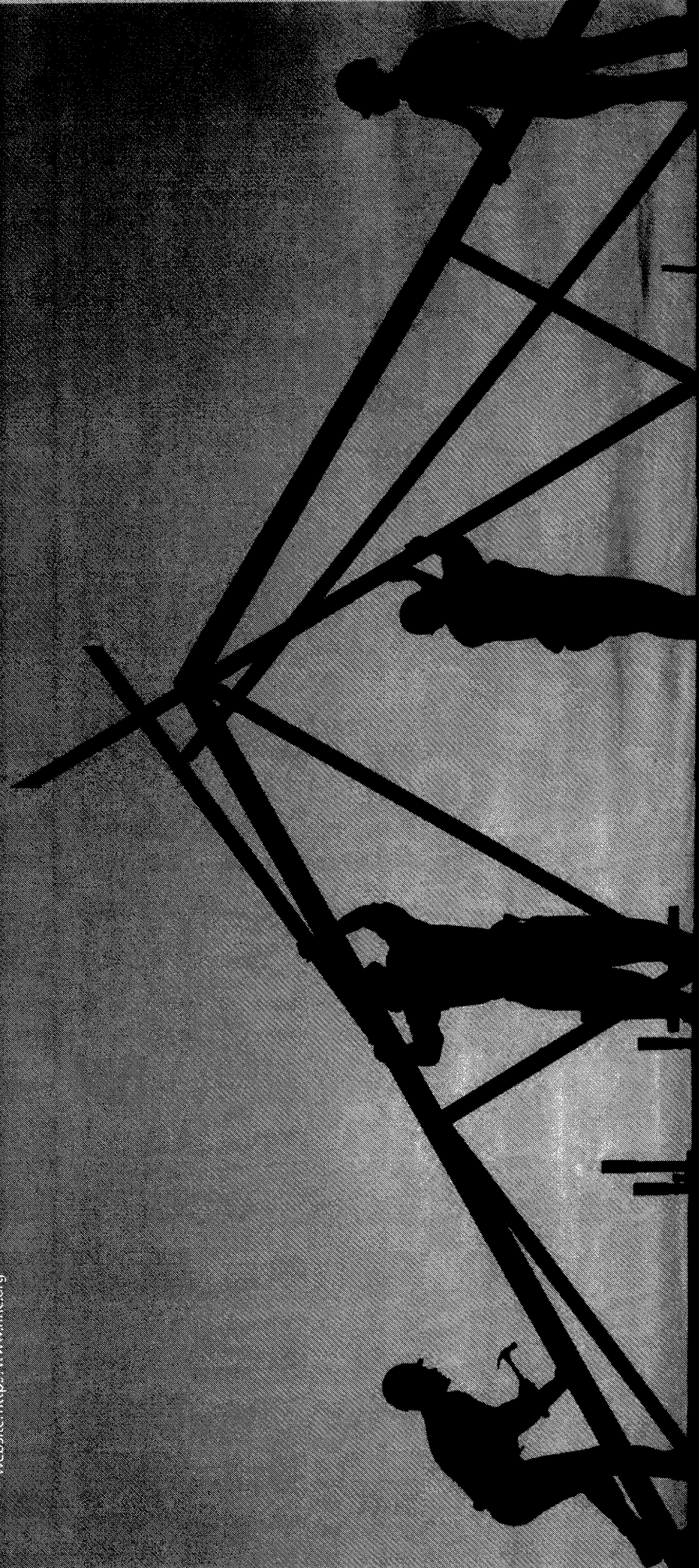
An Economic and Fiscal Analysis
of Housing Construction
in the Golden State



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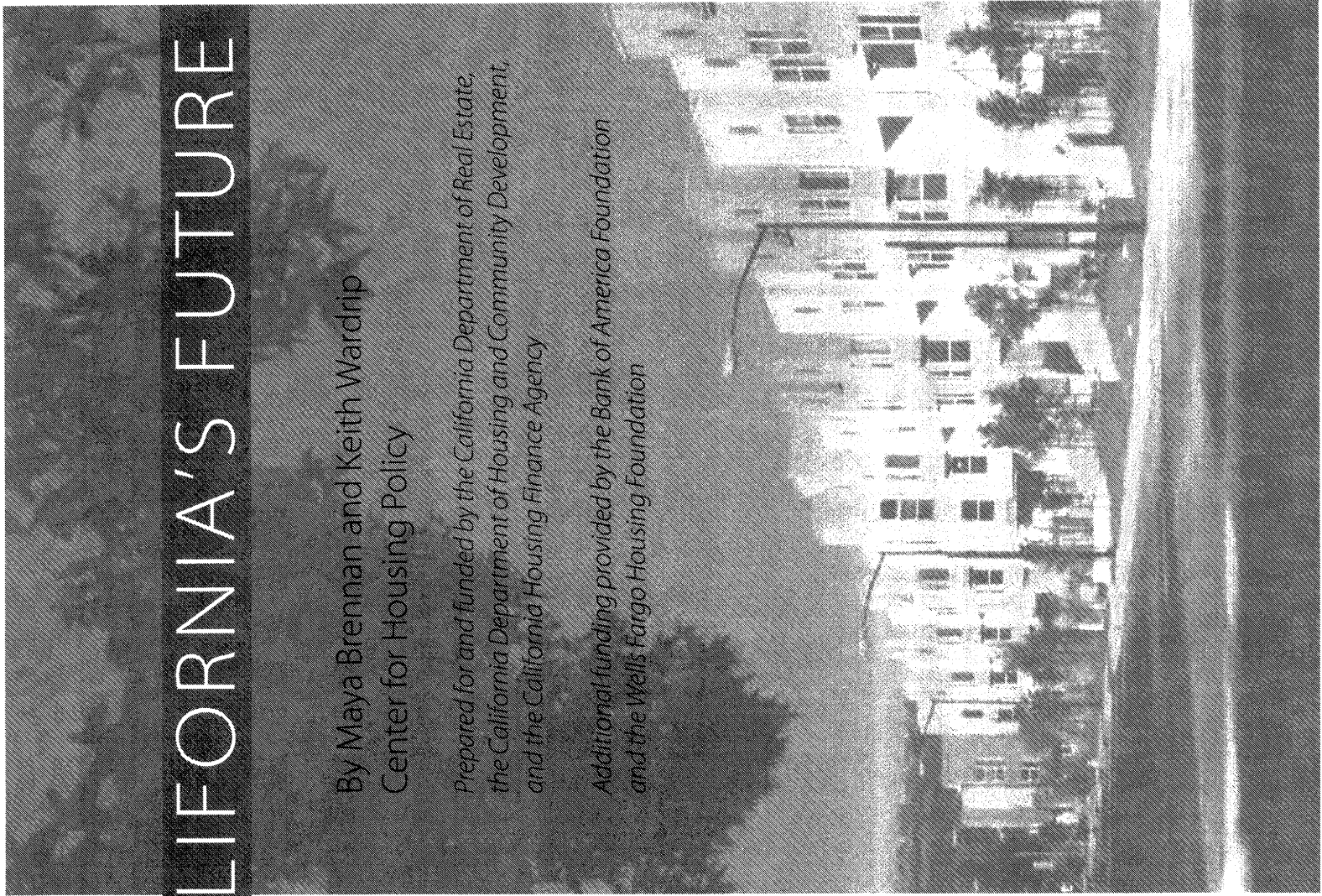
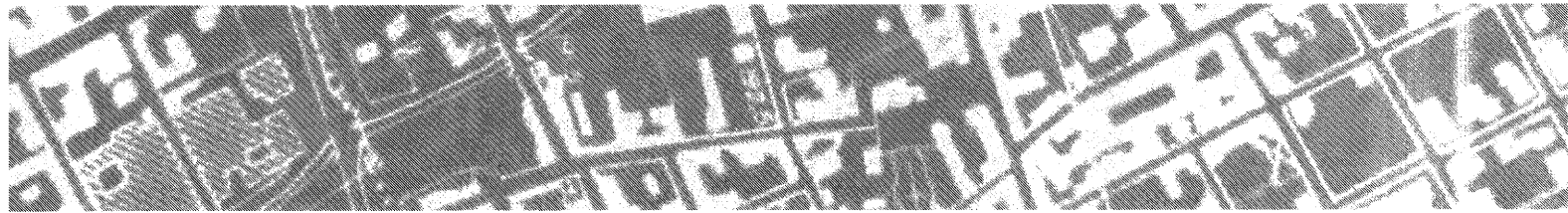
BUILDING CALIFORNIA'S FUTURE

An Economic and Fiscal Analysis
of Housing Construction
in the Golden State

By Maya Brennan and Keith Wardrip
Center for Housing Policy

*Prepared for and funded by the California Department of Real Estate,
the California Department of Housing and Community Development,
and the California Housing Finance Agency*

*Additional funding provided by the Bank of America Foundation
and the Wells Fargo Housing Foundation*



EXECUTIVE SUMMARY

Before the current economic recession, the housing industry was widely understood to play an integral role in California's economy. Employment in housing construction and related industries was robust, and state and local budgets benefited not only from the economic activity that the industry generated but also from the taxes paid by builders and homebuyers alike — all while increasing the supply of housing to keep pace with rising demand. The high prices of many of the homes built in the last decade produced significant tax revenues for state and local governments, and both the new residents and those who earned a living in the construction industry helped keep the economy humming.

But times have changed. A combination of risky lending, rising unemployment, and protracted foreclosure and credit crises has contributed to declining home values — by roughly 26 percent for new homes statewide since 2005.¹ The pace of housing construction has also slowed considerably, with the number of permits issued in 2009 at less than 20 percent of peak levels and only one-third of the annual volume experienced through the 1990s.² Unemployment has eclipsed 12 percent, and even after several years of post-bubble contraction, the

state continues to lose jobs in the construction sector.³ Given current conditions, it is wise to ask if new housing construction continues to act as an economic driver. Similarly, do new units pay for themselves and more, or do they require more of government resources than they give back?

This report finds that, despite the downturn, new housing construction still has positive economic and fiscal effects in California.

► **Economic Effects.** For fiscal year 2009–10, the construction of a median-priced home in the state of California produces an estimated \$375,699 in new economic activity. This economic activity, which can range from the purchase and installation of materials by a builder to the production of windows by a supplier to the purchase of groceries by a roofer, is enough to support the creation of 2.1 jobs per new unit built, on average.

► **Fiscal Effects for the State of California.** The construction of a median-priced home has a positive estimated one-time fiscal impact for the state of \$10,479 as it is being built and an ongoing annual fiscal impact of \$1,869 after it is occupied, as average revenues generated by the residents outweigh the costs of providing state services.

► **Fiscal Effects for Cities and Counties.** Permitting and building a median-priced home is estimated to have a positive, substantial one-time fiscal impact for the average city (\$759) and

the average county (\$1,442). Ongoing annual fiscal effects of new housing construction are also positive in the average city (\$262) and county (\$45). Fiscal effects for counties typically exceed these averages when a home is built in an incorporated area, as the vast majority are, but are lower for units built in unincorporated areas.

The estimates provided in this report suggest that in most places and by most measures, housing development is both economically and fiscally beneficial for communities in California, despite the housing downturn. On average, revenues for cities and counties continue to more than cover ongoing expenditures associated with development. But in places where values have fallen the farthest in recent years, property and sales taxes have diminished, and construction activity has stalled, ongoing fiscal effects can be more modest or negative. In these communities, revenues may improve in sync with the housing market, or governments may need to make hard choices to better align their expenditures with the reality of their current revenues.

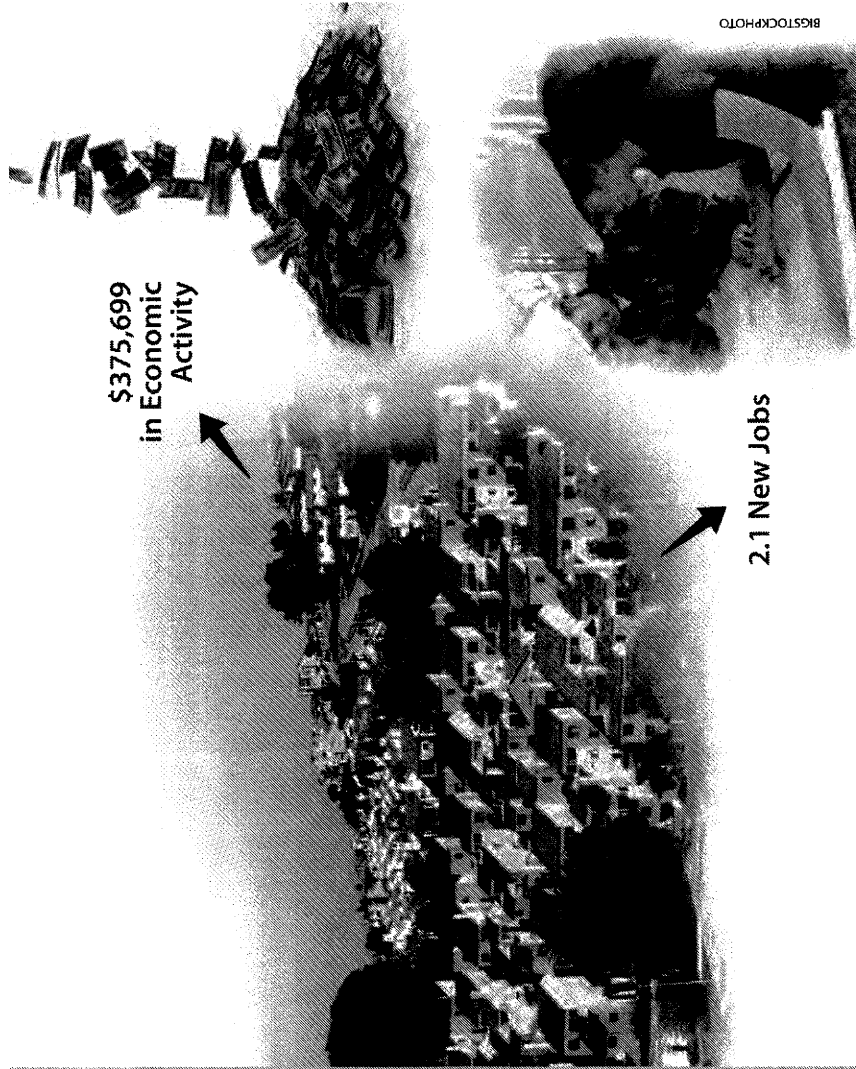
While this report focuses principally on the impact of constructing a median-priced home, a sensitivity analysis shows that even the construction of lower-cost housing has a positive fiscal effect on the budgets of the state and typical locality. This suggests that the development of lower-cost homes for Californians who cannot afford today's prices is not only an important strategy for attracting and retaining an essential workforce but also a sound financial move for local government.

California's Economy Benefits from New Housing Construction — Even in a Downturn

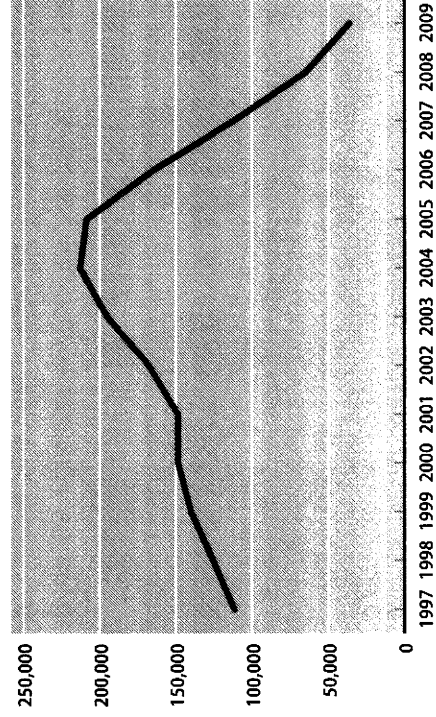
Housing construction has long been recognized as a major driver of California's economy, and the sector still employs thousands of Californians and generates billions of dollars in economic activity, even in troubled economic times. Although the total economic impact of home construction in the state has declined as the volume of home building has dropped, the next new home built still provides a strong boost to the state's economy.

Estimates for fiscal year 2009–10 show that a newly built, median-priced home adds more than \$375,000 in economic output for the state and creates 2.1 new jobs. These projections are based on residential building permit issuance and construction costs through October 2009.

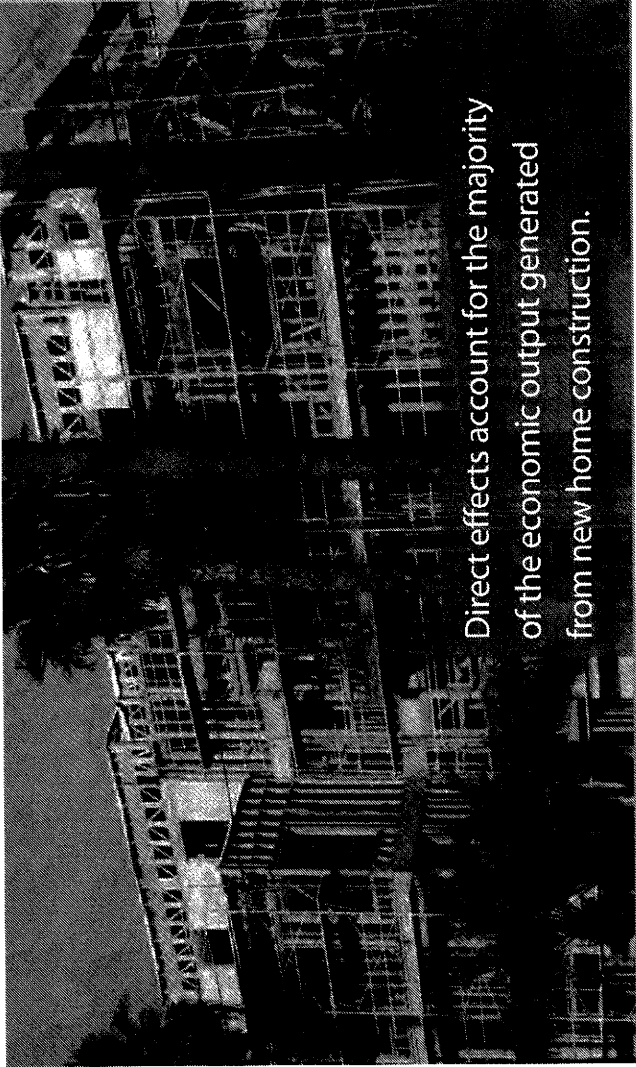
Since the downturn in the housing market in 2006, household growth has outstripped growth in the number of new housing units.⁴ In addition, the inventory of existing homes on the market has fallen significantly from levels observed in late 2008 and early 2009, providing a further indication that the state's housing market is not characterized by oversupply. As long as household growth outpaces new construction, economic theory would predict rising prices and reduced affordability.



Residential Permits Issued Annually, 1997–2009*



*Residential permit data are from the California Building Industry Association.



Direct effects account for the majority of the economic output generated from new home construction.

Home Construction's Direct Effects Account for More Than Half of Economic Output

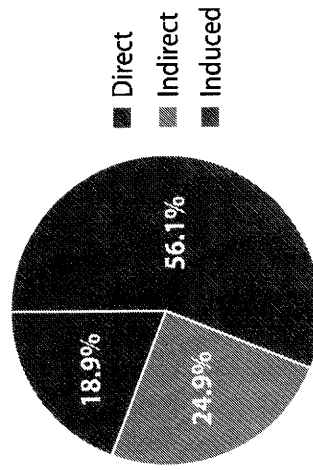
The projected \$375,699 in economic output generated for California by each new home built in fiscal year 2009–10 comes from three sources of economic activity: direct, indirect, and induced effects of home construction.

Direct effects are the impacts of spending by the construction firm on construction materials and wages for construction workers. As shown in the pie chart and table, direct effects account for the majority (56.1% or \$210,942) of the economic output generated from new home construction.

Indirect effects are the impacts of spending by suppliers of goods and services, such as the price of raw materials to make windows or the wages paid by a supplier to its employees. Indirect effects are responsible for the next-largest portion of economic output at 24.9% or \$93,595.

Induced effects are the impacts of the additional demand for goods and services created when employees of the construction firms or their suppliers spend their paychecks on things like food, clothing, housing, and entertainment. Induced effects account for \$71,162, or 18.9% of the economic output from new home construction.

Economic Output from Each New Home Built in Fiscal Year 2009–10, by Type



Type of Economic Effect	Economic Output Generated for California, FY 2009–10
Direct	\$210,942
Indirect	\$93,595
Induced	\$71,162
Total	\$375,699

Percentages in the pie chart do not add to 100 percent due to rounding.

Construction of a New Home Generates 2.1 Jobs on Average

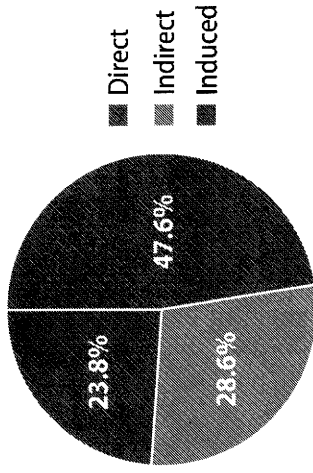
Home construction boosts employment in the state, both in the construction industry and in linked industries. For each new job created as a direct result of building a new home, the state gains more than one additional job through the indirect and induced effects of home construction.



Each new median-priced home built in California in fiscal year 2009–10 creates an estimated 2.1 jobs based on average economic output per employee in the residential construction industry, linked suppliers of goods and services, and industries that benefit from induced effects of new home construction.

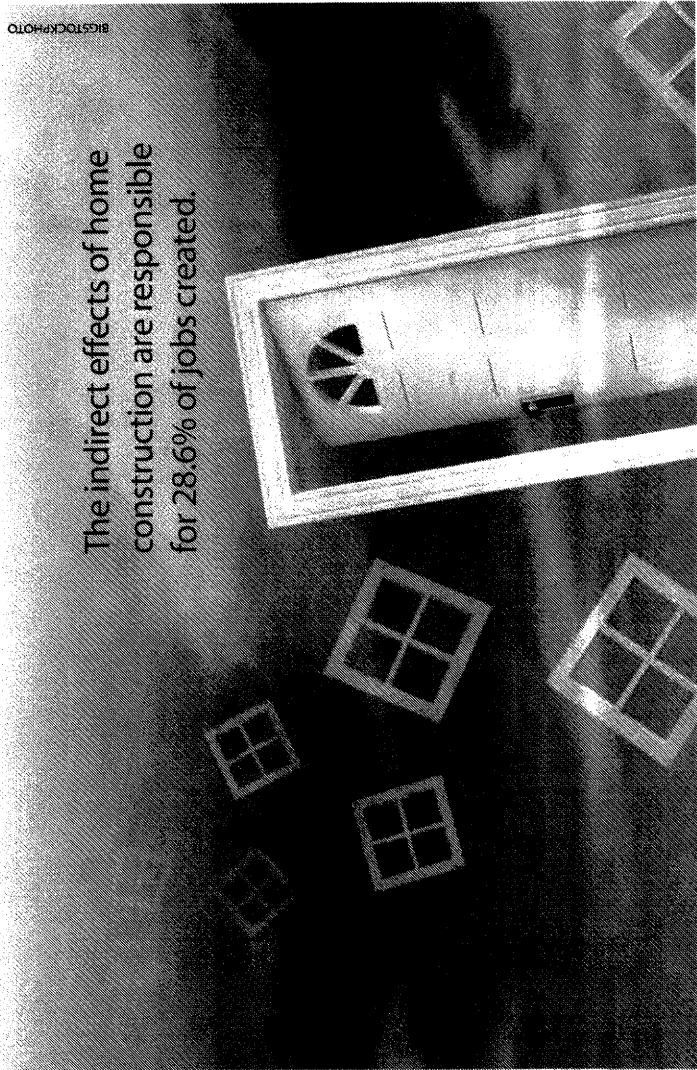
When a new home is built in California, one new job (or 47.6% of the 2.1 jobs in all) is created as a direct effect of home construction. The indirect effects of home construction, such as increased demand on manufacturers of windows and doors, are responsible for the next-largest share of jobs created at 28.6% (0.6 jobs). Induced effects, such as spending by construction or supplier employees on groceries and healthcare, account for 23.8% of jobs created (0.5 jobs).

Jobs Created with Each New Home Built in Fiscal Year 2009–10, by Type



Type of Economic Effect	Jobs Created FY 2009–10
Direct	1.0
Indirect	0.6
Induced	0.5
Total	2.1

The indirect effects of home construction are responsible for 28.6% of jobs created.



Benefits of New Home Construction Extend to Many Industry Sectors

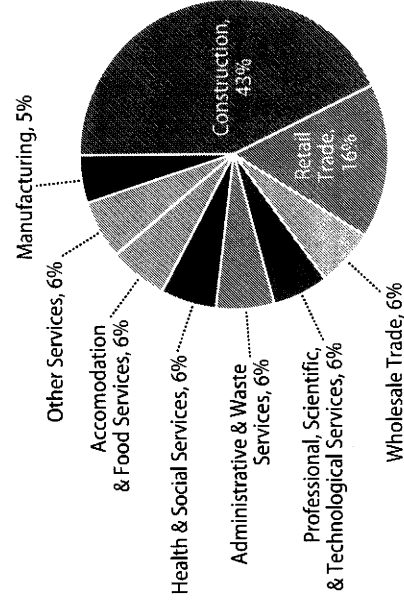
Some 43 percent of the new jobs created when a home is built are within the construction sector, but many other industry sectors benefit as well through indirect and induced activity. Retail trade receives the next-largest portion (16%) of new jobs linked with home construction due to the induced effects of employee spending as well as retail purchases by construction firms and suppliers. Manufacturing (5% of new jobs), wholesale trade (6%), professional services (6%), accommodation and food services (6%), and other sectors benefit from new home construction as well.

INDIRECT AND INDUCED EFFECTS STRONGLY FELT BY A FEW MAJOR SECTORS

Manufacturing, professional services, and retail trade account for nearly 67 percent of all indirect employment effects. Indirect economic activity in these sectors stems from purchases of supplies and services (such as architectural and legal reviews) needed for home construction.

Seventy-five percent of all induced employment from new home construction occurs in the retail trade, health and social services, and accommodation and food services sectors.

Share of New Jobs Created by Employment Sector



Economic Impacts Are Higher in Regions with More Construction-Related Businesses

The economic impact of new home construction varies across the state, as shown in the table. Among the six regions examined in this study, the estimated economic output per new home ranges from \$331,295 in the Inland Empire (which consists of Riverside and San Bernardino counties) to \$433,355 in Orange County. Despite variations in economic output per new home, each of the six regions experiences strong positive economic impacts when a new home is built.

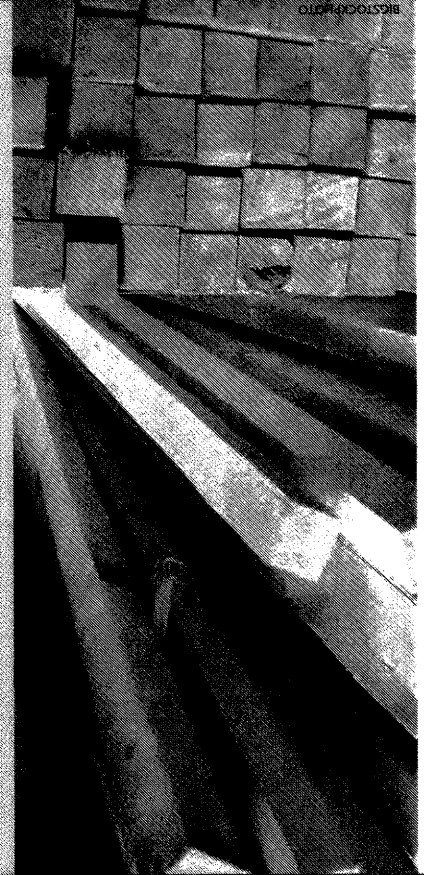
Variation between regions mainly reflects differences in home construction costs and in the extent of economic activity that is captured within a region's boundaries. In a region that is home to large numbers of construction firms and suppliers, the economic output and job creation per dollar of construction costs will be maximized because related spending is more likely to be captured by local establishments and less likely to "leak" to firms outside the region.

Economic Impacts by Region, FY 2009-10

Region	Economic Output Per New Home	Jobs Created Per New Home	Average Construction Costs per Unit
Orange County	\$433,355	2.4	\$259,488
San Francisco Bay Area	\$421,696	1.7	\$258,322
San Diego County	\$418,946	2.4	\$261,054
Los Angeles County	\$375,280	2.1	\$217,521
Sacramento Area	\$351,680	2.1	\$214,958
Inland Empire	\$331,295	2.0	\$203,376



MARTIN ROGERS/STONE/GETTY IMAGES



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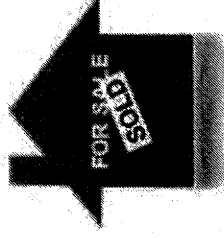
FISCAL EFFECTS OF NEW HOUSING CONSTRUCTION IN CALIFORNIA

New Housing Construction Improves the State's Fiscal Health from Day One

At the time of its construction, a median-priced home in California has a substantial positive impact on the state's budget. On average, the one-time fiscal effect on the state is \$10,479.

The primary one-time state revenues associated with the construction of a home are corporate taxes on builders' profits and sales taxes from the purchase of construction materials. Despite the recent decline in home prices, the cost of building the median-priced home has actually increased somewhat due to higher construction costs and shifts in the types of housing being built, which generates a premium in the taxes paid on construction materials.

One-Time Fiscal Effect of a Median-Priced Home on the State Budget (Fiscal Year 2009-10)



$$\text{Sales tax on construction materials} + \text{Tax on builders' profits} = \$10,479$$

Covering the Costs of Infrastructure

This analysis considers the development-related fees paid to general purpose local governments (i.e., cities and counties), as well as the outlays for infrastructure made by these entities. However, due to data limitations, this analysis does not cover the sizable cash payments and in-kind contributions (i.e. construction of roads or parks) required of some developers on a case-by-case basis, nor does it include charges made by special-purpose local entities such as sewer districts or schools. These additional charges can be substantial (even exceeding \$100,000 per unit in some cases). For the same reason, this analysis does not include the infrastructure costs that such revenues are intended to cover. Further research is needed to examine the relationship between (a) the total fees and in-kind contributions required of developers of new housing units and (b) the total costs to local government and special districts of providing the infrastructure needed to serve the new residents.

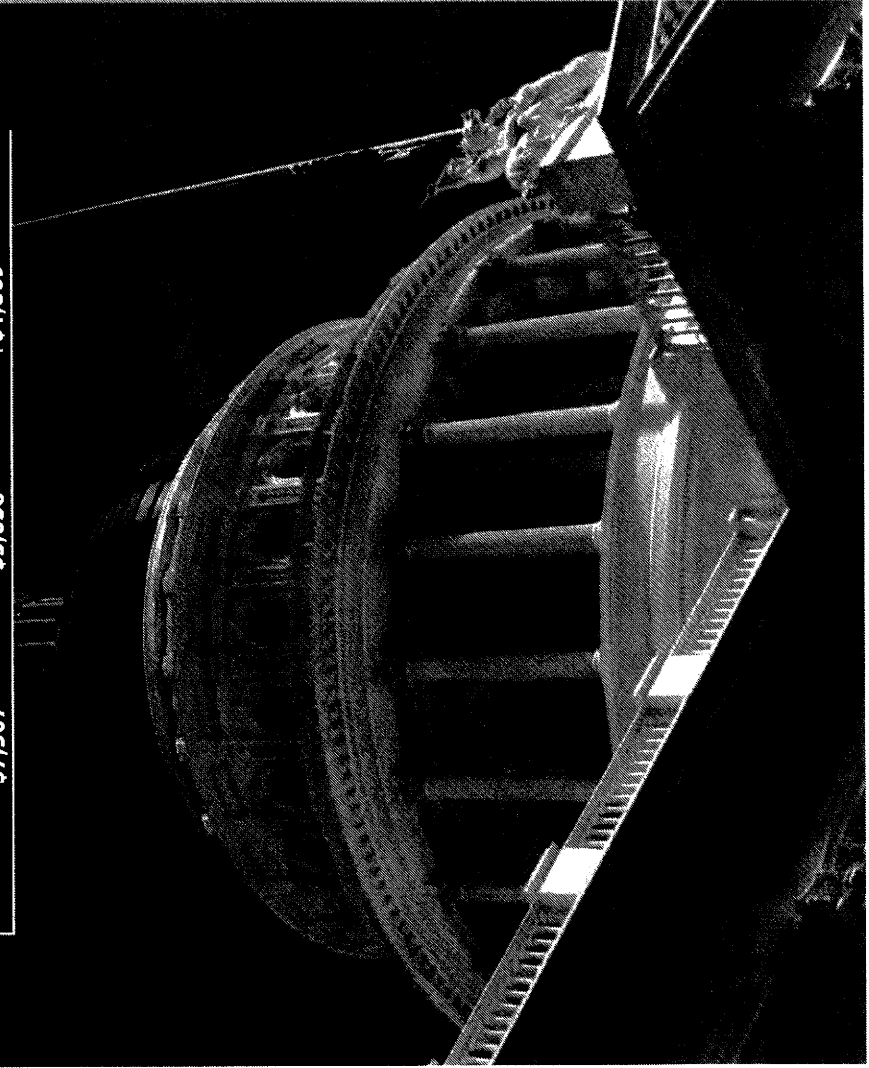
Other \$456	Other \$1,004	Revenues Minus Expenditures \$1,869
Corporation Tax \$714	Health and Social Services \$1,281	
Sales and Use Tax \$2,209	Education \$3,353	
Personal Income Tax \$4,128		
Ongoing Annual Revenues \$7,507	Ongoing Annual Expenditures \$5,638	Ongoing Annual Fiscal Effect +\$1,869

New Housing Continues to Have a Positive Effect on the State Budget After It Is Built

In most cases, a home is occupied after it is built. At that point, the state must begin providing services (such as education) to the home's residents, and in order to cover the cost of those services, the residents must in turn pay income and other state taxes. If revenues from the household are greater than expenditures by the state, the construction of the home can be said to have a positive ongoing fiscal effect on the state's budget.

The construction of a median-priced home in California in fiscal year 2009-10 is projected to have a substantial positive annual impact on the state budget. On average, the residents expected to occupy a new, median-priced home built in California are expected to generate \$7,507 in annual revenue for the state and consume only \$5,638 in services, for a net annual fiscal impact of \$1,869. More than half of all state revenue can be attributed to personal income taxes paid by the occupants of the new housing, and about 60 percent of all expenditures can be traced to the expected costs of K-12 and higher education for the occupants of the new units.

The ongoing fiscal effect of a home priced both 25 percent below and 25 percent above the median is also positive, at \$928 and \$2,801 respectively. Should prices fall or rise marginally, housing construction would continue to have a positive impact on California's state budget.



Local Budgets Benefit Immediately from New Housing Construction

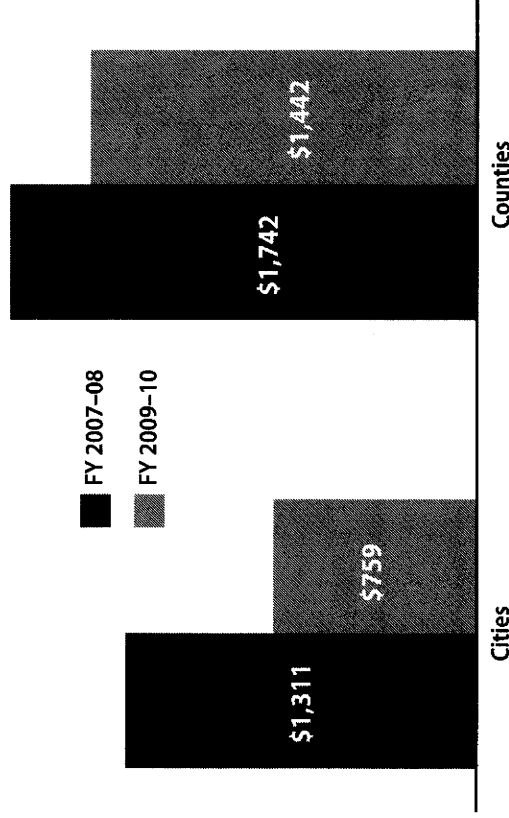
Like the state of California, cities and counties also stand to gain fiscally when a new home is built within their borders. For this to happen, revenues associated with new construction — such as the sales tax on building materials, property transfer taxes, and revenues from permits and licenses — must outweigh the costs that local governments incur to support this development (e.g., issuing permits, inspecting homes, zoning, etc.).

A newly constructed median-priced unit provides a positive one-time fiscal impact of \$759 in the average city and \$1,442 in the average county.

Though still significant, the average one-time fiscal effect for cities and counties is not as substantial as in recent years. This can in part be linked to higher per-unit costs for local governments, because the expenses associated with overseeing the home construction process, such as approving and permitting new housing construction, must be spread across fewer units than in years past.

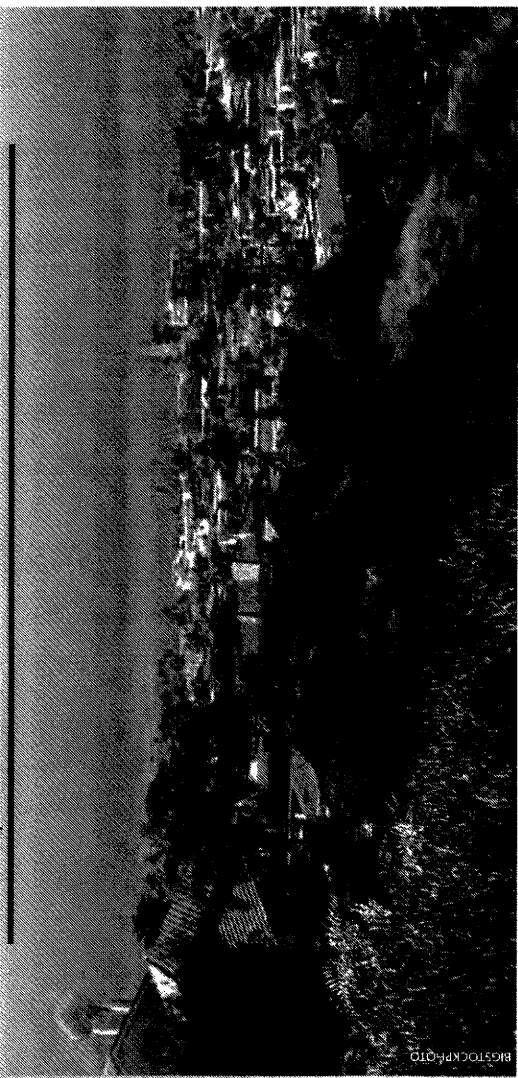
It is also worth noting that the average one-time fiscal effect of a newly constructed unit is partially dependent on where in the county it is constructed. As the table shows, a median-priced unit built in an incorporated part of a county has a slightly higher one-time fiscal impact, on average, than does a unit built in an unincorporated area.

One-Time Fiscal Effect of a Median-Priced Home

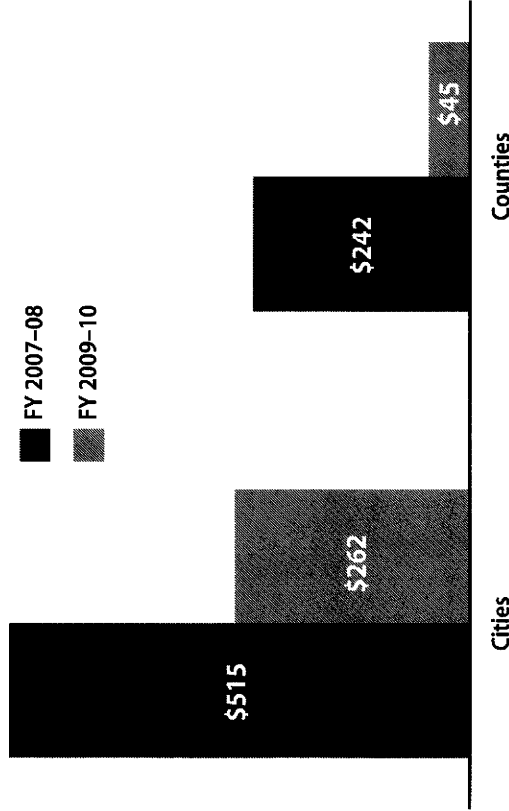


Average One-Time Fiscal Effects Are Significant in Both Incorporated and Unincorporated Areas (Fiscal Year 2009-10)

	Share of Construction Activity	One-Time Annual Fiscal Effect
Countywide Average	100%	\$1,442
Incorporated Area	81%	\$1,530
Unincorporated Area	19%	\$1,095



Ongoing Fiscal Effect of a Median-Priced Home



Average Ongoing Fiscal Effects Are Positive in Most Areas

(Fiscal Year 2009-10)

	Share of Construction Activity	Ongoing Annual Fiscal Effect
Countywide Average	100%	\$45
Incorporated Area	81%	\$203
Unincorporated Area	19%	-\$586

New Housing Construction Has a Positive Ongoing Impact on Most Jurisdictions' Budgets

The construction of a new housing unit generates a variety of revenues for city and county governments, year after year, the most significant sources of which are property and sales taxes. When these and other revenues exceed the costs of providing police and fire protection, health and sanitation, and other services to the occupants of a new home, the ongoing fiscal impact of the new unit is positive.

In general, California cities and counties can expect the occupants of a home constructed in fiscal year 2009-10 to contribute more in annual revenue than they will require in annual expenditures. As the chart shows, housing's ongoing annual fiscal impact is not as robust as it was two years prior, primarily because falling prices have decreased expected property and sales taxes, and falling construction activity has increased the per-household cost of providing some government services. Despite these recent trends, the median-priced home continues to pay its own way in the average city and county.

As the table shows, the generally positive ongoing fiscal effect of a median-priced home on a county's budget depends on where within the county it is constructed. When construction occurs in an incorporated part of the county, as is typical, the net impact is \$203 and rivals the estimate for the average city. But for the fewer than one-fifth of homes built in the unincorporated portion of counties, the average ongoing fiscal impact is negative, largely because providing services such as law enforcement across a lower density area can be expensive on a per-household basis.⁵

Fiscal Effects Vary Based on Recent Changes in Home Prices and Construction Levels

Every community makes decisions about the taxes and fees that households are obliged to pay and the services that residents can expect to receive. Over the long term, revenues and expenditures must be equivalent in order to balance the budget.

Recent rapid declines in home prices and building activity have reduced many governments' revenues by simultaneously limiting new construction activity and lowering the property and sales taxes that can be expected from new households.

The tables show that the fiscal impact of a newly constructed home is lowest in cities that have experienced the largest declines in prices and construction activity. But where prices and development levels have been more stable, fiscal impacts are significantly higher than average.

In jurisdictions where new construction currently has a negative fiscal impact, a rebound in home prices would lead to greater revenue from construction activity, thus reducing or reversing the negative effect.



Fiscal Effects Are Higher in Cities Where Prices and Permitting Have Remained Relatively Stable

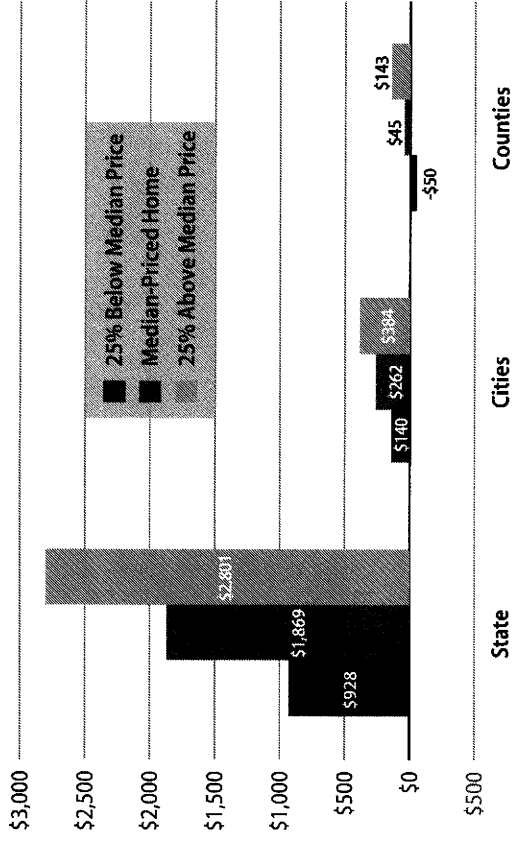
% Decline in a City's Median Home Price Compared to FY 2007-08*	Ongoing Fiscal Effect (FY 2009-10)
More than 23%	-\$204
16-23%	\$155
6-16%	\$340
Less than 6%	\$524
Average City in CA	\$262

% Decline in a City's Permits Issued Compared to FY 2007-08*	Ongoing Fiscal Effect (FY 2009-10)
More than 82%	-\$594
57-82%	\$237
11-57%	\$331
Less than 11%	\$321
Average City in CA	\$262

* Categories are based on quartiles, such that one-fourth of the cities fall into each category.

Ongoing Fiscal Effect of Housing Units at Various Price-Points

Sensitivity Analysis, FY 2009-10



Additional Benefits of Lower-Cost Housing Development

In addition to the fiscal benefits of lower-cost housing, there is evidence to suggest that areas with high housing costs are more likely to experience population loss because existing and prospective residents opt for more affordable locales. Business leaders also report that a lack of affordable housing has negative repercussions on their efforts to attract and retain a talented workforce.⁶

Areas that have a shortage of housing affordable to the local workforce may be faced with congested roads as workers are forced to commute in from long distances. Unintended effects can include a decreased ability to attract customers to local establishments, difficulty luring business investment, substantial increases in infrastructure spending to support ever more remote and sprawling development, and environmental degradation associated with increased auto use.⁷

Home Prices Have an Impact on Fiscal Effects

This report focuses principally on the economic and fiscal benefits of constructing a median-priced home in California. But many communities recognize the importance of also building homes at lower price points to accommodate low- and moderate-income households. What is the impact of this activity on city and county budgets?

A sensitivity analysis shows that, even in fiscal year 2009-10, the estimated ongoing fiscal effect of a housing unit priced 25 percent below the median — while lower than for a median-priced unit — remains positive for California and the average city, with a slightly negative countywide estimate.

The chart also provides estimates for the ongoing fiscal effect of building a home priced 25 percent above the current median value. As would be expected, higher-cost housing has a greater fiscal effect and suggests that, if prices rebound from current levels, the impact of construction activity on city and county budgets should increase as well.



BIGSTOCKPHOTO

TECHNICAL APPENDIX

The data in this report are drawn from *Analysis of the Fiscal and Economic Effects of New Housing Construction in California* — a report prepared for the California Department of Real Estate, the California Department of Housing and Community Development, and the California Housing Finance Agency by the Blue Sky Consulting Group and the Center for Housing Policy.

Economic Effects of Housing Construction

Pages two through six discuss the economic effects of housing construction for the state of California and for six regions in the state chosen by the report sponsors. These estimates are derived from an input-output model called IMPLAN, which calculates the full range of economic impacts and job growth associated with the construction of a home based on the cost of materials and labor to construct it. In this report, estimates are produced for the next unit built at the median price.

Data are presented for fiscal year 2009–2010, which is based on a 12-month moving average ending in October 2009.

Fiscal Effects of Housing Construction

Pages seven through 13 discuss the effects of the next unit built at the median price on state, city, and county budgets. Fiscal effects are estimated both on a one-time basis, which looks at government revenues and expenses associated with construction, and on an ongoing basis, which estimates the net fiscal impact of a new housing unit in the years following its construction. Sources of revenues and costs are different for states, cities, and counties but can be generalized as follows:

One-time fiscal effects: One-time revenues can include taxes paid on homebuilder profits, construction materials, and related sales associated with construction; property transfer taxes; and construction-related fees (e.g., permitting, zoning, inspection) collected by community development offices. Expenses can include paying for community development staff to provide these services.

Ongoing fiscal effects: Ongoing revenues associated with the construction of new housing are principally derived from income, property, corporate, and sales taxes paid directly

by the occupants and by the economic activity they generate. Ongoing expenses are primarily associated with providing the level of services expected of state and local governments, including public safety, education, health, community development, and public assistance.

This report uses a “per-capita average cost method,” which means that the revenues and expenses for the occupants of a new household approximate the average levels for existing households. In order to more accurately estimate the revenues and expenses associated with a new housing unit, the income of the household expected to occupy the median-priced home in a given jurisdiction is calculated. Taxes paid and services used are partially derived from the household income and other assumed characteristics of the unit’s occupants.

Unlike the exploration of the economic effects of new construction in which estimates are calculated by categorizing cities into six regions, the fiscal impact methodology uses housing market indicators to develop analytical categories. We employed this methodology because the extent to which home prices and production levels have fallen in recent years is a better indicator of fiscal performance than is regional affiliation. As such, estimates are provided for categories that are defined by a city’s year-over-year change in median home price and permit volume. Data are presented for two time periods: fiscal year 2007–08 and fiscal year 2009–10. For the latter, estimates are based on budget data collected from a sample of large jurisdictions in California and provide a good indication of how local revenues and spending have been affected in the most recent budget cycle.

For a more thorough discussion of the methodologies used in this publication, please refer to the full report.

ENDNOTES

¹Data provided by MDA DataQuick Information Systems.

²Data from the California Building Industry Association.

³State of California Employment Development Department 2010, March, *March 2010 California Employment Highlights*. Sacramento, CA: Author.

⁴Household growth estimates are based on data from the California Department of Finance, Demographic Research Unit. Residential permit data are from the California Building Industry Association.

⁵One factor at play in the negative average ongoing fiscal effects for the unincorporated portion of counties is the allocation of law enforcement (i.e., sheriff’s department) costs. Available data may overstate the per-household costs or understate associated revenues of law enforcement costs in these unincorporated areas, which would inadvertently lower the ongoing fiscal impact of new housing construction in these areas. It is also possible that per-household costs are lower in unincorporated areas that are more urbanized, but the data did not allow this possibility to be explored.

⁶See Bluestone, Barry, Mary Huff Stevenson, and Russell Williams. 2009. “Are the High Fliers Pricing Themselves Out of the Market? The Impact of Housing Cost on Domestic Migration Rates in U.S. Metropolitan Areas.” Paper prepared for the Urban Affairs Association Annual Meeting, Chicago, IL, March 4–7. Center for Continuing Study of the California Economy. 2009. July, “Are Businesses and High-Income Residents Fleeing California?” *Numbers in the News*. Palo Alto, CA: Author; and Urban Land Institute. 2007. June 4. “Lack of Affordable Housing Near Jobs: A Problem for Employers and Employees.” Press Release.

⁷See Cambridge Systematics, Inc., with Texas Transportation Institute. 2005, Sept. 1. *Traffic Congestion and Reliability: Trends and Advanced Strategies for Congestion Mitigation*. Cambridge, MA: Author; Weisbrod, Glen, Donald Vary, and George Treyz. 2001. *Economic Implications of Congestion*. NCHRP Report 463. Washington, DC: Transportation Research Board; Hartgen, David T., and M. Gregory Fields. 2006, August. *Building Roads to Reduce Traffic Congestion in America’s Cities: How Much and at What Cost?* Los Angeles, CA: Reason Foundation; and Ewing, Reid, Keith Bartholomew, Steve Winkelman, Jerry Walters, and Don Chen. 2008. *Growing Cooler: The Evidence on Urban Development and Climate Change*. Washington, DC: Urban Land Institute.



PHOTO: FRANK DOWN, COURTESY OF THE OAKLAND HOUSING AUTHORITY

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Proposed Scope and Schedule for the Phase II Study

Phase II Study Approach:

This scope is predicated on a commitment by the FORA Board to begin the process of extending FORA or designating its successor agency.

- I. Establish a framework to evaluate mid- to long-term costs prior to FORA sunset **(April 2011 to May 2011)**.
 - a. Disaggregate FORA's responsibilities into their individual elements
 - b. Assign a specific timeframe for retiring each individual element
 - c. Review existing cost estimates for retiring FORA's responsibilities
 - d. Match potential funding sources to costs – incorporate in FORA CIP.

- II. Monitor revenues **(ongoing April 2011 – June 30, 2014)**.
 - a. Evaluate FORA revenue sources.
 - i. CFD Special Taxes
 - ii. Tax-Increment Revenues
 - iii. Land Sales Revenues
 - iv. Membership Dues
 - v. Grant funds
 - vi. Other potential revenue sources
 - b. Present preliminary findings July 2011, and periodically thereafter.
 - c. Prepare funding approach for HCP Endowment and assist FORA during the U.S. Fish and Wildlife Service/California Department of Fish and Game approval process (see **Attachment E**).

- III. Process necessary legislative and/or ministerial action to enact/determine a FORA extension or transition **(April 2011 to December 2012)**.
 - a. Implement as noted in FORA Legislative Agenda (completed 12/12/10).
 - b. Staff/Authority counsel complete alternatives memo.
 - c. Executive Committee/Board select actions.
 - d. Implement preferred actions.

February 17, 2011

Steve Endsley
Director of Planning & Finance
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, CA 93933

Subject: Proposed Technical Support Work for Fort Ord Reuse Authority (FORA) Habitat Conservation Plan Financing Strategy Negotiation; EPS #21416

Dear Mr. Endsley:

EPS has enjoyed working with you, other FORA staff, and the FORA Administrative Committee and Board on the FORA Capital Improvement Program (CIP) review project. Through our discussion and analysis on the CIP review project, EPS understands FORA might require some technical support to inform FORA's negotiations with regulatory agencies regarding the Habitat Conservation Plan endowment amount and overall financing strategy.

As described below, EPS proposes the following scope of work to assist FORA with this effort.

Scope of Work

The goal of the work program is to develop a habitat conservation plan financing strategy to the satisfaction of key stakeholders (identified below) that ensures adequate funding will be provided for annual ongoing habitat mitigation operation and maintenance costs.

EPS would work directly with FORA staff in developing potential financing solutions. This technical support work will involve communication with and coordination between the following parties:

- FORA staff and legislative bodies.
- FORA's HCP consultant, Jones & Stokes.
- United States Fish and Wildlife Service (USFWS).
- California Department of Fish and Game (CDFG).

The Economics of Land Use



Economic & Planning Systems, Inc.
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The EPS Scope of Work assumes that all annual operating cost information will be provided by FORA and/or by FORA's HCP consultant. The focus of EPS will be on the overall mix of funding mechanisms, timing of investment and resulting annual cash flow required to fund HCP operations and maintenance costs.

The EPS work effort will include the following tasks:

- Evaluation of endowment creation and required rates of return.
- Completion of technical analysis for the HCP financing strategy.
- Preparation of memoranda summarizing the technical analysis.
- Participation in up to two on-site meetings with FORA staff or legislative bodies (e.g., Administrative Committee or Board).

EPS will work in close coordination with FORA staff in response to requested analysis and to ensure that the EPS work product does not duplicate any work completed by other FORA consultants in support of the overall financing strategy effort.

The financing strategy will consider, but not be limited to, the following types of funding mechanisms:

- HCP Endowment.
- HCP Endowment capitalized over time.
- Land secured financing district funding (e.g., Mello Roos CFD).
- Other ongoing revenue streams (e.g., real property transfer tax).

Key Personnel

EPS will be represented by Managing Principal David Zehnder, Principal Jamie Gomes, and other staff as needed. David is a leading economic consultant in base reuse with significant experience working with FORA staff and many other jurisdictions and agencies in the Monterey area. Jamie is an EPS practice leader in public finance, with specific expertise in CFD and impact fee structuring and substantial experience in base reuse. Both David and Jamie practice from EPS's Sacramento office.

Budget

Because it is difficult to determine the precise level of effort or number of meetings that may be required, EPS requests setting an initial technical support budget of **\$7,500**. This budget estimate assumes EPS participation in up to two project meetings at FORA's headquarters. EPS charges for its services on a direct-cost (hourly billing rates plus direct expenses), not-to-exceed basis; therefore, you will be billed only for the work completed up to the authorized budget amount.

Schedule

EPS is prepared to assist FORA immediately and will complete requested work product on a schedule that meets FORA's needs.

EPS appreciates the opportunity to present this proposed scope of work for FORA's consideration. We have enjoyed working with FORA and look forward to continuing to assist FORA in its role implementing the Base Reuse Plan. If you have questions regarding this proposal, please call me at (916) 649-8010.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.

David Zehnder
Managing Principal

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

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BUSINESS AND ADMINISTRATIVE SERVICES

SANTA CRUZ, CALIFORNIA 95064

March 30, 2011



Michael Houlemard
Executive Officer
Fort Ord Reuse Authority
100 12th St.
Marina, CA 93933

Re: FORA CFD Fees

Dear Mr. Houlemard:

The UCSC campus has closely followed the process by which FORA is evaluating the extent to which its Community Facilities District ("CFD") fees can be reduced in order to restart construction at the former Fort Ord. We understand the importance of taking action that will result in a renewal of construction projects. We appreciate and support the elimination of contingencies that are no longer needed. FORA staff and consultant David Zehnder have done a superb job responding to questions raised by members of the Administrative Committee and by members of the Board. We have been shown that many contingencies can be removed without significant financial harm to FORA and without significant modification to major elements of FORA's Capital Improvement Program ("CIP").

Nevertheless, I am concerned that the consultant is recommending one particular cut to the CFD fee that could threaten the financial health of FORA and its underlying jurisdictions and which could potentially threaten FORA's ability to obtain an endangered species take permit. Specifically, the consultant's recommendation eliminates a \$17 million line item that may be necessary to adequately fund the Habitat Conservation Plan endowments, consistent with CDFG's endowment program. Although FORA staff appears hopeful that CDFG can be convinced to allow FORA to place endowment funds in a financial institution with a pay-out rate of 4.5%, CDFG's endowment program does not appear to allow this as the HCP is currently written. CDFG's endowment program would, however, allow FORA's HCP endowment to be held by the National Fish and Wildlife Foundation, which provides a pay-out rate of only 3.5%. FORA staff has included a \$17 million line item to reflect the larger endowment required by CDFG's endowment program. Even if FORA staff is hopeful of eventually receiving CDFG approval for an endowment with a 4.5% pay-out rate, it would be premature to eliminate the \$17 million line item at this time.

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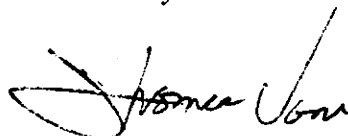
FORA CFD Fees continued

Were FORA to eliminate the \$17 million line item at this time and were CDFG to require an endowment arrangement with a pay-out rate of only 3.5%, FORA and its underlying jurisdictions would have an unfunded liability of \$17 million. If the condition of the permit is that FORA demonstrate its ability to fully fund the endowment in a short number of years, the permit might be withheld or revoked if the CFD fees have been set too low.

In adjusting the CFD fee, FORA must balance the desire for an incentive to restart the construction market against the risk of encountering future financial difficulties or the risk of not having an endangered species take permit. The impact on the CFD fee of restoring the \$17 million line item to the CIP would be to raise the fee by \$2,229, which is approximately one-half of one percent of the sales price of a single family home. The likelihood that this would significantly decrease the production of housing needs to be weighed against the risk of FORA finding itself without an endangered species take permit or with obligations that exceed CFD income by up to \$17 million.

The conclusion should be clear. I strongly urge that the \$17 million line item remain in the CIP and that the CFD fee be sized accordingly. If in upcoming months CDFG agrees to FORA's preferred endowment arrangement, the Board could consider reducing the developer fee accordingly at that time.

Sincerely



Thomas Vani
Vice Chancellor,
Business and Administrative Services

cc Lisa Akeson, Director -- Real Estate Office, UCSC
Donna Blitzer, Director - Government Relations, UCSC
George Blumenthal - Chancellor, UCSC
Margaret Delaney, Vice Chancellor - Planning & Budget, UCSC
Bruce Margon, Vice Chancellor - Research, UCSC



Attachment F to Item 6b
FORA Board Meeting 4/8/11

March 31, 2011

Crisand Giles
Executive Director

FORA Board of Directors
Fort Ord Reuse Authority
910 2nd Avenue
Marina, CA 93933

Via Email: Micheal Houlemard , michael@fora.org

RE: Comment Letter: Item 6, Capital Improvement Program Review

Dear Honorable Board Members;

On behalf of the Building Industry Association of the Bay Area (BIA) we appreciate the opportunity to comment on the Capital Improvement Program presented for the Board's consideration. The BIA supports the adoption of Option #2, adjusting the CFD Special Tax to \$29,600 per single-family residential unit. Option 2 has been fully vetted publically, covers 100% of the mitigation and CIP programs, and still achieves a projected cash surplus of \$24.6 million. Continuing to delay the CFD update will prolong completion of the CIP project schedule and have a negative effect on the region's affordable housing program, schools, and the county and local cities. FORA jurisdictions stand to benefit significantly by getting construction projects started.

Permitting and building new homes has a substantial one-time fiscal impact for the city or county in impact, plan review, and inspection fees; and an ongoing annual fiscal benefit by increasing tax revenue and tax increment dollars. The redevelopment of Fort Ord creates a windfall of tax increment that regardless of what happens during the state budget discussions, will directly benefit affordable housing programs and schools – pass through programs that are protected from budget discussions. Currently national unemployment rates hovers at 9%, in California 12%, and in Monterey County unemployment is 17% (US Bureau of Labor statistics 03/29/11). The housing economic analysis, *Building California's Future*, included in your Board packet highlights that despite the economic downturn; new home construction still has a positive economic and fiscal effect on the local economy. The construction of a median-priced home produces an estimated \$375,699 in new economic activity and is enough to support the creation of 2.1 jobs per new unit built.

Updating the CFD to Option 2 creates a unique opportunity for the FORA Board to generate additional affordable housing by design – market rate homes available for moderate and workforce families without the deed restrictions and equity limitations associated with below market rate programs. At present the median income for a family of four in Monterey County is \$66,100, under the moderate income requirements for affordable housing that family could qualify for a market rate home priced at \$437,124 (Attachment A). Recent market surveys used by EPS and DPFPG price homes between \$300,000 and \$500,000 – these economic conditions allow the FORA Board to leverage the downturn and promote the construction of market rate homes affordable for Monterey County residents without programs or restrictions.

Mailing Address:
150 S Almaden Blvd.,
#1100
San Jose, CA 95113

Tel (408) 961-8133
cgiles@biabayarea.org
<http://www.biabayarea.org>

S

We respectfully ask that you (1) direct staff to prepare documents and/or policy revisions necessary to approve Option #2 Special Tax Adjustment (\$29,600) and (2) Direct staff to prepare an agreement to implement a detailed analysis of the CIP program and its schedule (Phase II Analysis). By not delaying the CFD update, the FORA board can provide the following community benefits:

- FORA jurisdictions receive fiscal benefit – planning, inspection, and impact fees, MCWD fees, and school district fees (estimated \$42,886 per door without including the CFD Special tax).
- 17% of Monterey County is unemployed and needs new jobs construction provides; 2.1 jobs in construction, retail, professional, administrative, health and service for every home built.
- \$375,699 in additional economic output for each home built, of which \$210,942 is spent on construction material and wages, \$93,595 is spent on suppliers of raw materials and labor, and \$71,162 is spent on goods and services created when employees spend their paychecks.
- Provide affordable market rate homes available for moderate and workforce families without the deed restrictions and equity limitations associated with below market rate programs.

Thank you for your time and consideration, please contact me if you have questions or comments.

Sincerely,



Crisand Giles
Executive Director

Encl: Attachment A – Affordable Housing for Monterey

ATTACHMENT A
AFFORDABLE HOUSING FOR MONTEREY COUNTY

Moderate Priced at 120% AMI

		<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>
Monterey County AMI		59,500	66,100	71,400
Household Income for Mods	120%	71,400	79,320	85,680
Available for Housing Costs @	35%	24,990	27,762	29,988
Less Insurance		(850)	(850)	(1,050)
Less HOA		(1,320)	(1,320)	(1,320)
Less Property Taxes @ 1.215%	1.215%	(3,233)	(3,626)	(3,913)
Less PMI @ 0.52% (LTV 90%)	0.520%	(1,245)	(1,397)	(1,507)
Income Available for Mortgage		18,341	20,569	22,197
Mortgage Amount @ 5%, 30years	5.00%	281,948	316,197	341,229
Downpayment @10%	10%	(15,825)	(17,747)	(19,152)
Supported Home Price		313,276	351,330	379,143

Workforce Priced at 150% AMI

		<u>3 Person</u>	<u>4 Person</u>	<u>5 Person</u>
Monterey County AMI		59,500	66,100	71,400
Household Income @ 150% AMI	150%	89,250	99,150	107,100
Available for Housing Costs @ 40%	40%	35,700	39,660	42,840
Less Insurance		(850)	(850)	(1,050)
Less HOA		(1,320)	(1,320)	(1,320)
Less Property Taxes @ 1.215%	1.215%	(4,751)	(5,306)	(5,728)
Less PMI @ 0.52% (LTV 90%)	0.520%	(1,830)	(2,085)	(2,251)
Income Available for Mortgage		26,949	30,098	32,491
Mortgage Amount @ 5%, 30years	5.00%	414,274	462,687	499,463
Downpayment @10%	10%	(23,252)	(25,969)	(28,033)
Supported Home Price		460,304	514,097	554,959

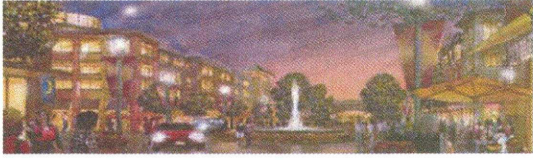
DRAFT

Table 1
FORA 2010 CIP Review
Potential CFD Special Tax Revenue Adjustment - Various Options

Item	Total Contingency Amount	HCP Contingency	CFD Special Tax
Option 2B	\$36,100,000	\$0	\$31,200
Option 2B & Portion of 2C (HCP cont. at 50%)	\$44,850,000	\$8,750,000	\$32,400
Option 2B & Portion of 2C (HCP cont. at 75%)	\$49,225,000	\$13,125,000	\$33,100
Option 2C	\$53,600,000	\$17,500,000	\$33,700

Source: FORA and EPS.


"options_split"



Fort Ord Capital Improvement Program (CIP) Review

Presented by
David Zahnder
Economic & Planning Systems, Inc.


Prepared for the Fort Ord Reuse Authority
April 8, 2011



Presentation Overview

- ▶ CIP Special Tax Reduction Options
- ▶ University of California (UC) Proposal – New Option 2C
- ▶ Response to Board Questions
- ▶ Discussion/Next Steps


Fort Ord Capital Improvement Program Review



Community Facilities District (CFD) Special Tax Reduction Options

- ▶ Option 1: Initial Recommendation:
 - ▶ Reduce the CIP Contingency to \$70.9 million.
 - ▶ Reduce CFD Special Tax ~21.5%.
 - ▶ Reduce SFR rate to \$36,300.
- ▶ Option 2: February Recommendation:
 - ▶ Builds on Option 1.
 - ▶ Further reduce transportation project contingency.
 - ▶ Eliminate habitat conservation plan (HCP) contingency.
 - ▶ Eliminate FORA loan repayment line-item.
 - ▶ Reduce SFR rate to \$29,600.


Fort Ord Capital Improvement Program Review



CFD Special Tax Reduction Options (continued)

- ▶ Option 2B: Alternative Approach (March 11, 2011):
 - ▶ Builds on Option 2.
 - ▶ Reinstate FORA loan repayment line-item to CIP Contingency.
 - ▶ Reduce SFR rate to \$31,200.
 - ▶ Extend CFD Tax reduction for life of FORA.
- ▶ Option 2C: UC Proposal (March 30, 2011):
 - ▶ Variation of Option 2B.
 - ▶ Reinstate HCP Contingency item of \$17.5 million.
 - ▶ Reduce SFR rate to \$33,700 (UC Calculations).
- ▶ Option 3: "Policy-Based" Recommendation:
 - ▶ Tax below the "minimum" justifiable CFD Special Tax Rate.


Fort Ord Capital Improvement Program Review



Options	Description	CFD Special Tax % Reduction	Total Program Cost	SFR CFD Special Tax
Present	CFD Special Tax based on July 2010 CIP Update	-	\$295.1 mill.	\$46,205
Option 1	Reduce Contingency to \$70.9 million. Includes other revenue and cost assumption updates	21.5%	\$267.1 mill.	\$36,271
Option 2	Consistent with Option 1. Reduce Contingency to \$23.9 million.	36.0%	\$220.1 mill.	\$29,600
Option 2B	Option 2 with "FORA Loan Repayment back in CIP Contingency. Contingency = \$36.1 million	32.5%	\$232.3 mill.	\$31,200
Option 2C	Option 2B with "HCP Cont." back in CIP Contingency. Total Contingency = \$53.6 million	27.1%	\$249.8 mill.	\$33,700

Option 3 from the Draft Report gave the option to reduce the CFD tax below Options 1 or 2.


Note all options eliminate the currently assumed revenue reduction associated with affordable housing incentives, as this policy incentive has not been used since inception.



Response to Board Questions

- ▶ Question #1: TAMC Positions Correctly Related?
 1. There is alignment between TAMC staff, FORA staff, and FORA's consultants.
 2. TAMC has been invited to present their analysis.


Fort Ord Capital Improvement Program Review



Response to Board Questions (continued)

▶ Question #2: HCP Costs and Endowment Funding Timing?


1. HCP CIP amount of \$35 million is in 2010\$.
2. CIP cash flow maintains 25% of CFD tax revenue to HCP assumption.
3. Continued negotiations with agencies on endowment earnings rates.
4. \$17.5 million additional HCP contingency reflected difference between endowment earnings rates.

Fort Ord Capital Improvement Program Review 

Response to Board Questions (continued)

▶ Question #3: CFD Board Actions?


1. Board may levy less than or up to the maximum CFD special tax.
2. Board reductions/increases must be proportional.
3. Other CFD adjustments must be by election of the registered voters.

Fort Ord Capital Improvement Program Review 

Response to Board Questions (continued)

▶ Question #4: CFD Tax Reduction helpful to Affordable Housing?


1. Tax reduction would lower costs, thereby assisting affordable housing.
2. CFD tax revenue forecast does not assume more than minimum affordable housing unit production.
3. If a 100-unit example paid reduced Affordable Housing tax rates, revenue reduction would equal approximately \$2.3 million (= 1.2% of total CFD Special Tax revenue).

Fort Ord Capital Improvement Program Review 

Response to Board Questions (continued)

▶ Question #5: FORA differences from California Redevelopment Agency (CRA)?

1. FORA is not a CRA.
2. FORA = Local Reuse Authority under Federal Law.
3. FORA tax increment revenues could be reduced or eliminated.
4. Current CIP cash flow is not dependent on tax increment revenues.


Fort Ord Capital Improvement Program Review 

New Alternative Option 2C

▶ Suggested by UC in response to uncertainty regarding HCP total endowment requirement.

▶ Option 2C: Alternative Approach (March 30, 2011):


- ▶ Builds on Option 2B.
- ▶ Reinstate \$17.5 million HCP Contingency line-item to CIP Contingency.
- ▶ Reduce SFR rate to \$33,700.

Fort Ord Capital Improvement Program Review 


Discussion/Next Steps

▶ Discussion/Questions regarding CIP Review/Special Tax Options.

▶ Next Steps.

Fort Ord Capital Improvement Program Review 

**Transportation Agency
for Monterey County**



**CAPITAL IMPROVEMENT PROGRAM
REVISED PROJECT SCHEDULES**

INVESTING IN YOUR TRANSPORTATION FUTURE

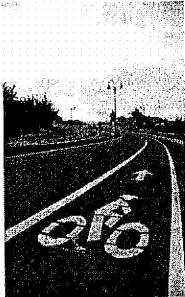
Purpose

Transportation Agency
Volunteered to Assist the CIP
Update Process Because:

- State and Federal funding match requirements
- Better match funding to project phasing

Need for Update

- Consistency with:
 - Proposed fee reductions
 - Annual updates to development forecasts/revenue projections
 - Match CIP project implementation to cover impacts



Impacts of Fee Reductions

- Option 2 (\$29,600/SFR):
 - Reduces fees by 36%
 - Total costs stays at \$115,725,927
 - Project implementation delayed in CIP



Contingency in the CIP

- Total costs stays at \$115,725,927
 - 20 Transportation projects in the FORA CIP
 - 15% contingency built-in for six FORA lead on-site projects
 - Remaining projects are lump-sum contributions or reimbursement agreements

Revisions to Project Schedules

- Assumptions used:
 - Fee reductions permanent
 - Input from lead agencies
 - No changes to project costs
 - No changes to non-trans expenditures or "Other Costs"

Additional CIP Modification

• **TAMC Requests:**

- Hwy 1 Widening replaced with:
 - ✕ Hwy 1 – Del Monte – Fremont Intersection
 - ✕ Monterey Branch Line – Light Rail

Impacts of Fee Reduction

• **Revenue Delay by year:**

Year	Adopted 2010 FORA CIP	Proposed Allocations	Difference
2010-2011	6,775,196	6,775,196	\$0
2011-2012	10,955,494	10,955,494	\$0
2012-2013	24,621,801	15,112,847	(\$9,508,954)
2013-2014	27,260,700	20,755,000	(\$6,505,700)
2014-2015	25,287,216	6,859,515	(\$18,427,701)
2015-2016	14,389,224	18,974,000	\$4,584,776
2016-2017	6,426,295	36,293,875	\$29,867,580
Total Allocations	115,725,927	115,725,927	\$0

Impacts of Fee Reduction

• **CIP Contributions Not Impacted:**

- General Jim Moore Blvd
- Eucalyptus Rd
- South Boundary Rd

Impacts of Fee Reduction

- **CIP Contributions Advanced:**
 - Eastside Parkway (2012-16 to 12-14)
 - Hwy 68 Operational Improvements (2013-16 to 12)
 - Crescent Ave extend to Abrams (2012-15 to 12)

Impacts of Fee Reduction

- **CIP Contributions Matched to Project Phase:**
 - Hwy 1 Widening replaced with:
 - × Hwy 1 – Del Monte – Fremont Intersection
 - × Monterey Branch Line – Light Rail
 - Abrams


Impacts of Fee Reduction

- **CIP Contributions Matched to Project Phase:**
 - Widen Reservation-4 lanes to WG
 - Widen Reservation, WG to Davis
 - Intergarrison
 - Intermodal Centers
 - Transit Vehicle Purchase/Replacement

Impacts of Fee Reduction

- **CIP Contributions In Later Years:**
 - Hwy 1 – Monterey Rd Int (2013-17 to 17)
 - Hwy 156 Widening (2013-17 to 16 - 17)
 - Davis Rd north of Blanco (2013-16 to 17)
 - Davis Rd south of Blanco (2012-15 to 15-16)
 - 8th Street (2012-14 to 17)
 - Gigling (2014-15 to 16-17)
 - Salinas Ave (2012-15 to 16-17)

**Transportation Agency
for Monterey County**



QUESTIONS?

INVESTING IN YOUR TRANSPORTATION FUTURE



FORT friends

FORT Friends
Fort Ord Recreation Trails Friends
PO Box 1349
Marina, CA 93933
www.fortfriends.net

April 8, 2011

Board of Directors
Fort Ord Reuse Authority
100 12th Street, Bldg. 2880
Marina, CA 93933

SUBJECT: April 8, 2011 Agenda Item 6b, Capital Improvement Program Review – Support for Development Impact Fee that Enables Funding for Fort Ord Trails Network

Dear FORA Board Members:

I am writing on behalf of the Fort Ord Recreation Trails Friends (“FORT Friends”) which represents hundreds of bikers, hikers, equestrians, dog-walkers and local residents who regularly use the trails at the former Fort Ord. We are an umbrella organization for several special-interest trail groups, as described on our website. Our mission focuses on:

- Preserve and expand public access to Fort Ord trails in light of Fort Ord Reuse Plan and habitat protection requirements;
- Work with agencies and landowners to implement an integrated Fort Ord Trails Plan;
- Enable Fort Ord to become a hub of regional recreation and bike commuting;
- Support sustainable economic development that benefits local residents, businesses and the environment.

FORT Friends supports actions that are consistent with our passion for the Fort Ord trails. As explained in more detail below, FORT Friends urges FORA to:

- (1) Adopt Option 2B, or a similar impact fee option that ensures adequate funding for both: (a) long-term implementation of the Habitat Conservation Plan (est. \$35 million), and (b) long-term property management activities for the “Habitat Management Areas” to be transferred to Monterey County and other land owners (est. \$12 million).
- (2) As requested by the County of Monterey, immediately contribute \$20,000 to help fund the Fort Ord Recreation Habitat Area (“FORHA”) Master Plan and Environmental Impact Report (EIR). Our understanding that the \$20,000 can be repaid to FORA once development fees accrue.

Development Fees Must Fund a Trail Network for the Public

The Fort Ord Reuse Plan envisioned certain areas for development, and as a mitigation measure, areas set aside for habitat preservation, including a trail system. The federal Bureau of Land Management (BLM) already administers a major part of this system. Another component is the non-BLM properties slated for transfer to Monterey County, cities and other entities that also includes habitat preservation and trails components. These are referred to as “Habitat Management Areas” (HMA). Local trail users refer to this 1,500-acre area as “Happy Trails” due to the gentle terrain suitable for families and people/animals with varying levels of skill and endurance.

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It is essential that the current use of Happy Trails be continued, especially as this area is the only access to the BLM trails from the Marina/Seaside/East Garrison area. FORT Friends strongly believe that the existence of a quality trail network will add value to development properties and result in higher tax revenues. Also, public use of trails by hundreds of law-abiding citizens tends to discourage use of the land by criminals (e.g., illegal dumping, drugs).

Our understanding is that at least \$35 million is needed to fund the Habitat Conservation Plan as required by the Endangered Species Act. In addition, an estimated \$12 million endowment is needed to fund the many needed "property management activities" in the HMA to ensure safe public access and use of the 1,500-acre area. Examples include trail maintenance, parking lots, rest rooms, trash receptacles, and signage. As tax-payers, we deserve access to these lands, especially if developers are given a fee reduction to help "jump start" construction in a poor economy. Thus, impact fees must be set high enough to support both long-term HCP and HMA activities.

\$20,000 Contribution is Needed Now to Begin Trails Network Master Plan

Recently, the County of Monterey Redevelopment Agency requested that FORA contribute \$20,000 to help pay for a \$65,000 consultant contract to prepare the FORHA Master Plan and EIR. The County can only afford \$20,000, and the proposed Horse Park developer has ponied up (pun intended) \$20,000. The trail users have been asked to raise \$5,000, which will take several months as these groups have minimal funds in their coffers. The County has approved the \$65,000 contract with the consultant, but has not issued a "Notice to Proceed" due to lack of funds. Thus, the \$20,000 contribution by FORA is essential to initiate the FORHA Master Plan.

In conclusion, please take action now to help ensure a wonderful recreation area that will benefit generations of families to come! FORT Friends stands ready to work with FORA and other agencies to achieve our mutual goals of sustainable, healthy communities and associated high-quality environment.

Thank you for your consideration. If you have questions, I can be reached during the day at work at: 831/658-5621. My personal e-mail is: henri.stern@ymail.com.

Sincerely,



Henrietta Stern
Interim President

cc: FORT Friends Board of Directors



*Dr. Marilyn K. Shepherd
Superintendent of Schools*

*P.O. Box 1031
700 Pacific Street
Monterey, CA 93942-1031*

*(831) 645-1203
(831) 649-4175 FAX
mshepherd@mpusd.k12.ca.us*

April 7, 2011

Chair/Supervisor Dave Potter
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, CA 93933

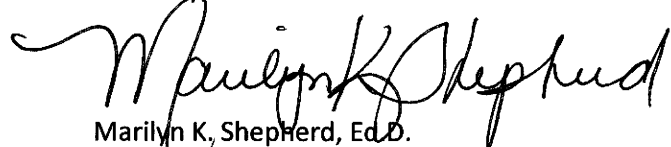
Dear Chair/Supervisor Potter:

At its meeting of April 4, 2011, City of Marina Development Services Director Doug Yount provided the Monterey Peninsula Unified School District Board with a presentation regarding the proposal to reduce the Fort Ord Redevelopment Authority (FORA) impact fees. If adopted by the FORA board, the reduction in fees would assist greatly in moving a variety of housing and commercial development projects on the former Fort Ord property forward.

Following Mr. Yount's presentation, the MPUSD Board discussed and reached consensus to support a potential reduction in fees that could stimulate redevelopment projects stalled by the economy. The benefit to the District can be illustrated through increase in average daily attendance (ADA) generated enrollment and the property taxes generated by the redevelopment of former Fort Ord.

On behalf of the Board of Education of the Monterey Peninsula Unified School District and as an ex-officio of the FORA Board, I would like to express support for the tax increment reduction for the benefit of the community.

Sincerely,


Marilyn K. Shepherd, Ed.D.
Superintendent of Schools

Cc: MPUSD Board of Education

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April 8, 2011

David Potter, Chair
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, CA 93933

Regarding: Capital Improvement Program Review

Dear Chair Potter,

LandWatch reviewed the staff report and the related materials for item 6b, the Capital Improvement Program Review. LandWatch has the following comments:

1. LandWatch recommends environmental review on any reduction of fees to the fee program. This review should address whether the fee reduction is consistent with the FORA Plan and its identified mitigation measures as well as GPU 2010. The environmental review should also address the fee reduction's impact on regional transportation projects which are often used as mitigation measures for local projects in their EIRs.
2. LandWatch is concerned that a fee reduction could impact on-site improvement projects. On-site projects are 100% funded by the fee program and are therefore the most vulnerable.
3. How would a fee reduction take into account the "unknown" costs of projects such as habitat conservation and EIR review for projects that have not gone through the process?

Thank you for the opportunity to comment on this item.

Sincerely,

Amy L. White
Executive Director

Charlotte Ellsworth

From: Richard H Rosenthal [rrosenthal62@sbcglobal.net]
Sent: Tuesday, April 05, 2011 5:22 PM
To: Charlotte Ellsworth
Cc: Mike Weaver; Richard H. Rosenthal
Subject: April 8, 2011 FORA meeting, Item 6 (b) CIP Program Review

Dear Members of the FORA Board:

Save Our Peninsula Committee (SOP) requests that before any proposal is accepted that a CEQA assessment be undertaken for purposes of determining the environmental impact of any such alternative and to determine whether or not the modification of the fee would require a supplemental environmental impact report.

If you have any questions please feel free to call.

Richard H. Rosenthal

Richard H. Rosenthal
Law Offices Richard H. Rosenthal
A Professional Corporation

For SOP

Fort Ord Reuse Authority
100 12th St., Building 2880
Marina, CA 93933
(831) 883-3675



MA
SE
JUG
JB

Re: April 8, 2011 FOR A Board Meeting
Agenda Item 6b: CIP Review Information/Action

April 8, 2011

Dear FOR A Board,

This agenda item 6b has just come to our attention this past week. Some of the issues we see are a proposed reduction in developer impact fees, traffic mitigation changes including endorsing light rail instead of improvements to Highway 1, and other items that have not been fully explained to the surrounding communities or had adequate environmental analysis.

How are these proposed changes consistent with the 1997 Fort Ord Reuse Plan, and the new Monterey County General Plan?

Please do adequate environmental analysis and recirculate the transportation element of the Fort Ord Reuse Plan EIR.

Thank you,

Mike Weaver

Mike Weaver
Chair, The Highway 68 Coalition
Email: highway68coalition@yahoo.com
Phone: (831) 484-6659

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FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject: Preston Park Management Agreement Modifications

Meeting Date: April 8, 2011

Agenda Number: 6c

ACTION

RECOMMENDATION(S):

1. Receive information regarding Preston Park Management Agreement ("PPMA") (**Attachment A**) modification numbers one (**Attachment B**), two (**Attachment C**), and three (**Attachment D**).
2. Authorize the Executive Officer to execute PPMA modification number three and ratify modification numbers one and two.

BACKGROUND/DISCUSSION:

On December 7, 2007, the Fort Ord Reuse Authority ("FORA") and the City of Marina ("Marina") entered into the PPMA with Alliance Communities Inc. ("Alliance") to provide professional management services for the Preston Park property, a 354-unit housing area owned by FORA. The PPMA identifies FORA as the Owner, Marina as FORA's Agent, and Alliance as the Operator. Net rental revenues from the property are shared 50/50 between FORA and Marina as described in the FORA-Marina Implementation Agreement and State law.

Marina initiated each of the three PPMA modifications, acting as FORA's Agent for Preston Park. In summary, modification numbers one and two were perfunctory amendments to the contract, which FORA staff decided to package together with the more significant modification number three. Modification number one changed the Preston Park auditing cycle from annually to bi-annually. Marina's objective was to reduce audit expenses. Modification number two extended the termination date of the PPMA from December 31, 2010 to December 31, 2011. Modification number three addresses more significant changes, which include: adding clarity to the categories where Alliance's Capital Improvement Management Fee of 6% would and would not apply, deleting the unused section regarding an incentive fee, revising and replacing a grievance procedure, and other minor adjustments.

Finally, an additional amendment to the PPMA may be needed to accommodate Marina's request to compensate itself for overseeing Preston Park beginning in FY 10-11. Marina is reviewing documents to determine if such amendment to the PPMA is needed. If it is required, it will be presented to the FORA Board with the Preston Park budget approval in May or June.


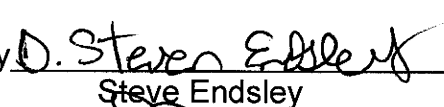
FISCAL IMPACT:

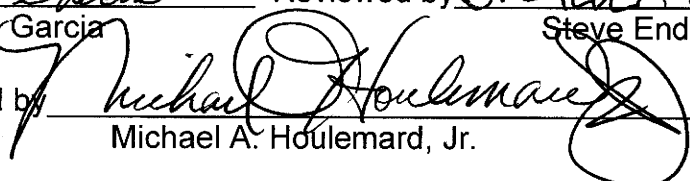
Reviewed by FORA Controller 

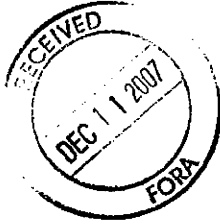
Staff time for this item is included in the approved FY 10-11 budget.

COORDINATION:

Executive Committee, Administrative Committee, Marina, Alliance, and Authority Counsel.

Prepared by  Jonathan Garcia Reviewed by  Steve Endsley

Approved by  Michael A. Houlemard, Jr.



ORIGINAL

**MANAGEMENT AGREEMENT
FOR
PRESTON PARK**

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into on December 7, 2007, by and between the Fort Ord Reuse Authority, a California public entity, hereinafter referred to as "Owner," Alliance Residential, LLC, an Arizona Limited Liability Company, , hereinafter referred to as "Operator" and the City of Marina, a California charter city, hereinafter referred to as "Agent," as follows:

RECITALS

1. Owner is the owner of certain improved real property and the improvements thereon commonly known as Preston Park consisting of 354 units ("Units") [2 are used for management purposes] located at 682 Wahl Court, Marina, CA 93933 (the "Property").
2. FORA has designated City as its Agent for the purposes of this Agreement;
3. Operator has the requisite skill, training and experience to properly perform the services specified herein.
4. Operator holds through an authorized officer a real estate brokerage license as required by the laws of the State of California.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner, Operator and Agent agree as follows:

ARTICLE I

APPOINTMENT OF OPERATOR AND AGENT

Owner hereby appoints Operator and Operator hereby accepts appointment on the terms and conditions set forth below as Owner's exclusive agent to manage, operate, supervise, and lease the Property and to perform those actions necessary to fulfill Owner's obligations to those government agencies with authority over the Property except as provided herein. Owner confirms its previous appointment of City as its Agent for the purposes of this Agreement. All subsequent uses of the term "Owner" in this Agreement shall mean "Agent" except as otherwise indicated.

ARTICLE II

TERM

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2.1 TERM. The term of this Agreement shall commence on January 1, 2007, unless an earlier date is agreed to by Agent, the current operator and Operator, and shall continue to and include December 31, 2010 unless terminated as provided herein or extended in writing by mutual agreement thereto.

2.2 EARLY TERMINATION. Notwithstanding the provisions of Section 2.1 above to the contrary, this Agreement and the obligations of the parties hereunder shall cease, upon the occurrence of any of the following:

(a) If Owner fails to comply, after notice and an opportunity to cure, with any rule, order, determination, ordinance or law of any federal, state, county, or municipal authority, Operator may terminate this Agreement upon thirty (30) days written notice to Owner unless Owner is in good faith contesting same, pursuant to Section 4.2(g) herein.

(b) If either party defaults in the performance of any of its obligations hereunder and such default continues for thirty (30) days after written notice to the defaulting party specifying such default, the party not in default may terminate this Agreement upon ten (10) days written notice to the defaulting party. Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30 day period then the party not in default shall not effect the termination.

(c) Owner or Operator may terminate this Agreement with cause upon sixty (60) days written notice to the other party. It is understood that the respective rights and obligations of the parties shall continue to be governed by this Agreement until the effective date of such termination.

2.3 DUTIES UPON TERMINATION. Upon the effective date of termination of this Agreement for any reason:

(a) Operator shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;

(b) Operator will immediately deliver to Owner all Books, Records, and Documents (as herein defined) maintained by it pursuant to this Agreement and do all that is reasonably necessary to facilitate the orderly transition of management of the Property;

(c) Operator shall render to Owner an accounting of all funds of Owner held by Operator relating to property and shall immediately cause such funds to be paid to Owner; and

(d) Operator shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

ARTICLE III

COMPENSATION

3.1 In addition to other reimbursements to Operator provided for elsewhere in this Agreement, Owner shall pay Operator on a monthly basis for its services hereunder a management fee of 2.5% of the total gross revenue, as defined in Section 3.2 below, received. Fees shall be paid in monthly installments at the beginning of each month, or as incurred, and shall be deductible from the Trust Account as part of the operating expenses of the Property on or before the 10th of each month from collection of said gross revenue. In the event of commencement or termination of this Agreement other than on the first or last day of a month, respectively, the compensation of Operator shall be prorated to the effective date of such commencement or termination.

3.2 **Gross Revenue.** The entire amount of all revenue, determined on a cash basis, from (a) tenant rentals collected pursuant to tenant leases of apartment units, for each month during the Term hereof; provided that there shall be excluded from tenant rentals any tenant security deposits (except as provided below); (b) cleaning, tenant security and damage deposits forfeited by tenants in such period; (c) laundry and vending machines income; (d) any and all other revenue from the operation of the Property received and relating to the period in question; (e) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (f) any other sums and charges collected in connection with termination of the tenant leases. Gross Revenue does not include the proceeds of (i) any sale, exchange, refinancing, condemnation, or other disposition of all or any part of the Property, (ii) any loans to Owner whether or not secured by all or any part of the Property, (iii) any capital expenditures or funds deposited to cover costs of operations made by Owner, and (iv) any insurance policy (other than rental interruption insurance or proceeds from third-party damage claims).

3.3 **Incentive Fee.** In order to induce and motivate Operator to achieve favorable Property performance, Owner agrees to consider paying Operator an additional annual incentive fee if conditions, as agreed upon by Owner and Operator, are satisfied. The conditions will be set forth in an Exhibit E that will be defined at a later date and will be attached hereto and make a part hereof once both Owner and Operator approve the language contained in said Exhibit in writing. At any point subsequent to the full execution of this Agreement, Owner shall retain the ability to implement the Incentive Fee as outlined in this Section 3.3.

3.4 **Capital Improvement Management Fee.** Owner will pay to Operator a construction management fee equal to 6% of the total cost set forth in an executed written proposal or agreement, as approved by Owner, as increased or decreased by all change orders relating thereto, for improvement to each of parking/paving, fence/gates, exterior lighting, pool and related improvements, site drainage, sidewalks, courts of all types, landscaping, retaining walls, foundation, termite treatment, carpentry and masonry repair, gutter/downspout, exterior paint, ventilation/chimney, site upgrade, trash compactor and area dumpster enclosures, laundry room, mail boxes, interior carpentry/cabinet, plumbing and electrical improvements, exterior mechanical, electrical and plumbing, office, clubhouse and exercise room improvements, American Disability Act improvements, signage and storm and fire disaster repairs to all interior, exterior and common areas of

the Property within thirty (30) calendar days from the time of completion and acceptance of work by the construction manager and Owner. Approval of the construction manager by Owner or Owner's designee shall be obtained by Operator prior to commencement of any capital improvements as defined in this Section 3.4. Operator shall provide construction management relating thereto pursuant to a separate written agreement prior to Operator providing such services. Owner will pay such fee within fifteen (15) days after completion of the agreed upon scope of work.

3.5 **Transactions With Affiliates.** With the prior approval and direction of Owner, (which approval is implicitly granted to the extent obtained in the Budget), Operator may obtain services and materials, including, but not limited to, advertising, consulting, computer hardware and software, forms for use at the Property, contract services, accounting and bookkeeping services and building materials, through the organization subsidiaries or affiliates of Operator for the benefit of the Property, provided the quality of service and the price thereof is competitive with comparable prices and services offered by third parties, and the costs therefore shall be reimbursed by Owner. All discounts, rebates and other savings realized as a result of such services being supplied by an affiliate of Operator shall inure solely to the benefit of Owner.

3.6 Owner hereby authorizes Operator to pay from the Trust Account all fees, reimbursements and other amounts payable to Operator or any third party hereunder.

ARTICLE IV

DUTIES AND RESPONSIBILITIES

4.1 **GENERAL RESPONSIBILITIES OF OPERATOR.** Subject to the provisions of this Agreement, Operator is hereby authorized to manage, operate and lease the Property in accordance with the standards of practice of professional managers of similar properties in the location of the Property and to provide other customary management services at the Property for the ordinary and usual business and affairs of the Property as are consistent with the management, operation, leasing, and maintenance of a building or buildings of the type located on the Property. Said services shall include but not be limited to the Scope of Services described in Exhibit "A" hereto. Operator shall provide and implement a mutually agreeable overall business plan and shall operate within the annual budget as approved by Owner. If Owner requests Operator to perform services beyond the ordinary and usual business and affairs of the Property, Operator shall be entitled to additional compensation for same, which shall be negotiated by the parties.

4.2 **SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR.** Operator agrees and is hereby granted authority to do the following:

(a) **Collection of Monies.** Operator shall use commercially reasonable efforts and means to collect the rents and other charges due from tenants, parking charges, and all other charges, and revenues, and, when deemed economically appropriate by Operator, to institute legal proceedings on behalf of Owner for collection in connection with the operation of the Property. Owner hereby authorizes Operator to

request, demand, collect, and receive funds for collection thereof in accordance with all applicable laws, regulations, ordinances or administrative grievance procedures and for the lawful dispossession of tenants, guests, and other persons from Property. Counsel shall not be used for actions taken in small claims court. Amounts expended by Operator for use of non-employee consultants or experts, including attorneys, in the performance of these duties shall be reimbursed by Owner, provided such expenditures have been approved in writing by Owner.

(b) Books, Records, and Documentation.

(i) Operator shall maintain at its principal office or on the Property, complete and separate books, records and documents relating to the management and operation of the Property, including without limitation all contracts, original leases, amendments, extensions and agreements relating to contracts and leases, annual contributions contracts, files, correspondence with tenants and prospective tenants, documentation of tenant eligibility, computations of rental adjustments, maintenance and preventive maintenance programs, schedules and logs, tenant finish and construction records, inventories of personal property and equipment, correspondence with vendors, job descriptions, correspondence with federal, state, county, and municipal authorities, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as "Books, Records, and Documents"). Books and records of account shall be prepared in conformity with generally accepted accounting principles consistently applied at Operator's sole expense. Except as approved in writing by Owner, all accounting functions shall be performed by those personnel of Operator whose compensation is payable solely by Operator without reimbursement by Owner. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office at reasonable times. Extraordinary requests of Operator's accountants made by Owner or audits of the Books, Records and Documents required by Owner, shall be at Owner's sole cost and expense, except as otherwise provided in this Agreement.

(ii) Upon request, Operator shall make all Books, Records and Documents available for examination, audit, inspection and copying by duly authorized representatives of any public housing agency or authority with regulatory power and/or jurisdiction over the Property to the extent required by federal or state law.

(iii) Operator shall provide a standard Financial Reporting Package to Owner by the 15th day of each month during the Term for the preceding month. The Financial Reporting Package shall include: Operations Summary, Variance Analysis, Market Survey, Profit & Loss, Balance Sheet, Projected Cash Flow, Trial Balance, Bank Reconciliation, Trust Account Bank Statement, Aged Receivables, and a summary of any Tenant's Association meeting that occurs during the period in question. All reporting will utilize Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing.

(iv) On or before fifteen (15) days following the end of each calendar month, Owner shall deliver or cause to be delivered to Owner (i) an unaudited income and expense statement showing the results of operation of the Property for the

preceding calendar month and the Fiscal Year to date; (ii) a comparison of actual income and expenses with the income and expenses projected in the Budget; and (iii) cash balances for reserves and the Trust Account as of the last day of such month. Operator shall at its option (a) preserve all invoices for a period of four (4) years, or (b) at the expiration of each Fiscal Year deliver all invoices to Owner. Such statements and computations shall be prepared from the books of account of the Property.

(c) Annual Audit. At the end of the term as described in Section 2.1 herein and as of the date of termination, Operator shall arrange and coordinate an audit of the books and records of the Property made by a firm of certified public accountants as approved by Owner. Operator shall also have said accountants prepare for execution by Owner all forms, reports, and returns required by any federal, state, county, or municipal authority relating to the Property. The cost of said audit is a cost of the Property that shall be reflected in the annual budget approved by Owner.

(d) Repairs and Maintenance. Operator will use commercially reasonable efforts to maintain the condition of the Property in the condition prescribed by Owner, will regularly inspect the readily accessible areas of Property, will take commercially reasonable efforts against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. Operator's maintenance duties shall include making all necessary repairs for the Property and trash removal. Consistent with provisions of FORA and City of Marina ordinances and policies on local hire and prevailing wages, Operator may employ independent contractors and other employees necessary to properly maintain, manage and operate the Property. Any contracts over \$20,000 per year for an item which is not covered within the approved annual budget shall be presented to Owner for approval in advance of the execution of such a contract by Operator, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Furthermore, approval shall be required to incur any Property expense pertaining to operations that exceeds the budgeted annual amount for that line item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval. Any expense which does require approval shall be either put out to bid by Operator or Operator shall have obtained at least three quotes for the cost of such item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator.

(e) Rental of Housing Units. Operator's renting of the Units shall be done in conformance with the terms and conditions of this Agreement and the Regulatory

Agreement between the Redevelopment Agency of the City of Marina and FORA (“Regulatory Agreement”), including the following:

(i) The Units shall be rented on a six-month lease term or month-to-month basis except as may otherwise be required by the Regulatory Agreement.

(ii) Owner has established rental rates for the Units for fiscal year 2007-08 (July 1, 2007 – June 30, 2008) as set forth in Exhibit “B” hereto. Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.

(iii) Applicants for the Units must qualify based upon the applicant’s ability to pay and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. Currently 70 of the Units are rented at below market rate affordable rents (“Affordable Rents”) as required by the Regulatory Agreement. The Affordable Rents are set forth in Exhibit B. Any increase in the Affordable Rents shall be subject to the approval of Owner. Applicants of units to be rented at the Affordable Rents must meet the same requirements as above, as well as qualify based upon maximum income limits and minimum occupancy guidelines according to rules and regulations promulgated by the State of California.

(iv) Operator shall select tenants for available units as follows:

(A) Notwithstanding the provisions of the Section 6.2 of the Regulatory Agreement, Operator shall first offer and rent available units to applicants on the basis of the following preferences, which have been determined by Owner and for which an applicant must qualify at the time of initial occupancy of a unit. No more than a total of 50% of the housing units shall be rented at any one time on the basis of the preferences listed in (B) – (D) below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner’s tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria.

(B) **First Preference.** To employees of City of Marina including reserve police officers and volunteer firefighters

(C) **Second Preference.** To public and private employees working in Marina including but not limited to schools and businesses.

(D) **Third Preference.** To employees of public and governmental entities located on the former Fort Ord.

(E) **Affordable Units.** Notwithstanding the foregoing, preferences (b), (c) and (d) will be subordinate to the affordability requirements contained in paragraph (iii) above. In addition, said preferences will be subordinate to

the requirement that, on average, twenty percent (20%) of the housing units on each street of the Property will be affordable units.

(F) **Rental Agreements.** The prior Operator prepared and submitted to Owner for its approval and Owner has approved said rental agreements which shall be used by Operator for the property. If Operator desires to change the approved rental agreements, Operator shall seek Owner's comments and approval of the terms and conditions thereof. Owner's approval of the proposed rental agreements shall not be unreasonably withheld. The rental agreements shall provide that the tenancy of a person selected for occupancy of a unit because of one of the preferences indicated above may be terminated if such person ceases to be in the class of persons described in the applicable preference. Owner shall be responsible for monitoring the status of tenants as to any preference and shall notify Operator if a tenant should be terminated because of a loss of her or his preference.

(G) **Tenant Compliance.** Operator shall enforce tenant compliance with all applicable rental agreement provisions including, without limitation, the collection of rents, late fees and other charges.

(f) Insurance.

(i) Operator shall obtain and keep in force fire and extended coverage insurance and other customary property insurance for the Property, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

(ii) Operator shall obtain and keep in force a Comprehensive General Liability (CGL) insurance policy and in amounts no less than \$1,000,000 per occurrence of bodily injury and property damage, and not less than \$2,000,000 policy general aggregate and an excess or umbrella liability policy in an amount not less than \$10,000,000 per occurrence basis, the cost of insurance to be paid out of the Trust Account as approved by the Budget. Such insurance shall name Owner as a named insured and shall provide Owner and Lender with 30-day prior written notice of cancellations or material change in coverage.

(iii) Operator shall obtain and keep in force Error and Omission insurance in amount of at least \$1,000,000 per wrongful act and \$1,000,000 in the aggregate. Operator shall obtain such insurance within 30 days of the date of this Agreement, and notwithstanding any other provision herein, all costs of insurance under this Section 4.2(f)(iii) shall be at the expense of Operator.

(iv) Operator shall obtain and keep in force commercial automobile liability insurance (where applicable) in an amount not less than \$1,000,000 (combined single limit), coverage shall include leased, hired and non-owned vehicles, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

(v) Operator shall not knowingly permit the use of the Property for any purpose which might void any policy of insurance relating to the Property, increase the premium otherwise payable or render any loss there under uncollectible.

(vi) Operator shall cause to be placed and kept in force workers' compensation insurance up to the statutory limit, including broad form, all-states coverage and employer's liability of at least \$500,000. Such insurance shall provide Owner with 30-day prior written notice of cancellations or material change in coverage. Workers' compensation insurance expenses associated with employees employed for the direct benefit of Owner or the Property shall be included in the approved budget for the Property.

(vii) All of the insurance policies required by this Agreement shall (a) be written by insurance companies which are licensed to do business in California, or obtained through a duly authorized surplus line insurance agent or otherwise in conformity with the laws of California, with a rating of not less than the third (3rd) highest rating category by any one of the Rating Agencies or with an A.M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than VI; (b) specifically identify the Owner, Agent and Operator as insureds and Lender as an additional insured; mortgagee; loss payee and additional insured with the Owner and Agent as the named insured; and (c) include a provision requiring the insurance company to notify the Lender and the Owner in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. In addition, the Operator shall provide the Owner and Lender with certificates of insurance and certified copies of all insurance contracts required by this Agreement within thirty (30) days of their inception and subsequent renewals.

(g) Debt Service, Taxes and Assessments.

(i) On Owner's behalf, Operator shall process payments of Owner's debt service on the Property as directed in writing by Owner.

(ii) On Owner's behalf, Operator shall also process payments of all taxes, impositions, or assessments relating to the ownership or operation of the Property, including, without limitation, improvement assessments, possessory interest and real estate taxes, personal property taxes, taxes on income or rents, or any charges similar to or in lieu of any of the foregoing. Prior to payment, Operator shall verify bills for possessory interest and real estate, personal property or other taxes, improvement assessments, and other similar charges which are due or may become due against the Property on the basis of ownership or operation of the Property. If requested by Owner, Operator shall render advice and assistance to Owner in the negotiation and prosecution of all claims for the reduction or equalization of property tax assessments and other tax assessments affecting the Property. The parties agree, however, that such advice and assistance goes beyond the ordinary management responsibilities contemplated by this Agreement and, as such, if Operator provides such services, they shall be at an additional cost to Owner.

(iii) Operator shall annually make a review of, and submit a report on, all real estate, personal property and other taxes and all assessments affecting the Property.

(h) Compliance with Legal Requirements. Operator shall use reasonable means to become aware of, and shall take such actions as Operator deems prudent and necessary to comply with any laws, orders, public housing agency plans or requirements affecting the use or operation of the Property by any federal, state, county, or municipal agency of authority, including but not limited to compliance with and participation in administrative grievance procedures, provided that if the cost of compliance in any instance exceeds \$10,000.00, Operator shall not expend funds for compliance without Owner's prior written consent. Operator shall promptly notify Owner in writing of all such orders, notices, plans or requirements requiring expenditure of non-budgeted amounts. Operator, however, shall not take any action as long as Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting any law, order, plan or requirement. Operator shall prepare, execute, and, after obtaining the written approval of Owner, thereby file any customary and standard reports and documents required by an applicable governmental authority. The filing of any special report or document shall not be included as part of this Agreement and shall be an additional cost to Owner. Operator covenants and agrees to obtain and maintain all licenses and permits necessary for the conduct of its business as Operator of the Property. Amounts expended by Operator for use of non-employee consultants or experts, including attorneys, in the performance of these duties shall be reimbursed by Owner provided that such amounts are approved in writing by Owner prior to Operator incurring such expenses. Operator shall comply with the terms of the Regulatory Agreement, a copy of which has been provided previously to Operator. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator based on said compliance provided that Operator is in compliance with the Regulatory Agreement.

(i) Energy and Water Conservation. Operator shall use prudent and customary means to use and control utilities and water use at the Property in a manner to minimize total costs and satisfy Owner's obligations to tenants.

(j) Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the annual budget approved or Owner's prior written approval.

(k) Employment of Personnel.

(i) Operator will hire, train, supervise, direct the work of, pay, and discharge all personnel necessary for operation of the Property. Such personnel shall in every instance be employees of Operator and not of Owner. Owner shall have no right to supervise or direct such employees. All costs associated with the employment of personnel necessary for the on-site operation of the Property, including, but not limited to, salaries, wages, the costs of hiring, termination, training, uniforms, educational and motivational programs, other compensation and fringe benefits will be included in the approved budget for the Property. The term "fringe benefits" as used herein shall mean and include the employer's contribution of F.I.C.A., unemployment compensation and other employment taxes, worker's compensation, group life and accident and health insurance premiums, 401K contributions, performance bonuses, and disability and other

similar benefits paid or payable by Operator to its employees in other apartment properties operated by Operator. Any litigation costs or expenses, including reasonable attorneys' fees and costs and wage penalties relating to the employment of on-site personnel are reimbursable to Operator by Owner, unless Operator has been negligent in its employment practices. Operator will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature.

(ii) The salaries, wages, other compensation, benefits (including without limitation social security, taxes, worker's compensation insurance, and the like), travel, training and other Property-related expenses of all on-site, field, or maintenance employees of Operator working on or with respect to the Property shall be expenses of the Property and included in the approved budget for the Property. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, wages and other compensation of employees performing services for Operator at properties other than the Property, shall be reimbursed to Operator pro rata based on the portion of working hours involved in services to the Property and such other properties; provided that Operator shall be reimbursed for any roving maintenance supervisor providing services to the Property at the rate of \$50 per hour for such services (or such amount as may reflected in the approved Budget). Operator shall solicit and receive approval from Owner to utilize the services of a roving maintenance supervisor prior to services being rendered.

(iii) The salaries, wages, other compensation, benefits, travel, entertainment, and other expenses shall be non-reimbursable expenses of Operator with respect to the following persons working on or in respect to the Property:

(A) executive personnel of Operator charged with general administration of Operator's performance of this Agreement; and

(B) record-keeping personnel (off-site).

(l) Leasing. Operator shall make diligent efforts to secure and/or retain tenants for the Property consistent with the character and status of the Property as outlined in the established Resident Selection Criteria. Operator shall make diligent efforts to assure that all leases and leasing practices conform to all laws, ordinances, regulations, public housing agency plans or annual contributions contracts applicable to the Property. Prior to the execution of a new lease by a tenant, Operator shall in good faith conduct such investigations of the financial responsibility and general reputation of the prospective tenant as are ordinarily and customarily performed by the managers of similar properties in the location of the Property.

(m) Management Structure. Operator has previously provided an oral description of its management structure, roles and assurances as to the frequency of management visits to the Property and said description is attached as Exhibit "C" hereto.

(n) Tenant Grievance Procedure. Operator has previously provided an oral description of its tenant grievance procedure and said procedure is attached as Exhibit "D" hereto.

(o) Prior to executing this Agreement, Operator shall obtain and thereafter maintain, at its expense, a business license from the City of Marina.

ARTICLE V

EXPENSES OF OWNER

5.1 Except as otherwise provided in this Agreement, all contractual obligations incurred by Operator to third parties in the course of managing the Property pursuant to this Agreement shall be obligations of Operator. All expenses incurred by Operator shall be commercially reasonable in the rental housing industry for similar properties and shall be reimbursable or otherwise payable by Owner as described in section 4.2(d). All reasonable expenses, including fees for necessary legal advice, incurred by Operator in performance of its obligations under this Agreement described as reimbursable shall be reimbursed by Owner, subject to pre-approval as described in this Agreement. Such expenses and reimbursables shall be paid with funds drawn from the Trust Account in accordance with Article VII hereof. Owner's responsibility for such expenses and reimbursables, including future attorneys' fees and costs relating to issues which arose during the term of this Agreement remain in full force and effect until resolved even if this Agreement is terminated before such resolution.

5.2 Operator may pay the following expenses directly from the Trust Account subject to the conditions and limitations set forth elsewhere in this Agreement:

- a) Cost of on-site computer hardware and telecommunications equipment;
- b) Cost of forms, papers, ledgers, and other supplies and equipment used by Operator at the Property, and postage, messenger and overnight delivery services;
- c) Cost to correct any violation of law relative to the leasing, management, use, operation, repair, maintenance or occupancy of the Property, or relative to the rules, regulations or orders of any national or local Board of Fire Underwriters or other similar body;
- d) Actual cost of making all repairs, decorations and alterations of the Property;
- e) Employment fees, including costs of advertising, relating to the Property Personnel;
- f) Third party costs of collection of delinquent rentals, including a collection agency;
- g) Legal fees of attorneys in accordance with this Agreement;

- h) Cost of capital expenditures, to the extent approved in the current year Approved Budget or otherwise allowed by this Agreement;
- i) Cost of printed checks for each bank account maintained by Operator relating to the Property;
- j) Leasing bonuses and other incentive compensation payments;
- k) Cost of service contracts and agreements;
- l) Cost of utilities;
- m) Cost of advertising as to the extent set forth in the Approved Budget;

- n) Cost of real estate and personal property taxes, improvement assessments and other like charges;
- o) Fee(s) as provided in Section 3.1 through 3.5 hereof;
- p) Periodic payments on account of any debts and liability of Owner pursuant to Section 4.2(g) hereof;
- q) Costs of Owner's Liability Insurance and workers' compensation insurance;
- r) Costs of the property management software package that is utilized for management of the Property and Operator training class and related travel expenses for the use of such and software; and
- s) Employee-related costs as set forth in Section 4.2(k) hereof.

The foregoing enumeration of reimbursable expenses is not intended to be exclusive, and subject to the conditions and limitations set forth elsewhere in this Agreement, Operator shall be entitled to make disbursements from the Trust Account for other expenses incurred or paid by Operator to the extent those expenses are related to operation of the Property, except to the extent Section 6.1 prohibits reimbursement.

ARTICLE VI

EXPENSES OF OPERATOR

6.1 Operator agrees to pay all salaries, wages and other compensation and fringe benefits of all personnel described in Section 4.2(k)(ii) of this Agreement as an expense of Operator without reimbursement by Owner, except as otherwise provided therein. Operator shall pay other expenses which are expressly (a) payable by Operator or (b) not reimbursable hereunder. Operator shall also pay (without reimbursement) any costs of providing corporate office facilities and supplies for such off-site corporate personnel and other expenses incurred by Operator which are not incurred in the performance of duties and obligations required by this Agreement.

ARTICLE VII

BANK ACCOUNTS

7.1 ESTABLISHMENT OF ACCOUNTS.

(a) Operator shall establish a separate bank account for the Property in such Name as Owner shall designate and at a bank selected by Operator (the "Trust Account"). Operator shall promptly deposit all rents and other funds collected by Operator at least monthly in respect of the Property, including, without limitation, any and all advance rents, into the Trust Account and shall not deposit funds attributable to any other property into the Trust Account. Operator shall inform such bank in writing that the funds deposited in the Trust Account are held in trust for Owner. Operator shall use funds in the account to pay the operating expenses of the Property and any other payments relative to the Property as allowed by the terms of this Agreement.

Operator shall establish a working capital reserve of \$20,000 to be retained within the Trust Account to make up for operating shortfalls. Any such reserve shall be replenished to its starting level on a monthly basis, unless Owner determines otherwise. Operator will be reimbursed by Owner within one (1) month of the effective date of this Agreement for Owner approved and reasonable pre-transition expenses incurred by Operator.

(b) Where law requires that tenant security deposits in respect of the Property be separately maintained, a separate bank account for the Property will be opened by Operator at a bank designated by Operator (the "Security Deposit Trust Account") into which such security deposits shall be deposited. The Security Deposit Trust Account will be (a) maintained in accordance with applicable law and (b) used only for maintaining tenant security deposits for the Property. Operator shall inform the bank in writing that the funds are held in trust for Owner. Operator shall maintain detailed records of all security deposits deposited in the Security Deposit Trust Account, and such records will be open for inspection by Owner's employees or appointees.

(c) The designated broker for Operator shall be an authorized signer on the Trust Account and the Security Deposit Trust Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. For purposes of Section 7.1 (c), the name of the designated broker shall be communicated by Operator to Owner in writing. Authorized signatories on such accounts shall have authority to make disbursements from such accounts for the purpose of fulfilling Operator's obligations hereunder. Funds over Five Thousand Dollars (\$5,000.00) may be withdrawn from such accounts in accordance with this Article VII, only upon the signature of at least two (2) individuals who have been granted that authority by Operator. All persons who are authorized signatories or who in any way handle funds for the Property (on-site or off-site) shall be insured for dishonesty in the minimum amount of \$1,000,000.00 per occurrence or loss with not more than a \$25,000.00 deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date.

(d) Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of

dealing with such funds in the property management business. Such petty cash fund shall be maintained subject to the Operator's policies and procedures.

(e) Pursuant to other provisions contained in this Agreement and provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.

7.2 FUNDS PROVIDED BY OWNER. If the funds collected by Operator from operation of the Property are not sufficient to pay authorized expenses incurred in operation of the Property and to make all reimbursements to Operator pursuant hereto, Operator shall submit to Owner a statement showing such shortfall and identifying the bills and charges requiring payment, and Owner shall release reserve funds sufficient to pay same to the Operator.

ARTICLE VIII

ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by December 31 of each year, with the exception of the first fiscal year when the proposed budget will be due to Owner from Operator by January 31, for Owner's approval proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties. The proposed budgets will be made assuming accrual basis accounting or such basis as prescribed, in writing, by Owner. Operator will provide an explanation for the numbers used in such budgets. Operator shall make available executive personnel to discuss the proposed budget at a minimum of one meeting of the Marina City Council and other meetings as requested.

8.2 SUBMISSION OF OTHER REPORTS. When submitting such proposed budgets, Operator shall also include: rental rate recommendations with analysis if appropriate; a listing of all capital improvement and all repair, maintenance, renovation and replacement expenditures (together with estimated costs for each item) anticipated to be made in the upcoming operating period; a payroll analysis including a salary or wage description for every on-site employee, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. Subject to notation in Article 8.5 below, if Owner does not disapprove in writing to Operator's proposed budgets before July 1 of each year, the budgets shall be deemed approved. If an annual budget has not been approved by said date, Operator shall continue to operate the Property under the approved budget for the previous fiscal year until Operator and Owner can agree on the new budget or the termination of this Agreement.

8.4 COMPLIANCE WITH BUDGETS. Said budgets, after approval by Owner, shall be used by Operator as a guide for the actual operation of the Property. Approval shall be required to exceed any expense which exceeds the budgeted annual

amount for that line item. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval.

8.5 SUBJECT TO IMPLEMENTATION AGREEMENT. Owner and Operator acknowledge that the approved budgets and the operation of the Property is subject to the terms and conditions of that certain Implementation Agreement dated May 1, 2001 ("Implementation Agreement") by and between the Fort Ord Reuse Authority ("FORA") and the City of Marina. Operator hereby acknowledges the previous receipt of a copy of the Implementation Agreement. Operator shall advise the City and notify FORA of any operational or budget conditions in order for FORA to assure itself that the provisions of the Implementation Agreement are being met. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of the Implementation Agreement as set forth in this Section 8.5.

ARTICLE IX

GENERAL PROVISIONS

9.1 RELATIONSHIP. It is understood and agreed that all contracts and obligations entered into by Operator with respect to the Property as provided for, and consistent with, this Agreement shall be the obligations of Owner and Owner agrees to indemnify, defend and hold harmless Operator from any liability or claims thereof: with counsel of Owner's choice, and Operator agrees that to the extent Operator deems it necessary or prudent to have separate counsel from that of Owner, Operator shall bear all fees, costs, and expenses associated therewith.

Operator and Owner shall not be construed as joint venturers or partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Operator understands and agrees that the relationship with Owner is that of independent contractor working on behalf of Owner and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Notwithstanding the foregoing, Operator acknowledges and understands that it is acting as Agent of Owner and as such owes Owner the duties a reasonable investor would expect if managing his own property.

9.2 ASSIGNMENT. This agreement shall not be assigned by Operator without the prior written approval of Owner which approval may be withheld in Owner's sole and absolute discretion.

9.3 BENEFITS AND OBLIGATIONS. Subject to the provisions of Section 9.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

9.4 INDEMNIFICATION.

(a) Operator shall indemnify, hold harmless and defend FORA and City, their officers, employees and agents, with counsel reasonably satisfactory to Owner, for, from and against any and all liabilities, claims, causes of action, losses, demands and expenses whatsoever including, but not limited to attorneys' fees, court costs and other litigation expenses and costs arising out of or in connection with the maintenance or operation of the Property or this Agreement (collectively the "Claims"), except to the extent arising directly from the gross negligence or willful misconduct of FORA and or City and the loss of use of property following and resulting from damage or destruction. The indemnification by Operator contained in this Section 9.4 is in addition to any other indemnification obligations of Operator contained in this Agreement. FORA and City shall approve the liability insurance coverage procured by Operator pursuant to Section 4.2(f)(ii), and, once approved, FORA and City shall not be entitled to assert the inadequacy, in any respect, of the coverage. Operator's defense and indemnity obligation set forth in this Section 9.4(a) shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to Section 4.2(f)(ii), unless Operator has engaged in gross negligence or willful misconduct.

(b) FORA and City shall indemnify Operator (and Operator's affiliates, partners, directors, shareholders, officers, employees and agents) with counsel for, from and against any and all Claims which arise out of the gross negligence or willful misconduct of Owner, FORA or City.

(c) The indemnification and hold harmless obligations of the parties in this Section 9.4 shall survive the expiration or earlier termination of this Agreement.

9.5 NOTICES. All notices provided for in this Agreement shall be in writing and served by registered or certified mail, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

TO OWNER: FORT ORD REUSE AUTHORITY
Attention: Executive Officer
100 12th Street
Marina, California 93933

TO AGENT: CITY OF MARINA
Attention: City Manager
City Hall
211 Hillcrest Avenue
Marina, California 93933

TO OPERATOR: ALLIANCE RESIDENTIAL, LLC
2415 East Camelback Road, Suite 600
Phoenix, Arizona 85016
Attn: James M. Krohn

9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No alteration, modification, or interpretation of this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement itself.

9.7 SEVERABILITY. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

9.8 DISPUTE RESOLUTION. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association, provided, however, that nothing contained in this Agreement shall require the parties to use the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

9.9 APPLICABLE LAW. This agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall take place in the County of Monterey, State of California.

9.10 OPERATOR. The term "Operator" as used in this Agreement shall include any corporate subsidiaries or affiliates of Operator who perform service, in, on or about the Property in connection with this Agreement.

9.11 ATTORNEY'S FEES. If any controversy, claim, dispute or litigation between the parties arises out of this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, costs and expenses.

9.12 NON-WAIVER. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in this Agreement.

9.13 HEADINGS. All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

9.14 INTERPRETATION. This Agreement has been negotiated by and between representatives of the parties hereto and their staffs, all persons knowledgeable in the subject matter of this Agreement, which was then reviewed by the respective legal counsel of each party. Accordingly, any rule of law (including Civil Code §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 effect the purpose of the parties and this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

OWNER:

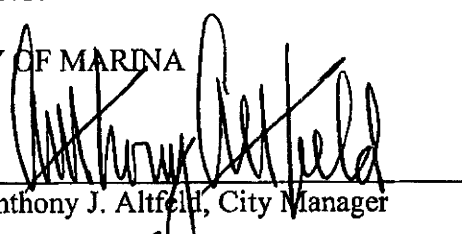
FORT ORD REUSE AUTHORITY

By: 
Michael Houlemard, Executive Officer

Date: December __, 2007

AGENT:

CITY OF MARINA


By: 
Anthony J. Altfeld, City Manager

Date: December 1, 2007

Attest: (Pursuant to Resolution: 2007__ - 248)

By: 
Joy P. Junsay, City Clerk

Approved as to Form


City Attorney

OPERATOR:

ALLIANCE RESIDENTIAL, LLC

By: James M. Krahn
Name: JAMES M. KRAHN
Title: CHIEF OPERATING OFFICER
Date: December 5, 2007

EXHIBIT A
Preston Park Management Agreement

SCOPE OF SERVICES

Manage, direct and supervise using commercially reasonable efforts, all aspects of property management for Preston Park which includes, but is not limited to:

1. Placement of residents in residential apartment homes with appropriate leases and addendums as prudent or required by law.
2. Collect all monthly rents and fees. Institute legal action for the collection of monies owed. Administer rent increases in close cooperation with the City.
3. Maintain community standards of physical and social environment, while keeping within budget guidelines. Respond to requests for maintenance by tenants and City promptly. Schedule and conduct annual unit inspections and followup annual inspections with corrective work where required.
4. Hire, train and supervise all staff needed to effectively manage the community and provide a description of the staffing plan to Owner. Maintain access to multi-lingual resources to assist with applicants and tenants of Limited English Proficiency, said access may be accomplished through a "language hotline" or similar service so long as it's responsive to the needs of Owner, applicants and tenants.
5. Develop and maintain a list of qualified prospective renters. Develop and maintain a list of backup renters. Accept applications for apartment homes and maintain eligibility standards. Maintain preference lists as specified. Seek to maintain full occupancy with a minimum of vacancies.
6. Prepare an affirmative fair housing marketing plan. Prepare and circulate marketing materials; e.g. advertisements, brochures, displays, disclosure documents, contracts and program web site. Participate in community meetings as requested.
7. Analyze and review financial requirements for operations with the City of Marina; prepare annual budget recommendations for Owner. Work within the approved budget; obtain owner authorization for variances from the budget. Analyze and prepare multi-year capital improvements plan and make recommendations to City about financing and implementation of the plan.
8. Develop and implement written office procedures; train and supervise office and leasing personnel.
9. Maintain financial records including, but not limited to, the tracking of receipts and deposits, journal entries, bank deposits, accounts payable and accounts

receivable. Generate monthly financial reports. Prepare required periodic reports to Owner.

10. Report periodically to Agent to ensure that Agent is properly informed (through regular contact and periodic formal meetings) as to the current status of all operations so that the Agent City may make proper and timely decisions on all strategic matters.
11. Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Board approval. Continually inspect property, recording deficiencies and taking necessary action within budgetary allocations.
12. Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter, in format and content approved by the City. Participate in meetings and events with tenants as requested.
13. Explore opportunities for coordination/joint programs with housing developments at California State University-Monterey Bay.
14. Other duties as needed.

EXHIBIT B
Preston Park Management Agreement
July 1, 2007

AFFORDABLE RENTAL RATES

	2 BR – Household of 3	3BR – Household of 4	4BR – Household of 5
Area “Very Low” Income-	\$29050	\$32250	\$34850
VL Max. Monthly Affordable Housing Cost (50% of Median at 30% housing cost)¹	\$726	\$806	\$871
Utility deduction (including sewer and water)²	(\$91)	(\$99)	(\$117)
Net Max. VL Monthly Rent	\$635	\$707	\$754
	2 BR – Household of 3	3BR – Household of 4	4BR – Household of 5
Area Median Income-	\$57100	\$63400	\$68500
Low (60%) Max. Monthly Affordable Housing Cost (60% of Median at 30% housing cost)¹	\$856	\$951	\$1027
Utility Deduction (including sewer and water)²	(\$91)	(\$99)	(\$117)
Net Max. Low Monthly Rent	\$765	\$852	\$910

¹Maximum gross rent calculated using income limits published by HCD

² Assumes that the following utilities are paid by the tenants: natural gas for heating, cooking, and water heating, water, sewer, and trash collection, and electricity for other appliances.

EXHIBIT "C"
Preston Park Management Agreement

MANAGEMENT STRUCTURE

The Senior Management Team for Preston Park and Abrams Park:

Regina Leachman, Regional Manager
Greg Beeler, Regional Maintenance Supervisor
Kelly Ogan, Regional Training Manager
Amy Guerrero, Regional Marketing Manager
Kellie Hughes, Vice President of Operations

Regina Leachman, Regional Manager, has an office at Schoonover Park. She will be at the communities at least two days a week and will have the capacity to spend additional time as needed. Regina will be responsible for all compliance training related to the approved below market rate rental program.

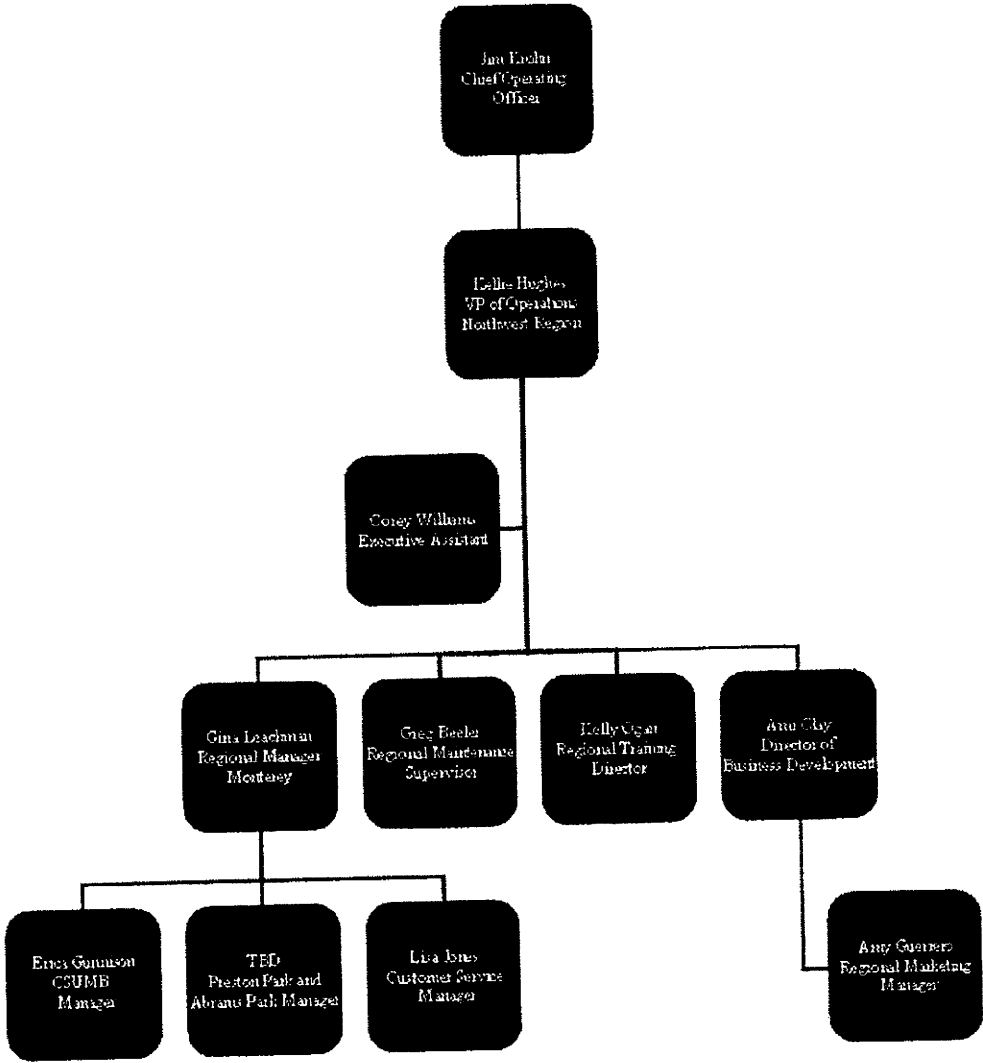
Greg Beeler, Regional Maintenance Supervisor, will perform monthly site inspections in addition to overseeing any capital projects that require completion. Greg will spend no less than two days per month at the community and possibly more depending on the capital project requirements.

Kelly Ogan and **Amy Guerrero**, Regional Training Manager and Regional Marketing Manager, will spend no less than one day each month at the site providing leasing and customer service training and marketing resources. Kelly and Amy are also available on an as needed basis for one-on-one training.

Kellie Hughes, Vice President of Operations, will be at the site no less than once per month.

The team above is available to meet with the City of Marina as needed. Owner is to provide operator with an annual calendar of expected meetings during transition period.

Organizational Chart – Monterey Region



Ernie Gunnison and Abramo Park Management

Agreement

EXHIBIT D
Preston Park Management Agreement

TENANT GRIEVANCE PROCEDURE

How do I submit a request for service, provide feedback or log a complaint?

1. A toll free number will be established for the residents to call when they have issues to resolve. This number will be published via the resident newsletter, refrigerator magnets, and reviewed with the residents upon move-in. Additionally, the staff will give this number to the resident if the resident calls the main office telephone number at either Preston or Abrams.
2. A customer service email address will be available to the residents for email requests and complaints. The email address will be MarinaCustomers@allresco.com.
3. A "We Care" hotline will be established for any residents that wish to provide anonymous feedback.
4. The residents also will be able to submit requests in writing to the office at Preston or Abrams and the request will be turned over to the Customer Service Center.
5. There will be a Customer Service Representative available at the Customer Service Center to answer the resident's calls 7-days a week with the exception of approved holidays. A maintenance emergency number will be available after hours and on holidays in the event of a maintenance issue.
6. All resident issues will be resolved within the guidelines set by the City of Marina, Alliance Residential Company, and State and Federal Fair Housing Laws.
7. All requests for maintenance will be responded to within 24-hours. If the repair or request requires a part or vendor, the repair may not be completed within 24 hours; however the resident will receive a response and status update within 24 hours.
8. All requests submitted to the Customer Service Center will be responded to within 24-hours. Please note that resolution may take longer than 24-hours depending upon the nature of the submission, however the resident will be contacted within 24-hours to begin the resolution process.
9. The Customer Service Representative will track the issues in order to determine if any issues become pervasive. If this occurs, the issue will be brought to the attention of the Customer Service Manager. The Customer Service Manager will coordinate with the Community Manager and the Regional Manager to determine the best course of action.

What if my request is not handled to my satisfaction?

1. If your request cannot be resolved by the Customer Service Representative, you may request to speak with, or contact the Customer Service Manager. The customer service manager will act as your liaison with the Community Manager and, if needed, the Regional Manager/VP of Operations to ensure your request is handled to your satisfaction.
2. If you have a claim for damages that requires mediation, Alliance Residential Company will provide you with a claim form to submit to a third party resident service department. The third party company will work with you to resolve your claim for damages.
3. Alliance Residential Company will contact the Owner or Owner's designated representative prior to submitting the claim to the third party resident services department. The City of Marina will have the opportunity to mediate the claim prior to submission and will have final approval of any settlement.

AMENDMENT # 1
TO
~~ALLIANCE RESIDENTIAL, LLC~~ *JK* *(u)*
Alliance Communities, Inc.
MANAGEMENT AGREEMENT FOR PRESTON PARK

This Amendment to the Management Agreement for Preston Park shall be effective as of July 1, 2010. In consideration of the mutual promises contained herein, Fort Ord Reuse Authority (FORA) and the City of Marina as Agent for FORA (collectively referred to in the Agreement as "Owner") and ~~Alliance Residential, LLC~~ (referred to in the Agreement as "Operator") agree that the Terms and Conditions set forth herein are incorporated into the Management Agreement for Abrams Park between Owner and Operator, dated December 7, 2007. Only the modified paragraphs of said Agreement are set forth in this Amendment.

JK
Alliance
Communities
Inc.
(u)

Paragraph 4.2(c) is hereby modified as follows:

4.2(c) Audit. Operator shall arrange and coordinate audits of the books and records of the Property made by a firm of Certified Public Accountants approved by Owner. The first audit shall cover eighteen (18) months from January 1, 2008 through June 30, 2009. Subsequent audits shall cover two-year periods beginning July 1, 2009; except that if the Agreement is terminated before the end of any two-year audit period, said audit shall be conducted through the date of termination. Operator shall also prepare, or have ~~accountants~~ prepare, for execution by Owner all forms, reports, and returns required by any federal, state, county or municipal authority relating to the Property. The cost of said audits is a cost of the Property that shall be reflected in the annual budget approved by Owner.

JK
A Firm
of
Certified
Public
Accountant

FORT ORD REUSE AUTHORITY &
CITY OF MARINA

By: *Anthony Altfeld* *9-20-10*
Name: Anthony Altfeld
FOR A Agent/ City Manager

By: *Michael Houlemaud*
Name: Michael Houlemaud
FOR A Executive Director

OPERATOR

By: *James M. Kralin*
Name: *JAMES M. KRALIN*
Title: *CHIEF OPERATING OFFICER*
Alliance Communities Inc.
Date: *OCTOBER 18, 2010*

(u)
(u)

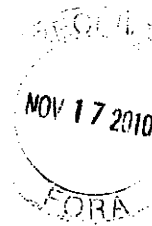
ATTEST: (Pursuant to Resolution. 2010-108)

By: *Amie Strawn*
City Clerk

Approved as to form:
By: *Scott Babin*
City Attorney

Reviewed:
By: *[Signature]*
Risk Manager

CITY OF MARINA



Serving a World Class Community

MEMORANDUM

DATE: November 15, 2010
TO: MICHAEL HOULEMARD, EXECUTIVE OFFICER
FROM: Jennifer Coile, Interim Housing Coordinator
RE: PRESTON PARK: AMENDMENT NO. 1 TO MANAGEMENT AGREEMENT WITH ALLIANCE

Enclosed are two original copies of Amendment No. 1 to the Management Agreement for Preston Park. When Alliance signed the Agreement, they made some additional changes and initialed them. City Manager Anthony Altfeld agreed with the changes so added his initials. If you concur with the changes, please initial, then retain one of the two originals for your records and return the other original to me. Thank you.

Enc.

Cc: Ivana Bednarik, Controller
Steve Endlsey, Director of Planning and Finance
Douglas Yount, Director of Development Services

**AMENDMENT NO. 2 TO MANAGEMENT AGREEMENT
FOR PRESTON PARK HOUSING AREA**

This Amendment No. 2 ("Amendment") to the Management Agreement by and between the Fort Ord Reuse Authority (FORA), a California public entity, hereinafter referred to as "Owner," Alliance Communities Inc, a Delaware corporation, hereinafter referred to as "Operator," and the City of Marina, a California charter city, hereinafter referred to as "Agent," is made and entered into as of the 21st day of December 2010. Only the numbered paragraph of said Agreement which is being amended or deleted is set forth in this Amendment.

Recitals

A. On December 7, 2007, the Owner and Agent entered into an Agreement ("Agreement") with Operator for services related to management of the property commonly known as Preston Park consisting of 354 units ("Units") [2 are used for management purposes] located at 682 Wahl Court, Marina, CA 93933 (the "Property").

B. Effective May 14, 2009, the Agreement was assigned to Alliance Communities, Inc., and;

C. On July 7, 2010, Owner, Agent and Operator approved Amendment No. 1 to the Management Agreement.

D. On December 14, 2010, the Owner, Agent and Operator approved Amendment No. 2 to the Management Agreement.

Terms and Conditions

In consideration of the mutual promised contained herein, Owner, Agent and Operator agree that the terms and conditions set forth herein are incorporated into the Agreement.

1. Section 2.1. Term is amended to read as follows:

The term of this Agreement shall commence on January 1, 2008, unless an earlier date is agreed to by the City, current operator and Operator, and shall continue and include December 31, 2011 unless terminated as provided herein or extended in writing by mutual agreement thereto.

All other provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

This Amendment may be signed in counterparts, each of which shall constitute an original.

OWNER:
FORT ORD REUSE AUTHORITY

By: 
Michael A. Houlemard, Jr. Executive Officer

Date: December 17, 2010

AGENT:
CITY OF MARINA

By: _____
Anthony J. Altfeld, City Manager

Date: December __, 2010

Attest: (Pursuant to Resolution: 2010-198

By: _____
Acting Deputy City Clerk

Approved as to Form

City Attorney

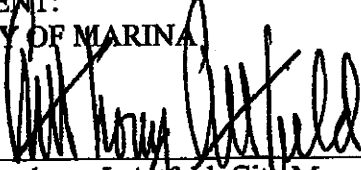
By: _____
Risk Manager

OPERATOR:

ALLIANCE COMMUNITIES INC.

By: James M. Krohn
Name: James M. Krohn
Title: Chief Operating Officer
Date: December 17, 2010

AGENT:
CITY OF MARINA


By: 
Anthony J. Altfeld, City Manager

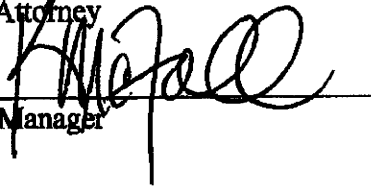
Date: December 14, 2010

Attest: (Pursuant to Resolution: 2010-198

By: 
Acting Deputy City Clerk

Approved as to Form


City Attorney

By: 
Risk Manager

OPERATOR:

ALLIANCE COMMUNITIES INC.

By: _____
Name: James M. Krohn
Title: Chief Operating Officer
Date: December , 2010

CITY OF MARINA

**AMENDMENT NO. 3 TO MANAGEMENT AGREEMENT
FOR PRESTON PARK**

This Amendment No. 3 (“Amendment”) to the Management Agreement by and between the Fort Ord Reuse Authority (FOR A), a California public entity, hereinafter referred to as “Owner,” Alliance Communities Inc, a Delaware corporation, hereinafter referred to as “Operator,” and the City of Marina, a California charter city, hereinafter referred to as “Agent,” is made and entered into as of the ____ day of _____ 2011. Only the numbered paragraphs of said Agreement which are being amended or deleted are set forth in this Amendment.

Recitals

- A. On December 7, 2007, the Owner and Agent entered into an Agreement (“Agreement”) with Operator for services related to management of the property commonly known as Preston Park consisting of 354 units (“Units”) [2 are used for management purposes] located at 682 Wahl Court, Marina, CA 93933 (the “Property”).
- B. Subsequent to execution of the Agreement on December 7, 2007, the Agent has taken certain actions to approve policies that result in inconsistencies in the Agreement.
- C. On November 24, 2008, the Agent and Owner executed a Project Management Agreement for Preston Park Capital Project.
- D. On July 7, 2010, the Agent and Owner approved Amendment No. 1 to the Management Agreement.
- E. On December 14, 2010, the Agent and Owner approved Amendment No. 2 to the Management Agreement.

Terms and Conditions

In consideration of the mutual promised contained herein, Owner, Agent and Operator agree that the terms and conditions set forth herein are incorporated into the Agreement.

- 1) Section 3.3 Incentive Fee is deleted in its entirety.
- 2) Section 3.4. Capital Improvement Management Fee is amended to read as follows:

“3.4

Capital Improvement Management Fee. Each year in the annual budget process, the Operator shall submit a Capital Improvements Program describing recommended capital improvements. The Owner and Agent shall approve in writing the Capital improvement projects to be implemented each Fiscal Year. Owner will pay to Operator a construction management fee equal to six percent (6%) of the total cost set forth in an executed written proposal or agreement, as approved by Owner, as increased or decreased by all change orders relating thereto. An initial payment of ten percent (10%) of construction costs shall be made upon execution of a written proposal or agreement, and services shall be computer and paid based on monthly invoices describing the work performed by the project manager. Such fees will be paid from Capital Reserve funds. Approval of the construction manager by Owner or Owner’s designee shall be

obtained by Operator prior to commencement of any capital improvements as defined in this Section 3.4.

A capital item is distinguished from maintenance in that it has the effect of extending the useful life of a fixed asset, whereas repairs and maintenance have the effect merely of keeping the asset in its customary state of operating efficiency. Minor improvements to structures or site involving a total expenditure of less than Five Thousand Dollars (\$5,000) are not considered a capital improvement. The replacement of structural elements, even if they cost more than Five Thousand Dollars (\$5,000), i.e., slurry seals, due to normal wear and tear are considered non-routine maintenance and not a capital improvement because they do not extend the useful life the property. "Extraordinary maintenance," referring to those emergency items that need immediate replacement prior to the capital planned schedule for replacement, are provided for in the annual budget so that urgent replacements or repairs may be addressed immediately rather than delaying until the scheduled larger capital project.

Routine maintenance: Simple, small-scale activities (usually requiring only minimal skills or training) associated with regular (daily, weekly, monthly, etc.) and general upkeep of a building, equipment, machine, plant, or system against normal wear and tear.

Examples: Those items listed in the budget of which are classified as general Repairs and Maintenance.

Non-routine maintenance: Activities that require specialized skills or training that are associated with irregular or out of the ordinary upkeep of a building, equipment, machine, plant, or system.

Examples: Slurry Seal, Carpet and Flooring Replacements, Modest roof repairs, Gutter repairs, dryer vent cleaning.

Capital work/construction: Complex or larger scale activity associated with buildings, structures, or other types of real property or improvements including alterations, painting, remodeling, transportation of construction and furnishing goods and material etc.

Examples: Replacement of windows, Exterior building repaint, Interior Unit remodeling or remediation, re-plumbing projects, Signage development, Roof replacement.

3) Section 4.2(b)(i) is amended to read as follows:

“ 4.2(b)(i)

Operator shall maintain at its principal office or on the Property, complete and separate books, records and documents relating to the management and operation of the Property, including without limitation all contracts, original leases, amendments, extensions and agreements relating to contracts and leases, annual contributions contracts, files, correspondence with tenants and prospective tenants, documentation of tenant eligibility, computations of rental adjustments, maintenance and preventive maintenance programs, schedules and logs, tenant finish and construction records, inventories of personal property and equipment, correspondence with vendors, job descriptions, correspondence with federal, state, county, and municipal authorities, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as “Books, Records, and Documents”). Books and records of account shall be maintained in conformance with generally accepted accounting principles consistently applied at Operator’s sole expense. Except as approved in writing by Owner, all accounting

functions shall be performed by those personnel of Operator whose compensation is payable solely by Operator without reimbursement by Owner. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office with written advance notice of two business days."

3. Section 4.2 (b)(iii) is amended to read as follows:

"4.2(b)(iii)

Operator shall provide a standard Financial Reporting Package to Owner by the 15th day of each month during the Term for the preceding month. The Financial Reporting Package shall include: Operations Summary, Variance Analysis, Market Survey, Income Statement, Balance Sheet, Projected Cash Flow, Trial Balance, Bank Reconciliation, Trust Account Bank Statement, Aged Receivables, Capital Expenditures Statement, Request for Reserves Withdrawal, report of all disbursements, General Ledger detail report of all transactions in all accounts, summary of tenant comments and complaints, and a summary of any Tenant's Association meeting that occurs during the period in question. All reporting will utilize Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing."

4. Section 4.2 (e) (iii) is amended to read as follows:

"4.2(e)(iii)

Applicants for the Units must qualify based upon the applicant's ability to pay and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. Fifty one (51) of the Units are to be rented at below market rate affordable rents ("Affordable Rents") as required by the Regulatory Agreement. The Affordable Rents are set forth in Exhibit B and may be amended annually. Any increase in the Affordable Rents shall be subject to the approval of Owner. Applicants of units to be rented at the Affordable Rents must meet the same requirements as above, as well as qualify based upon maximum income limits and minimum occupancy guidelines according to rules and regulations promulgated by the State of California."

4) Section 4.2 (e)(iv) is amended to read as follows:

"4.2(e) (iv)

Operator shall select tenants for available units as follows:

(A) Notwithstanding the provisions of the Section 6.2 of the Regulatory Agreement, Operator shall first offer and rent available units to applicants on the basis of the following preferences, which have been determined by Owner and for which an applicant must qualify at the time of initial occupancy of a unit. No more than a total of 35% of the housing units shall be offered for lease at any one time on the basis of the preferences listed in (B) – (E) below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner's tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria. For all preferences, a letter from the applicant's employer verifying the applicant's eligibility will be required when submitting the application. Incomplete applications will not be accepted.

(B) **FIRST PREFERENCE:** People who work at least twenty five (25) hours per week in a business or agency with a physical location within the City of Marina limits. Sales people or consultants who do business in Marina, but who do not have a physical location in Marina will not be considered as working in Marina.

(C) **SECOND PREFERENCE:** Employees of public safety departments, including police, fire, and public works employees of government jurisdictions in Monterey County.

(D) **THIRD PREFERENCE:** Employees of public or private education facilities, including colleges and universities located in Marina, on the former Fort Ord, and employees of the Monterey Peninsula Unified School District.

(E) **FOURTH PREFERENCE:** Employees of entities located on property known as “the former Fort Ord.” A letter from the employer stating that the physical location where the applicant works is in this area must be provided.”

(F) **Affordable Units.** Notwithstanding the foregoing, preferences (B), (C), (D) and (E) will be subordinate to the affordability requirements contained in paragraph (iii) above. In addition, said preferences will be subordinate to the requirement that, on average, twenty percent (20%) of the housing units at the Property will be affordable units.”

(G) **Rental Agreements.** The prior Operator prepared and submitted to Owner for its approval and Owner has approved said rental agreements which shall be used by Operator for the property. If Operator desires to change the approved rental agreements, Operator shall seek Owner’s comments and approval of the terms and conditions thereof. Owner’s approval of the proposed rental agreements shall not be unreasonably withheld.”

5) Section 7.1(C) is amended to read as follows:

“7.1 (C)

The designated broker for Operator shall be an authorized signer on the Trust Account, the Security Deposit Trust Account, and the Reserve Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. For purposes of Section 7.1 I, the name of the designated broker shall be communicated by Operator to Owner in writing. Authorized signatories on such accounts shall have authority to make disbursements from such accounts for the purpose of fulfilling Operator’s obligations hereunder. Funds over Five Thousand Dollars (\$5,000.00) may be withdrawn from such accounts in accordance with this Article VII, only upon the signature of at least two (2) individuals who have been granted that authority by Operator. All persons who are authorized signatories or who in any way handle funds for the Property (on-site or off-site) shall be insured for dishonesty in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence or loss with not more than a Twenty Five Thousand Dollars (\$25,000.00) deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date.”

6) Section 7.1 is amended to add Section 7.1(f) to read as follows:

“7.1.(f)

Operator shall establish a separate bank account (‘Reserve Account’) at a depository selected by Operator as agent for Owner, for the purpose of depositing funds for the Property in amounts Owner shall instruct and in such name as Owner shall designate. Deposits shall conform in all respects to depository and security requirements pertaining to Local Agency cash contained in California Government Code Title 5., Division 2., Part 1., Chapter 4., Article 2., Sections 53630 to 53686. To the extent sufficient funds are available, Operator shall promptly deposit funds in amounts instructed by Owner into the Reserve Account, and shall not deposit funds belonging or attributable to any other party or property into the Reserve Account. Operator shall execute and submit to Owner copies of bank documents demonstrating that funds deposited in the Reserve Account are held in trust for Owner. Operator shall not withdraw funds from the Reserve Account without express written consent of Owner.

7) Exhibit B is amended to read as follows:

“EXHIBIT B. AFFORDABLE RENTAL RATES

Rates may be established each year.”

8) Exhibit C is amended to add a section to read as follows:

“Every year on June 1, Alliance will provide the names of the people associated with the management positions as described on the organization chart. “

9.. Exhibit D is amended to read as follows:

“EXHIBIT D, GRIEVANCE PROCEDURE

Note: All resident issues will be resolved within the guidelines set by the City of Marina, Alliance Communities Inc., and State and Federal Fair Housing Laws.

12-15-10
PRESTON AND ABRAMS PARKS
GRIEVANCE PROCEDURE

I. Definitions applicable to the grievance procedure

- A. **Grievance:** Any dispute pertaining to a lease violation, maintenance charge or other disagreements with respect to Management's action or failure to act in accordance with the individual Tenant's lease or Management's Policies or regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. **Elements of due process:** An eviction action or a termination of tenancy in a State court in which the following procedural safeguards are required:
 - 1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
 - 2. Right of the Tenant to be represented by counsel;
 - 3. Opportunity for the Tenant to refute the evidence presented by Management, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
 - 4. A decision on the merits of the case.
- C. **Hearing Officer:** A neutral party selected by the City of Marina to hear grievances and render a decision. The City of Marina has selected the Conflict Resolution and Mediation Center of Monterey County to be the Hearing Officer for grievances at Preston and Abrams Parks. If the Mediation Center of Monterey County is not available for the Grievance Hearing, the City of Marina shall choose another Hearing Officer who is a neutral third party not involved in the management decisions at Preston and Abrams Parks and has experience and knowledge of management practices and procedures for comparable properties and has experience in mediation.
- D. **Tenant:** The adult person (or persons other than a live-in aide) who resides in the unit at Preston or Abrams Parks and who executed the lease with Alliance Residential or its predecessor(s).
- E. **Management:** The property management company for Preston and Abrams Parks is Alliance Residential.
- F. **Management Policies:** Rules and/or regulations contained within the Tenant's valid and most recent lease and any subsequent amendments thereto.
- G. **Working days:** For the purpose of these procedures, working days means the scheduled working days of the City of Marina.
- H. **Tenant's designated representative:** A person that the Tenant has designated in writing to represent him/her in this grievance procedure or a legal document naming a person that represents the Tenant in such matters. The written designation along with the address and contact information for designated representative shall be placed in the Tenant's file. All

correspondence related to this grievance procedure shall be distributed to both the Tenant and the designative representative.

II. Applicability of this grievance procedure

The purpose of this Grievance Procedure is to set forth the requirements, standards and criteria to assure that Tenants of Preston and Abrams Parks have a procedure to dispute an act or failure to act by Management (see above for definition of grievance). The Grievance Procedure only applies to grievances lodged by Tenants who lived at Preston or Abrams Parks at the time the alleged dispute occurred.

This grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between a Tenant and Management. The right to a grievance shall apply to disputes over the application of Management's policies to the detriment of a Tenant but shall not apply to the Management policies, class action lawsuits or evictions. Management policies may be discussed with the City of Marina Housing Coordinator. Class action lawsuits and evictions are heard in a court of law and receive due process in that manner.

The grievance procedure may not be used as a forum for initiating or negotiating policy changes between a group or groups of tenants and the City of Marina and/or the Fort Ord Reuse Authority (for Preston Park only). Such requests may be made to the City of Marina Housing Coordinator.

III. Filing a Grievance and Informal Meeting

Any grievance must be made in writing at the Alliance Residential Management Office, located at 682 Wahl Court, Marina, CA 93933, **within twenty (20) working calendar days after the grievable event.**

As soon as the grievance is received it will be reviewed by Management to be certain that neither of the exclusions in Paragraph II applies to the grievance. Should one of the exclusions apply, the Tenant or designated representative will be notified in writing that the matter raised is not subject to this grievance procedure, with the reason(s), that the grievance is dismissed and appropriate venue for the Tenant or designated representative to contact.

If neither of the exclusions cited above apply, the Tenant or designated representative will be contacted **within ten (10) working days** to arrange a mutually convenient time to meet so the grievance may be discussed informally and resolved. Management will assign a Staff Representative (usually the Business Manager) to meet with Tenant or designated representative to discuss the grievance informally and attempt to resolve the matter without a further hearing. At this informal meeting the Tenant or designated representative will present the grievance and the Staff Representative will attempt to resolve the grievance to the satisfaction of both parties.

Within **five (5) working days following the informal meeting**, Management shall prepare and either hand deliver or mail to the Tenant or designated representative a summary of the discussion that must specify: the names of the Tenant(s) and all participants at the meeting, the date(s) of meetings, the nature of the grievance, the proposed disposition of the grievance and the specific reasons, and the Tenant's rights to a Grievance Hearing, and, if not satisfied with the disposition of the grievance, the procedure to either respond and have comments placed in the Tenants file or request a Grievance Hearing. A copy of this summary shall also be placed in the Tenant's file. A receipt signed by the Tenant or designated representative or return receipt for delivery of certified mail, whether signed or unsigned, will be sufficient proof of time of delivery for the summary of the informal discussion.

IV. Grievance Hearing

If the Tenant is dissatisfied with the proposed disposition of the grievance arrived in the informal meeting, the Tenant or designated representative may submit a written request for a Grievance Hearing no later than **ten (10) working days after the summary of the informal meeting is received**.

A Tenant's request for a Grievance Hearing shall be addressed to the Regional Manager c/o Alliance Residential, 682 Wahl Court, Marina, CA 93933. The written request shall specify:

- The factual basis for the grievance, including any sections of the Tenant's lease or written Management policies allegedly violated;
- The action of relief sought from Management; and
- Several dates and times **in the following fifteen (15) working days** when the Tenant or designated representative can attend a grievance hearing.

If the Tenant or designated representative requests a Grievance Hearing in a timely manner, Management shall schedule a hearing on the grievance at the earliest time possible for the Tenant or designated representative, Management and the Hearing Officer. A written notice specifying the time, place and procedures governing the hearing will be either hand delivered or mailed to the Tenant or designated representative.

If the Tenant or designated representative fails to request a Grievance Hearing **within ten (10) working days** after receiving the proposed disposition of the grievance, Management's decision rendered at the informal meeting becomes final and Management is not obligated to offer the Tenant or designated representative a Grievance Hearing unless the Tenant or designated representative can show good cause why s/he failed to proceed in accordance with the procedure. Failure to request a Grievance Hearing does not affect the Tenant's right to contest the Management's decision in court.

V. Scheduled hearing

When a or designated representative submits a timely request for a grievance hearing, Management will, **within three (3) working days**, contact the Hearing Officer to schedule the hearing on one of the dates and times indicated by the Tenant or designated representative. If the Hearing Officer is not available for one or more of the times provided by the Tenant or designated representative during those ten working days, Management will schedule a convenient time for the Grievance Hearing for all parties as soon as possible.

VI. Procedures governing the Grievance Hearing

The Tenant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the hearing any Management documents, including records and regulations, that are directly relevant to the hearing.
- B. The Tenant or designated representative shall be allowed to copy any such documents. If Management does not make the document available for examination, Management cannot rely on such document at the grievance hearing.
- C. The Tenant may be represented by counsel or other person chosen as the Tenant's representative, at the Tenant's expense. Management may be represented by counsel. The Tenant, or the designated representative, must be present at the scheduled hearing.

- D. The right to present evidence and arguments in support of the Tenant's complaint and to controvert evidence relied on by Management and to confront and cross examine all witnesses upon whose testimony or information Management relies; and
- E. A decision based solely and exclusively upon the facts presented at the hearing.

The hearing shall be conducted informally by the Hearing Officer. Oral or documentary evidence pertinent to the facts and issues raised by the Tenant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings provided that such information is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.

The Hearing Officer shall require Management, the Tenant or designated representative, counsel and other participants to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer to maintain order may result in exclusion from the proceedings.

The Hearing Officer will hear evidence provided by both the Tenant or designated representative and Management and will review appropriate policies, regulations, lease, etc.

VII. Failure to appear at the hearing

If either the Tenant or designated representative or Management fails to appear at the scheduled hearing, the Hearing Officer may postpone the hearing **for another date not to exceed five (5) working days**. In the event that Management fails to appear at the re-scheduled hearing, the Hearing Officer shall make his/her decision based on the record including anything submitted by the Tenant or designated representative. In the event that the Tenant or designated representative fails to appear at the re-scheduled hearing, the Tenant is deemed to have waived his/her right to a hearing.

Both the Tenant or the designated representative and Management shall be notified of the determination by the Hearing Officer; provided, that a determination that the Tenant has waived his/her right to a hearing shall not constitute a waiver of any right the Tenant may have to contest Management's disposition of the grievance in court.

VIII. Decision of the Hearing Officer

The Hearing Officer shall prepare a written decision, together with the reasons for the decision **within fifteen (15) working days after the hearing**. Any delay on the part of the Hearing Officer in submitting the written decision will not invalidate this process. A copy of the decision shall be sent to the Tenant or designated representative, Management and the City of Marina's Development Services Department. Management shall retain a copy of the decision in the Tenant's folder.

The decision of the Hearing Officer shall be binding on Management, which shall take all actions, or refrain from actions, necessary to carry out the decision unless the City of Marina determines **within ten (10) working days** after receiving the written decision, and promptly notifies the Tenant or the designated representative of its determination that:

- A. The grievance does not involve Management's action or failure to act in accordance with the Tenant's lease or the property's policies, which adversely affect the Tenant's rights, duties, welfare or status.
- B. The decision of the Hearing Officer is contrary to applicable Federal, State or local law or City of Marina policy or regulation.

A decision by the Hearing Officer or the City of Marina which denies the relief requested by the Tenant in whole or in part shall not constitute a waiver of, nor affect in any way, the rights of the Tenant to judicial review in any court proceedings which may be brought in the matter later.

This Grievance Procedure does not preclude the Tenant from exercising his/her rights, including those rights pertaining to alleged discrimination on the basis of race, color, creed, religion, sex, age, disability, sexual orientation, familial or marital status, ancestry or national origin.

I acknowledge that I have received a copy of this Grievance Procedure.

_____ Date _____
Signature _____
Print Name _____
Address _____

All other provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

OWNER:
FORT ORD REUSE AUTHORITY

By: _____
Michael A. Houlemard, Jr. Executive Officer

Date: ____, 2011

AGENT:
CITY OF MARINA

By: _____
Anthony J. Altfeld, City Manager

Date: ____, 2011

Attest: (Pursuant to Resolution: 2011-

By: _____
City Clerk

Approved as to Form

City Attorney

Risk Manager

OPERATOR:

ALLIANCE COMMUNITIES INC.

By: _____

Name: _____

Title: _____

Date: _____, 2011

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: Electronic Distribution of Board Packets

Meeting Date: April 8, 2011

Agenda Number: 7a

ACTION

RECOMMENDATION:

Authorize the Executive Officer to implement electronic distribution of Fort Ord Reuse Authority ("FORA") Board meeting packets.

BACKGROUND:

Since FORA's inception, Board packets have been delivered as paper copies to its members and other recipients via US postal and/or courier service. Several Board members have approached staff inquiring about electronic Board packet distribution. FORA staff concurs that electronic distribution is more efficient and both cost and time effective. It is also consistent with current FORA Board member agency and jurisdiction practice.

DISCUSSION:

Following is the recommended electronic distribution process:

1. One week prior to each Board meeting, the Electronic Board Packet will be posted in a PDF format on the FORA website (www.fora.org).
2. One week prior to each Board meeting, FORA Board members will be emailed the Agenda and a web link to the Board packet to the email address/addresses provided to FORA staff.
3. Paper Board packets will be mailed to members who prefer mail delivery.

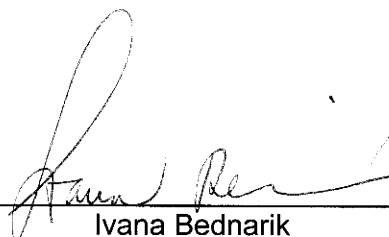
FISCAL IMPACT:

FORA's "DocStar" computer software system for electronic scanning allows staff to upload Board packet information to the website. An initial investment of about \$7 thousand dollars will upgrade the system to achieve the required speed and print quality. The equipment upgrade is included in the approved FY 10-11 budget and will be offset by cost savings such as; labor, paper, delivery, postage, and copying costs.

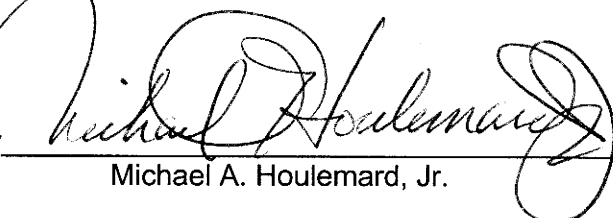
COORDINATION:

Executive Committee

Prepared by


Ivana Bednarik

Approved by


Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Outstanding Receivables

Meeting Date: April 8, 2011

Agenda Number: 8a

INFORMATION/ACTION

RECOMMENDATIONS:

- I. Receive a Fort Ord Reuse Authority (FORA) outstanding receivables update as of March 31, 2011.
- II. Provide direction to staff regarding the unpaid Neeson Road development fees.

BACKGROUND/DISCUSSION:

FORA has several significant outstanding receivables. FORA Late Fee policy requires receivables older than 90 days be reported to the Board.

	Item Description	Amount Owed	Amount Paid	Amount Outstanding
1	City of Del Rey Oaks PLL Loan Payment 09-10	182,874	-	182,874
	PLL Loan Payment 10-11	256,023	-	256,023
2	City of Marina Tax Increment 08-09	124,232		124,232
	CFD Fees	19,617	12,165	7,452
3	City of Seaside Tax Increment 03-10	358,830	90,000	268,830
Total outstanding receivables				\$ 839,411

1. City of Del Rey Oaks (DRO)

- PLL insurance annual payments: In 2009, DRO cancelled its agreement with its project developer who previously made the PLL loan payments. The FORA Board approved a payment plan for DRO and the interim use of FORA funds to pay the premium until DRO finds a new developer (who will be required by the City to bring the PLL Insurance coverage current). DRO agreed to make interest payments on the balance owed until the new developer is secured, and they are current.

Payment status: At the February Board meeting, the DRO Mayor informed Board members about City of Del Rey Oaks effort to pursue a commercial loan to pay off this obligation.

2. City of Marina (Marina)

- CFD fee: Marina approved development entitlements for the Neeson Road projects in 2004 and 2008 without collecting the CFD/development fee as required by Section 6(a) of the FORA/Marina Implementation Agreement. Following the Board discussion of this item in September 2010, Marina, who was responsible for assuring fee collection, sent letters to the three owners of Neeson property about paying the FORA fee.

Payment status: FORA staff and Authority Counsel have spent considerable time dealing with this issue. One property owner paid (\$12.1K), the second indicated payment (\$3.5K), and the third one has disputed the obligation (\$3.9K) based on the expired statute of limitations. FORA Counsel believes this statute of limitations point may be valid.

- **Action:** Provide direction to staff regarding the uncollected and disputed \$3,994 development fee. FORA Executive Committee suggested invoicing Marina for the fee as

they did not assure the fee was collected and did not inform FORA about the Neeson Road permit issuance.

- Tax increment (TI): In the fall of 2010, as directed by the FORA Board during the Capital Improvement Program review, FORA conducted an audit of TI revenue that FORA collects from the Cities of Seaside, Marina and Monterey County. The results indicated that FORA is owed property TI payments from Seaside and Marina. Both cities acknowledged the debt.

At the March 2011 meeting, FORA Board authorized the execution of an MOA with Marina for a phased repayment of this obligation.

Payment status: The first installment payment is due May 1, 2011. The interest accrues from February 1, 2011.

3. City of Seaside (Seaside)

- Tax increment: Please see paragraph 2 above regarding Seaside tax increment underpayment.

At the February 2011 meeting, FORA Board approved an MOA with Seaside for a phased repayment of this obligation.


Payment status: Seaside paid the first installment on time (by January 31, 2011). The next installment payment is due June 30, 2011.

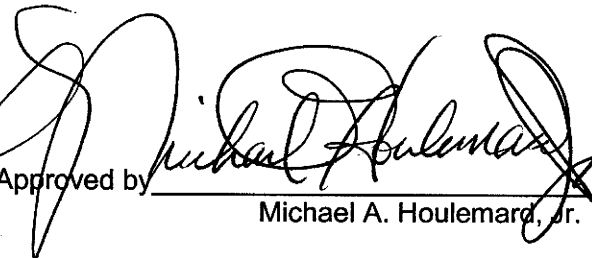
FISCAL IMPACT:

Negative. FORA is expending unbudgeted resources until these receivables are collected.

COORDINATION:

Executive Committee

Prepared by 
Ivana Bednarik

Approved by 
Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Administrative Committee Report

Meeting Date: April 8, 2011

Agenda Number: 8b

INFORMATION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

Joint Administrative Committee and Capital Improvement Program Committee meetings were held on March 2, March 23 and March 30th 2011. The approved minutes for the February 16, March 2nd, and March 23rd meetings are attached. The minutes for the March 30, 2011 will be presented at the Board meeting in May.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 10-11 budget.

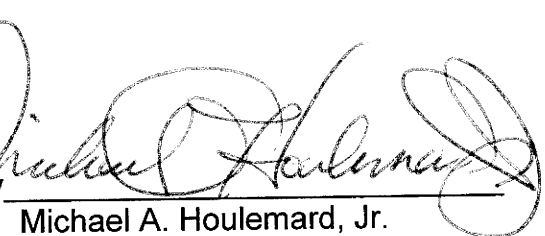
COORDINATION:

Administrative Committee

Prepared by


Daylene Alliman

Approved by


Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY

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Minutes of the Joint Administrative/Capital Improvement Program Committee Meeting Wednesday February 16, 2011

1. Call to Order at 8:15 A.M.

Administrative Committee Co-chair Doug Yount called the meeting to order at 8:20 A.M. The following people, as indicated by signatures on the roll sheet, were present:

Nick Nichols, Monterey County
John Marker, CSUMB
Bill Collins, BRAC
Daniel Dawson, City of Del Rey Oak
Graham Bice, UCMBEST
Anya Spear, CSUMB
Bob Schaffer, MCP
Patrick Breen, MCWD
Todd Muck, TAMC
Jonathan Garcia, FORA
Diana Ingersoll, City of Seaside

Tim O'Halloran, City of Seaside
Elizabeth Caraker, City of Monterey
Jim Arnold, FORA
Scott Hilk, MCP
Steve Endsley, FORA
Vicki Nakamura, MPC
Beth Palmer, Monterey Downs
Dustin Woome, Diamond West
Keith McCoy, UCP
Debby Platt, City of Marina

2. Pledge of Allegiance

Chair Yount intentionally omitted the pledge of allegiance due to a late start of the meeting.

3. Acknowledgements, Announcements and Correspondence - None

4. Public Comment Period - None

5. Approval of the February 2, 2011 Meeting Minutes

On a motion made by City of Monterey representative Graham Bice and seconded by Dan Dawson, the meeting minutes were unanimously approved.

6. Follow-up to the February 11, 2011 FORA Board Meeting – Acting Assistant Executive Officer/Director of Planning and Finance Steve Endsley reported that although the Capital Improvement Program as presented by EPS (“Economic & Planning Systems, Inc.”) was supported by the Administrative Committee the Board was not ready to take action. Mr. Endsley said that the Board asked staff to answer more questions before moving forward. He also noted that there were concerns regarding the short time frame of FORA and that perhaps the best solution would be to push out the fee reductions to the end of FORA’s life (3 years and 4 months) rather than the recommendation of the 2-year interim. There was discussion among committee members regarding the life of FORA, that a specific timetable is needed, next steps in the process, and what kind of compromises would bring officials to a decision. Scott Hilk stated that the 2-year interim fee was misleading and that the fee would never go back up, that it would go down. Graham Bice commented that there was a concern about risk regarding too much of a fee reduction. Mr. Endsley said that there could be a limit on the number of permits pulled – i.e.: 20% and understood that there might be concern that someone would get good rates now and higher rates later. Bob Schaffer said the building community does not expect changes in fees, developers expect to take risks. Co-Chair Yount stated that at the last Administrative Committee meeting there was a strong

consensus about the need to have a period of time to "right size" the fee and then look at the cost side, for example: transportation. He further commented that the extra contingency was no longer needed and could be taken out of Phase II after the immediate adjustment. He said that an analysis of the fees could be completed in Phase II and adjustments could be made as needed. Co-Chair Yount also stated that there appears to be a strong consensus of the Board to move forward. Mr. Endsley said that the Board was unclear as to when Phase II begins and a time certain is warranted. He said that the Board is comfortable with the \$29,600 fee and that the methodology works. Nick Nichols commented that this idea would only work if FORA was extended and that option was not presented to the Board. Mr. Endsley stated that the life of FORA question needs to be resolved. Mr. Hilk asked about the current FORA Community Facilities District ("CFD") and viable alternatives, especially after FORA sunsets in 2014. Mr. Endsley suggested that, since the Administrative Committee appeared to have consensus on a recommendation, briefing the elected officials on the facts was reasonable after we determine and address their concerns. Co-Chair Yount requested FORA staff develop a list of Board member questions for the Administrative Committee and that the consultant develop an outline of the proposed Phase II Study for the March 2, 2011 meeting. He concluded the discussion with the following three things that need to be addressed at the Administrative Committee prior to the March 11, 2011 Board meeting: (1.) Specific list of Board member Questions, (2.) Timeframe – what happens at the end of the 2-year interim fee period? (3.) List out scope of Phase II work. Additionally there was a brief discussion between members regarding the light rail/multimodal and roads under the Base Reuse Plan.

7. Old Business – Item 7a, Senior Planner Jonathan Garcia gave an oral report regarding the Land Use Covenants stating that University of California Santa Cruz ("UCSC") and the City of Monterey had completed their review and conversations were being held with the City of Seaside and California State University Monterey Bay ("CSUMB"). The Department of Toxic Substances Control has planned a site visit for February 25, 2011.

Mr. Garcia reported on Item 7b, regarding the Eastside Parkway Memorandum of Agreement ("MOA") timeline and said that comments received by February 28, 2011 would allow adequate time for scheduling meetings with policy makers to approve the MOA. Nick Nichols said the County was comfortable in moving forward and scheduled to move for approval. Vicki Nakamura said that Monterey Peninsula College ("MPC") thought the timeline was overly optimistic. She said MPC was concerned about the road and has hired an environmental consultant to study the impacts of the proposed roadway alignment. MPC said they would contact Mr. Garcia later regarding their anticipated schedule in providing comments. John Marker said that CSUMB is not sure about returning their comments by February 28, but would look into it. Todd Muck said that TAMC was curious as to why there was no Class 2 bike lane described in Exhibit B. Nick Nichols said that there are 8-foot shoulders (serving as a function of a Class 2 bike lane) and that the Sea Otter Classic and other stakeholders would be working with the County. There was brief discussion between members regarding the roadway.

Mr. Garcia completed his presentation to the members regarding Item 7c with a report from Resource Agencies meeting held February 9, 2011 stating he met with the Ventura office of the U.S. Department of Fish and Wildlife ("USFWS") and FORA's HCP Consultant Inner City Fund International ("ICF"). USFWS had comments regarding the conservation strategy and funding chapters (5 and 9). USFWS is requesting that there be a reorganization of chapters 5 and 9 including an update to the current cost model. The requested reorganization of these chapters would largely result in a re-wording and editing out redundancies. Mr. Garcia said that a follow-up conference call was scheduled for February 24, 2011 to bring California Department of Fish and Game ("CDFG") up to speed with the se requested changes. Co-Chair Yount requested a summary of the conference call be shared with the FORA Administrative Committee. Mr. Endsley reported that CDFG is now committing their staff to the HCP review.

8. New Business – Mr. Endsley reported that in accordance with the Operating Protocol for the

FORA Administrative Committee (document distributed), there shall be two officers of the Administrative Committee. They shall be the Co-Chairs: the FORA Executive Officer and a City or County Manager, or his or her designee. The City or County Manager Co-Chair, or his or her designee, may serve as Co-Chair for no more than six months at a time. The FORA Executive Officer will recommend a City or County Manager to serve as Co-Chair, and the members will approve, or disapprove, the recommendation. It is the intention of this protocol to allow each city manager or the county manager an opportunity to serve as Co-Chair of the Administrative Committee. On behalf of the Executive Officer, Michael Houlemard, Mr. Endsley recommended Del Rey Oaks City Manager Daniel Dawson. Nick Nichols motioned for acceptance of the recommendation, Graham Bice seconded and the vote was unanimous. Mr. Dawson said he would be honored to serve in this capacity and accepted the appointment.

9. Adjournment - The meeting was adjourned at 9:55 A.M.

Meeting minutes prepared by Daylene Alliman, Deputy Clerk

APPROVED

FORT ORD REUSE AUTHORITY

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Marina, CA 93933

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Minutes of the

Joint Administrative/Capital Improvement Program Committee Meeting

Wednesday March 2, 2011

1. Call to order at 8:15 a.m.

Administrative Committee co-chair Daniel Dawson called the meeting to order at 8:15 a.m. The following people, as indicated by signatures on the roll sheet, were present:

Nick Nichols, County of Monterey
Diana Ingersoll, City of Seaside
Rob Robinson, BRAC
Jim Arnold, FORA
Doug Yount, City of Marina
Graham Bice, UCMBEST
Tim O'Halloran, City of Seaside
John Marker, CSUMB
Vicki Nakamura, MPC
Jim Cook, County of Monterey
Ian Gillis, Urban Community Partners
Keith McCoy, Urban Community Partners
Todd Muck, TAMC
Ray Corpuz, City of Seaside
Jonathan Garcia, FORA

Debby Platt, City of Marina
Steve Endsley, FORA
Anya Spear, CSUMB
Bob Schaffer, MCP Patrick Breen, MCWD
Scott Hilk, MCP Crissy Maras, FORA
Brian Boudreau, Monterey Downs
Crisand Giles, BIA Bay Area
Beth Palmer, Monterey Downs
Michael Houlemard, FORA
Daniel Dawson, City of Del Rey Oaks
Pat Ward, Bestor Engineers
Bill Collins, BRAC
Kathleen Lee, County of Monterey
Carl Niizawa, MCWD

2. Pledge of Allegiance – Chair Dawson asked City of Marina representative Doug Yount who agreed, to lead the pledge of allegiance.

3. Acknowledgements, Announcements, Correspondence – none

4. Public Comment Period – none

5. Approval of February 16, 2011 Meeting Minutes

Scott Hilk asked that his comment on page 1 (item 6; 11th line) be revised to eliminate “and that there are currently no projects willing to pull 100 building permits.” Mr. Yount asked that his comment on page 2 (item 6; 6th line), be revised to read: “Co-chair Yount also stated that there appeared to be a strong consensus of the Board to move forward.” UCMBEST representative Graham Bice moved approval of the minutes as amended, which was seconded by TAMC representative Todd Muck, and unanimously approved.

6. Old Business

a. Capital Improvement Program Review

- i. List of Board Members' questions
- ii. Post-interim fee period question
- iii. Phase II CIP Review Study Scope

FORA Acting Assistant Executive Officer D. Steven Endsley reviewed a series of staff/consultant answers to Board member questions from the February 11th Board meeting. Mr. Endsley noted that staff had adjusted option #2 to extend the fee reduction to the FORA sunset date. The current plan includes presenting the answers and the phase II consultant scope of work to the FORA Board at their March meeting. FORA Executive Officer Michael A. Houlemard, Jr. noted that the Board wanted to know what policy adjustments would have to be made in conjunction with a fee reduction. Chair Dawson opened the floor to those with questions or comments on the answers to Board members' questions. BIA Bay Area representative Crisand Giles asked if the response to question #1 could include a cash flow analysis reflecting a \$24.6M surplus at build-out (2019-2022) with the option #2 fee reduction. She noted that the BIA believes the phase II work will show further reductions can be made due to this surplus and other revenue not accounted for in the phase I analysis. Mr. Endsley responded that staff would research that information, but that showing "phantom" dollars so many years out would not be helpful to the Board in reaching a decision. He said that FORA's ability to meet its obligations toward CIP mitigations under option #2 was the information that would be important for the Board to know.

Monterey County representative Jim Cook noted that the County would be receiving approximately 1300 acres of habitat and was concerned that the \$16M caretaker cost line item in option #2 had been removed. Mr. Endsley responded that the caretaker cost item had not been completely removed, but that individual contingency items were compiled into one contingency that was expected to cover various costs.

Mr. Houlemard noted that if FORA "sunset" in 2014, the land use jurisdictions (LUJs) will get the land, and will also assume the obligations and the risks. Staff preferred option #2 provides the revenue necessary to mitigate development. Staff extending option #2 to 2014 should offer the development community the assurance that there won't be a big jump in the fee in two years; the consultant agrees with staff that a \$29.6K fee through June 30, 2014 will retire FORA's obligations.

Monterey Downs representative Brian Boudreau asked if Eastside Parkway (EP) would be phased or slowed down by a fee reduction. Mr. Endsley responded that if development doesn't occur at the current fee level, EP would be delayed indefinitely. If development occurs at a lower fee rate, then FORA will be collecting money toward construction. FORA staff is working with TAMC staff on transportation project phasing scenarios. Mr. Cook noted that the development community had indicated a certain amount of activity if the fee were reduced and asked when funds would be available for EP. Mr. Houlemard responded that EP construction would likely be phased and that the first phase could be achieved through developments already been approved.

Mr. Houlemard stated that the group should be cognizant about adding issues to the table that will cause more questions. Tax increment, land value, etc. is uncertain and staff wants to present the Board with realistic information. Mr. Yount agreed and additionally noted that during this review process, the consultant determined that FORA can lower the fee and still meet its obligations. He stated that questions involving more research, like the FORA transition or tax increment, can be answered during the phase II analysis and suggested the group keep moving forward in an effort to provide the Board with the necessary information.

Marina Community Partners representative Bob Shaffer added that there is considerable motivation for the development community to move forward since there has already been a significant amount of money invested in the land and they want to start getting a return on their investment.

Ms. Giles asked if staff would review answer #9. Mr. Endsley responded that these questions were asked by the Board concerning policy and CEQA issues. Staff is still researching answers and will have more information by the March Board meeting. Mr. Endsley additionally noted that staff had included in the response that FORA and TAMC were working together on transportation phasing issues since it seemed like the Board was not aware that TAMC was involved. Mr. Yount asked if a conclusion regarding transportation/transit obligations could be added to the response; Mr. Endsley stated it could.

Mr. Cook asked if a one-time land sales borrowing could occur to accelerate EP. Mr. Houlemard responded that staff would review these issues on a case by case basis. Completely funding one project above others is a complicated issue since technically all transportation/transit obligations should be funded equally. Mr. Cook asked that the minutes reflect that land sales borrowing may occur on a case by case basis.

Mr. Cook apologized for the lateness of this comment, and proceeded to tell the group that after the County's analysis, an additional \$1600 (\$31.5K total fee) would provide \$10M more security for land management/caretaker costs. Mr. Yount responded that the \$29.6K fee showed remaining resources after meeting all obligations and that tax increment, of which the County can use in its general fund, may be available as well. Mr. Houlemard noted that the County seemed more concerned about restoring the caretaker cost line item than the fee amount, and suggested that the proper analysis could occur during the phase II Base Reuse Plan review.

Mr. Yount stated that the consultant, the administrative committee and FORA staff have put in the work to get to option #2 and that there is a window of opportunity to move forward with a substantial fee reduction now. Under the Board agenda review, this item is an action item and Mr. Yount stated that he would make a motion at that time.

Mr. Endsley noted that FORA is doing everything it can by pushing the extension out and that phase II work will begin with the "life of FORA" question, which would occur right away. Mr. Hilk stated his support of that approach.

Mr. Endsley reviewed the phase II scope of work and noted that it was more of an outline not specific to particulars. The scope outlines the information that is important to Board members and staff is open to suggestions. Mr. Yount noted that it's important for the LUJs to understand what obligations would be remaining if FORA sunsets in 2014 in order to determine the best replacement option. Mr. Endsley responded that that is a difficult process without having the needed information. The scope was written in such a way that allows those questions to be answered.

b. Eastside Parkway Memorandum of Agreement – timeline

FORA Senior Planner Jonathan Garcia noted that the deadline to receive feedback had been extended to April 4th.

c. Habitat Conservation Plan – update

Mr. Garcia noted that a conference call with US Fish and Wildlife (USFW) and California Fish and Game (F&G) had occurred to get F&G on board with recent USFW comments particular to chapters 5 and 9. F&G responded that staff should move forward with the changes. Additionally, FORA received a letter stating that F&G representative Deb Hillyard was now devoting 50% of her time to the FORA HCP. Mr. Cook commended FORA staff and the development community for working together to move this process forward.

7. New Business - none

8. March 11, 2011 FORA Board meeting agenda review

Mr. Houlemard reviewed the consent agenda which includes the approval of an amendment to a design contract for EP. The Board was inclined to approve the amendment at the last meeting but a City of Marina representative asked to see the amendment so it is now included.

During review of Old Business item 6a, Mr. Yount moved that the Administrative Committee recommend to the Board that:

1. At the March 11th Board meeting, the Board review the answers provided by FORA and its consultant in response to questions asked at the February Board meeting, reflecting the updates discussed at today's meeting;
2. The Board direct staff to prepare all necessary documents to approve a fee reduction at their April meeting;
3. Resources regarding land management/caretaker costs are captured in the fee reduction; and
4. The Board direct staff to prepare phase II contract documents for approval at their April meeting.

Mr. Cook seconded the motion provided that there would be sufficient resources to cover the \$16M in caretaker costs and that FORA staff work with the administrative committee if needed to make appropriate modifications to the fee reduction.

Mr. Houlemard stated that the consultant would review how re-inserting caretaker costs would affect the recommendation.

The motion as amended was voted on and approved: City of Marina – Yes; City of Seaside – Yes; Monterey County – Yes; City of Del Rey Oaks – Abstained; City of Monterey – Absent.

During review of New Business item 7a, Mr. Cook asked if the Bureau of Land Management could add more clarity to what the different names/designations mean to their presentation. During review of New Business item 7b, Mr. Houlemard stated that this veteran's cemetery item would not be discussed under Old Business since there are new items for the Board to review: a Memorandum of Understanding between FORA, City of Seaside and Monterey County should be extended, and, since the State adds 44-46% administrative oversight to the design process, FORA staff believes it can provide a less expensive alternative. Item 7c will include a presentation by the Army. Executive Officer's Report item 8g is an administrative determination that does not occur on the administrative committee agenda unless appealed. Mr. Yount asked why MCWD would be paying 5% lease revenues when other LUJs pay 50%. Mr. Houlemard stated that the property MCWD would be leasing was not covered in the property conveyed with the 50% lease provision.

9. Adjournment

The meeting was adjourned at 10:07 AM. The next administrative committee meeting was scheduled for March 16th, but due to several FORA staff members being in Washington, D.C., the meeting was rescheduled for March 23rd.

Meeting minutes prepared by Crissy Maras, Administrative Coordinator

FORT ORD REUSE AUTHORITY

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MINUTES OF THE JOINT ADMINISTRATIVE / CAPITAL IMPROVEMENT PROGRAM COMMITTEE MEETING Wednesday, March 23, 2011

1. Call to order at 8:15 a.m.

Fort Ord Reuse Authority ("FORA") Executive Officer Michael A. Houlemard, Jr. called the meeting to order at 8:20 a.m. The following people, as indicated by signatures on the roll sheet, were present:

Nick Nichols, Monterey County

Rob Robinson, BRAC

Doug Yount, City of Marina

Tim O'Halloran, City of Seaside

Vicki Nakamura, MPC

Todd Muck, TAMC

Jonathan Garcia, FORA

Steve Endsley, FORA

Bob Schaffer, MCP

Scott Hilk, MCP

Brian Boudreau, Monterey Downs

Beth Palmer, Monterey Downs

Daniel Dawson, City of Del Rey Oaks

Kathleen Lee, Monterey County

Carl Niizawa, MCWD

Diana Ingersoll, City of Seaside

Jim Arnold, FORA

Graham Bice, UCMBEST

Elizabeth Caraker, City of Monterey

Chuck Lande, Marina Heights

Ray Corpuz, City of Seaside

Debby Platt, City of Marina

Anya Spear, CSUMB

Patrick Breen, MCWD

Crissy Maras, FORA

Crisand Giles, BIA Bay Area

Michael Houlemard, FORA

Pat Ward, Bestor Engineers

Don Hofer, Shea Homes

- 2. Pledge of Allegiance** – Chair Houlemard asked Monterey Downs representative Brian Boudreau, who agreed, to lead the pledge of allegiance.

3. Acknowledgements, Announcements, Correspondence

Commendation of service – Doug Yount

Chair Houlemard asked City of Del Rey Oaks representative Daniel Dawson to present a commendation of service certificate to City of Marina representative Doug Yount for his nearly four year service to the Administrative Committee ("AC") as co-chair. Mr. Yount was commended for his outstanding performance as the longest serving AC co-chair.

- 4. Public Comment Period** – none

5. Approval of March 2, 2011 Meeting Minutes

City of Seaside representative Ray Corpuz moved approval of the minutes as presented, which was seconded by TAMC representative Todd Muck, and unanimously approved.

6. Old Business

a. Capital Improvement Program Review

i. Fee reduction policy impact

ii. Recommendation to the FORA Board of Directors

FORA Senior Planner Jonathan Garcia directed committee attention to the Economic & Planning Systems ("EPS") memo in the AC packet which describes what was presented at the March 11th Board meeting and responds to questions asked by Board members at that meeting. The first question was related to the Transportation Agency for Monterey County's ("TAMC") position on a fee

reduction. Mr. Garcia noted that TAMC Executive Director Debbie Hale would be providing a presentation at the April Board meeting outlining their work on the revised transportation project schedule based on the fee reduction, and asked Mr. Muck to provide additional input.

Mr. Muck responded that he has presented the transportation project schedule at two AC meetings and no changes have been made since February 1st. TAMC worked with EPS on development revenue forecasts and with land use jurisdictions ("LUJs") on project timing to align FORA's transportation projects with development project readiness and grants received anticipating FORA funds as a local match. The reduced development fee of \$29,600 was used in the analysis; keeping the overall transportation costs the same at \$115M total. Reducing the fee means a slower accumulation of funds and extending the time period in which projects can be constructed, but assuming development forecasts are correct, all projects can be funded within a similar time frame as presented in the current FY 2010/11 Capital Improvement Program ("CIP"). There were no impacts assumed to General Jim Moore Boulevard, Eucalyptus Road or South Boundary Road improvements. Eastside Road, Highway 68 improvements, and the Crescent Avenue and 8th Street Reimbursement Agreements were moved up. Other off-site and regional projects were moved and/or consolidated into one year/100% funding to match development project needs.

Mr. Muck noted that the contingency built into the on-site transportation project costs still remained and that TAMC was comfortable with the fee reduction. He additionally noted that FORA's contribution toward off-site and regional projects were in funding only and did not require a built-in construction contingency.

Chair Houlemard stated that it was important to note that the transportation project schedule meets FORA's California Environmental Quality Act ("CEQA") requirements and the Board's "pay-as-you-go" policy, and that when there is no development impact, mitigations are not necessary.

The second question was regarding the Habitat Conservation Plan ("HCP") and funding the HCP endowment. Mr. Garcia noted that UC had asked if the \$35 million HCP endowment target in 2010-11 FORA CIP was in 2007 or 2010 dollars. The answer was that this \$35 million target was in 2010 dollars. UC had also asked when the HCP is expected to be fully funded at the current fee level vs. the option 2 fee reduction. EPS's analysis showed the reduced fee fully funding the endowment in FY 2014/15 and with no fee reduction full funding in FY 2013/14. UCMBEST representative Graham Bice asked if inflation was accommodated as a part of the endowment cost. Mr. Houlemard responded that FORA is working with the US Fish and Wildlife Service ("USFWS") and the California Department of Fish and Game ("CDFG") to gain sign-off on a higher rate of return (possibly 4.5%) so that the initial capital investment for the endowments could be held at \$35 million. Mr. Yount noted that the reduced fee allows full funding. Mr. Bice added that if FORA does not gain sign-off from the regulatory agencies and is only allowed a 3% return rate, the endowment might not be fully funded by the FORA "sunset" date and the LUJs will be left with the obligation to raise the funds. Mr. Houlemard noted that the HCP includes a cooperative funding agreement within the draft Implementing Agreement that must be approved by the LUJs prior to HCP approval. Bob Schaffer responded to Graham Bice's inflation question that he would hope that the HCP funding that FORA is collecting will be invested to at least keep pace with inflation. So, inflation should not be an additional cost. FORA staff agreed that this statement was correct.

BIA Bay Area representative Crisand Giles noted that in her work with a separate agency's HCP, the regulatory agencies expressed flexibility by allowing different financing options. Mr. Houlemard stated that this was good news. FORA Acting Assistant Executive Officer D. Steven Endsley added that USFWS and CDFG staff were being reasonable and that recent meetings have been productive. He additionally noted that the reduced fee would be indexed yearly to account for inflation.

The third question was regarding Board actions and policy changes required to implement a fee reduction. Mr. Endsley stated that special district counsel Paul Thimmig had opined that the Board could act to reduce the fee across the board, or the fee reduction could go to the electorate for a vote. If the Board acted to reduce the fee, in effect, they would be lowering the maximum fee level. This option would make it more difficult to increase the fee in the future.

Mr. Hilk asked if payment of the fee caused removal from the Community Facilities District ("CFD"). Mr. Houlemard responded that it did not since the chance of a change in use would remain. If a change in use occurs, only the delta between the fee previously paid and the fee based on the changed use would be due. Staff will research further and report back any additional information.

Other policy adjustments required could be accomplished through Board action. Policy modifications required to implement a fee reduction will be presented to the Board at their April meeting.

The fourth question was regarding affordable housing. EPS analysis showed that a fee reduction would be helpful to the affordable housing program, which is currently set at 20% (15% per the Health and Safety Code and 5% LUJ voluntary increase). Mr. Hilk noted that current market rates were basically the same as moderate and workforce housing rate levels. Mr. Bice asked what the effect would be if a developer took advantage of the option that allowed tiered reductions to the fee to incentivize building in excess of 20% affordable housing. Mr. Houlemard responded that it was a possibility and the analysis should be done. He noted that the incentive was originally offered when California State University Monterey Bay (CSUMB) had a 100% workforce housing project planned, which is currently still on the table; he added that since those are CSUMB units, they were not originally accounted for and would not reduce fee revenue.

The fifth question was regarding the potential elimination of California Redevelopment Agencies. Since FORA was created under the government code, it would not be impacted in that sense. The reduction or elimination of tax increment (TI) revenue is a possibility and Mr. Houlemard is currently working with Mr. Yount to add substitute language that would exempt military base reuse agencies from TI reductions. Mr. Houlemard additionally noted that the third sentence in the answer to this question would be stricken.

Mr. Hilk added that several Board members and members of the public had asked what the benefits to the community would be if the fee were reduced. Mr. Hilk feels that the benefits should be addressed in the information presented to the Board, including: payment of FORA fees, LUJ fees, MCWD fees (allowing CIP and other projects to move ahead), plan check fees, and school district fees. Payment of fees would not only create jobs per project, but may also create or retain jobs within those agencies. Mr. Hilk noted that there were many more benefits which could be found in a recent report (titled Building California's Future – An Economic and Fiscal Analysis of Housing Construction in the Golden State, which was prepared for the California Departments of Real Estate, Housing and Community Development, and the California Housing Finance Agency).

Mr. Yount made a motion to recommend that the Board:

1. Receive additional information as described in the memo, including comments made at this meeting (plus further analysis of the HCP endowment and affordable housing questions);
2. Direct staff to prepare documents necessary to: a) approve a fee reduction to \$29,600 for review and consideration at the May FOR A Board meeting; and b) implement accompanying policy adjustments;
3. Direct staff to proceed with phase II work under a specific time frame using the EPS scope of work as previously defined; and
4. Receive additional information outlining the community benefits that would occur if the proposed option 2 fee reduction to \$29,600 was implemented.

Mr. Yount also asked to review the TAMC presentation at the March 30th AC meeting.

The motion was seconded by Mr. Corpuz. Several comments were added: Mr. Muck noted that if the Board acts to approve the fee reduction, the FY 2011/12 CIP would reflect the TAMC analysis and subsequent transportation project phasing. Mr. Bice asked the AC not to approve the \$29,600 fee until further HCP analysis was done. Mr. Yount responded that while the City of Marina has hundreds of acres of habitat maintenance obligations, he feels that the analysis shows plenty of resources available at the reduced \$29,600 fee. Monterey County representative Nick Nichols noted that he was not authorized to approve any action that might have a Monterey County general fund liability and that he would not support the motion on the County's behalf. Shea Homes Vice President Don Hofer noted that he had been following this process closely through his work with Mr. Hilck and moving forward with a fee reduction is incredibly important. He additionally noted that if the fee is not reduced, the Shea Homes development could not proceed. He added his full support of the \$29,600 fee level and additional phase II analysis.

On the motion made by Mr. Yount and seconded by Mr. Corpuz, the vote was called. The motion was approved on a 4-1 vote (the Cities of Del Rey Oaks, Marina, Monterey and Seaside voted yes; the County of Monterey voted no).

b. Habitat Conservation Plan – update

Mr. Garcia noted that results from the Monterey Ornate Shrew work were back and that more analysis would be necessary. He added that finding the shrew outside of its typical habitat means that the current habitat areas set aside in the HCP would be sufficient to include the species in the HCP, subject to USFWS and CDFG's review. Meetings continue with the regulators. FORA received a letter from John Laird committing to a schedule for approval which will be distributed at the March 30th AC meeting.

7. New Business

a. Legislative Mission – update

Mr. Houlemard reported that meetings in Washington, DC, included meeting with the US Army about remediation, munitions and explosives. Defense Language Institute activities on Fort Ord and the Presidio of Monterey, and how FORA can collaborate with the Army regarding water resources and water augmentation. A meeting with Office of Economic Adjustment officials presented the possible opportunity to amend the existing veteran's cemetery planning grant. A meeting with the US Environmental Protection Agency related to FORA's Environmental Services Cooperative Agreement was productive. Other local agencies, including TAMC and the Marina Coast Water District and John Arriaga, acting on behalf of the California League of Cities, were also in DC. Mr. Houlemard will draft an informational update to the Board.

8. FORA Board Direction

a. March 11, 2011 Board meeting

This item was sufficiently covered during discussion of item 6a; no additional comments were noted.

9. Adjournment

The meeting was adjourned at 9:50 AM.

Meeting minutes prepared by Crissy Maras, Administrative Coordinator

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Travel Report – Legislative Mission, D.C.	
Meeting Date:	April 8, 2011	INFORMATION
Agenda Number:	8c	

RECOMMENDATION(S):

Receive a report regarding FORA's 2011 Federal Legislative Mission to Washington, DC.

BACKGROUND/DISCUSSION:

The Executive Officer regularly submits reports to the Executive Committee providing details of his travel requests, including those by the Fort Ord Reuse Authority ("FORA") staff and board members. Travel expenses may be paid or reimbursed by FORA, outside agencies/jurisdictions/organizations, or a combination of these sources. The Executive Committee reviews and approves these requests, and the travel information is reported to the Board as an informational item.

2011 Federal Legislative Mission to Washington, DC (March 13-17, 2011): Executive Officer Houlemard and Chair/Supervisor Potter, travelled to the nation's capital to attend a series of meetings which focused on items from the FORA Legislative Agenda, including follow-up with the Bureau of Reclamation, Environmental Protection Agency, U.S. Fish and Wildlife Service, Office of Economic Adjustment, Bureau of Land Management, U.S. Army, Congressman Farr, and others as noted on the attached report (**Attachment "A"**).

FISCAL IMPACT:

Reviewed by FORA Controller 

Travel expenses and staff time for this item are included in the approved FY 10-11 budget.

COORDINATION: Chair Potter, Executive Committee and Legislative Committees; staff members from the offices of Congressman Sam Farr, Transportation Agency of Monterey County, Marina Coast Water District, and FORA.

Prepared by:  Daylene Alliman Approved by:  Michael A. Houlemard, Jr.



Fort Ord Reuse Authority

Legislative Mission – March 14 – 17, 2011

MEETING REVIEW

Monday, March 14

8:45 a.m. – 9:30 a.m.

Todd Herberghs/Association of Defense Communities
1023 15th Street NW, Suite 200, DC
(202) 822-5256 ext. 425
Attendees: Michael Houlemard & John Arriaga

Meeting included discussions about the current status of the federal budget, funding for military base closure and planning, sustainable communities funding through multiple federal departments, and policy issues regarding munitions and explosives cleanup. Discussions also included subject matter nadd planning issues for the Association of Defense Communities (ADC) Board retreat scheduled for May 9 and 10, 2011 and the ADC Annual Conference scheduled for mid-July 2011.

11:30 a.m. – 12:30 p.m.

George Schlossberg, Barry Steinberg/Kutak Rock
1101 Connecticut Ave., N.W. DC
(202)-828-2418
Attendees: Michael Houlemard & John Arriaga, Dave Potter & Jim Heitzman

Kutak Rock represents FORA in certain federal matters. Discussion included an overview of the federal budget status and funding opportunities for military base closure and planning along with several implementation issues regarding the FORA Environmental Services Cooperative Agreement with the US Army and the potential for assisting in resources for the Presidio of Monterey. Discussions also evolved around planning for the ADC Congressional Caucus co-chaired by Congressman Sam Farr. Some issues surfaced about the planned veteran's clinic on the former Fort Ord.

1:00 p.m. – 2:00 p.m.

Reggie Cheatham USEPA
Potomac Yard North, Room N5722
Crystal City, VA
Cheatham.Reggie@epamail.epa.gov
Attendees: Michael Houlemard, Jim Heitzman, Dan Burns, Barry Steinberg

Meeting included discussions about funding for environmental programs and contaminated building removal. Current restrictions for certain military base closure from participating in Brownfields funding opportunities and the recent federal facilities environmental cleanup dialogue.

4:00 p.m. – 5:00 p.m.

Sam Farr, Rochelle Dornatt/ 17th Congressional DC office
1126 Longworth House Office Building, DC
Attendees: Dave Potter, Michael Houlemard, Dan Burns, George Schlossberg

Meeting included outline of the federal mission, potential issues concerning the approval of the veteran's clinic on the former Fort Ord, DOD cleanup funding, military base closure and planning/Congressional Caucus, UC MBEST Visioning meetings, and policy issues regarding munitions and explosives cleanup. (Follow up on UC MBEST visioning was held on Wednesday (3/16) from 4:30 to 5:30 P.m.)

Tuesday, March 15

7:45 a.m. – 8:45 a.m. Tom Lederle/US Army BRACO
Residence Inn Marriott
1401 N. Adams St. Arlington, VA
(703) 602-2854 OFFICE
Attendees: Michael Houlemard, Kristie Reimer

Discussions centered on the performance of ESCA provisions ESCA updates, formal RQA results processing, Inland Range MPC parcel, East Garrison discoveries, and FORA Sunset questions.

9:30a.m. – 10:30 a.m. Don Morgan, Steve Henry/US Fish & Wildlife
4501 N. Fairfax Dr. (Conference Room), Arlington, VA
(703) 358-2444
Attendees: Michael Houlemard, Dave Potter, Kristie Reimer, & Keith McCoy

Meeting included discussions about sustaining the schedule for the approval of the Habitat Conservation Plan and the USFWS resources needed to respond more timely than this past year.

11:00 a.m. – 12:00 p.m. Dave Larson - Office of Economic Adjustment
400 Army Navy Drive, Suite 200, Arlington, VA
(703) 604-6020
Attendees: Michael Houlemard, Dave Potter, Kristie Reimer, Keith McCoy

Discussions about the status of the veterans' cemetery planning and the potential for continuing support. Also, discussed other planning programs, MEC remediation under the Army contract, and building removal.

3:30 p.m. – 4:30 p.m. Bureau of Reclamation
1849 "C" Street NW 5618, DC
Arrangements by John Freshmen
Attendees: Dan Burns, Jim Heitzman & Michael Houlemard,

Meeting was top explore designation of Fort Ord Public Lands in the Bureau special programs.

Wednesday, March 16

8:00 a.m. – 9:00 a.m. ADC Conference call
Military families subcommittee pre call with ADC staff.

1:30 p.m. – 2:30 p.m. Bill Birney and Mark Connor
Pentagon George Schlossberg coordinating (202) 828-2418 office
Attendees: Michael Houlemard, Dave Potter, George Schlossberg

Meeting included discussions about the potential to exchange Army retained water for augmented water supply resources. The Army agreed conceptually to make water resources available for the Presidio of Monterey/defense Language Institute to enable them to complete their defense mission past 2014.

3:30 p.m. – 4:30 p.m. Carl Rountree, BLM
1849 "C" Street NW 5618, DC
Call (202) 208-3516 (Vernell Smith) for clearance into the building.
Attendees: Dave Potter & Michael Houlemard,

Meeting was to explore designation of Fort Ord Public Lands in the Bureau special programs.

FORT ORD REUSE AUTHORITY BOARD REPORT**EXECUTIVE OFFICER'S REPORT****Subject:** Habitat Conservation Plan – status report**Meeting Date:** April 8, 2011**Agenda Number:** 8d**INFORMATION****RECOMMENDATION(S):**

Receive a status report regarding the Habitat Conservation Plan ("HCP") and State of California 2081 Incidental Take Permit ("2081 permit") preparation process.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority ("FORA"), with the support of its member jurisdictions and consultant team, is on a path to receive approval of a completed basewide HCP and 2081 permit in 2012, concluding with the US Fish and Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG") issuing crucial federal and state permits.

ICF International (formerly Jones & Stokes), FORA's HCP consultant, completed a pre-public administrative draft HCP on December 4, 2009. FORA member jurisdictions completed a comment and review period, which ended February 26, 2010. At this time, USFWS has commented on all draft HCP sections except for the Alternatives section, while CDFG has not submitted comments.

On January 24, 2011, Chair/Supervisor Dave Potter, Executive Officer Michael A. Houlemard, Jr., Acting Assistant Executive Officer Steve Endsley, and Authority Counsel Jerry Bowden met with John Laird, the Natural Resources Secretary, in Sacramento. During the meeting, FORA legislative representatives described the year-long delay in CDFG's review of the draft HCP and requested immediate feedback and a commitment to meeting HCP approval schedule milestones. CDFG has been more cooperative since this meeting, has engaged FORA and USFWS staff in several conference calls, and has agreed in writing to provide its draft HCP comments by the end of April 2011.

The next critical milestones for completing the HCP are receiving all HCP comments from USFWS and CDFG, resolving any outstanding issues, and drafting the National Environmental Policy Act/California Environmental Quality Act ("NEPA/CEQA") documents. FORA staff is working on two outstanding issues [1) Allowing Permittees to include the Monterey Ornate Shrew as a covered species and 2) Identifying and certifying an endowment holder that can guarantee an acceptable earnings rate for the HCP endowment] and holding regular meetings with ICF International, Denise Duffy & Associates, USFWS, and CDFG. FORA has made significant headway in addressing USFWS comments to reorganize/rewrite section 5 Conservation Strategy, section 9 Funding, and appendix M Cost Model. Due to the level of consultant work required to address these comments, FORA anticipates bringing an ICF International contract amendment for Board consideration in May.

FISCAL IMPACT:Reviewed by FORA Controller 

ICF International and Denise Duffy and Associates' (FORA's NEPA/CEQA consultant) contracts have been funded through FORA's annual budgets to accomplish HCP preparation. Staff time for this item is included in the approved FY 10-11 budget.

COORDINATION:

Executive Committee, Administrative Committee, Legislative Committee, HCP working group, HCP Permit Completion working group, FORA Jurisdictions, USFWS and CDFG personnel, ICF International, Denise Duffy and Associates, and various development teams.

Prepared by 

Jonathan Garcia

Reviewed by 

Steve Endsley

Approved by 

Michael A. Houlemard, Jr.



CITY OF MARINA
211 Hillcrest Avenue
Marina, CA 93933
831-884-1278; FAX 831-384-9148
www.ci.marina.ca.us

April 4, 2011

Copy via e-mail

Chair David Potter
and Board Members of the
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, CA 93933

Re: Disposition of Preston Park

Dear Chair Potter and Board Members,

I have been directed by the Marina City Council to make this initial reply to Chair Potter's letter dated March 23, 2011, to Mayor Delgado, which was in response to the January 4, 2011 memorandum sent by Mayor Delgado to FORA's Ad Hoc Preston Park Committee. The Council was disappointed in the substance and tenor of your March 23rd letter. It did little if anything to answer the points and deal with or attempt to rebut the legal issues presented by the City, but instead appeared to sidestep or completely ignore them and raise entirely new and peripheral matters. The City needs to and certainly will respond in detail to the March 23rd letter and the issues raised therein, and plans to do so within the next week or ten days. As soon as that response is prepared and sent to FORA, Mayor Delgado and Mayor Pro Tem O'Connell will make themselves available for a further meeting with the Ad Hoc Committee, which hopefully can be scheduled for a mutually convenient time during the week of April 11th.

As we continue on this track relative to determining the respective rights and responsibilities of FORA and the City regarding Preston Park, the City Council will also act concurrently to take this matter to Marina's citizens in a public meeting for a full presentation and discussion of the several options for the City relative to Preston Park (including conveyance to the City, a third party sale, and possibly others). Hopefully this can be done at the Council's regular meeting on April 19th.

In addition to the above, the City at this time hereby requests¹ that FORA and the City enter into the mandatory formal meet and confer process as set forth in the Dispute Resolution clause (Section 17) of the Implementation Agreement between the parties. Although not all, clearly the major or a large part of this present matter involves the differing opinions and disagreements between us about the interpretation and application

¹ Or "demands," to use the language of Section 17 of the Implementation Agreement.

Chair Potter and
FOR A Board Members

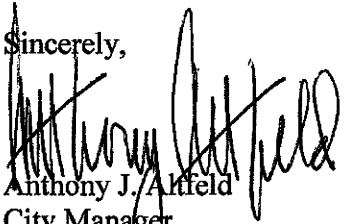
April 4, 2011

of the Implementation Agreement. If FORA would instead prefer to move directly on to mediation, the next step or phase required in this matter by the Dispute Resolution clause, the City may be amenable to that as well. Please advise the City of FORA's preference in this regard, by no later than April 14, 2011, if at all possible, so we may start working out the scheduling necessary for the commencement of the meet and confer or mediation process.

In light of the above discussion, it is obvious that the 30-day deadline imposed in FORA's March 23rd letter is unrealistic (even more so given that it took FORA over two and one-half months to respond to the City's January 4th memo). The required meet and confer and the mediation processes have their own timeframes that exceed 30 days, and it will take several months for the City to complete financing arrangements, if that is the direction which is determined to be taken. Clearly this is a matter that will need to play out over several months, not 30 days, to be resolved. We strongly request (and demand) that the FORA Board in the meantime not unilaterally act to attempt to sell Preston Park in complete derogation of the substantial interests of the City of Marina in this property. To do so would of course force the City to respond with all actions necessary to protect its rights in this regard.

We look forward to hearing from you and working with FORA to resolve this matter in a mutually agreeable and legal manner.

Sincerely,



Anthony J. Alffield
City Manager
City of Marina

cc: Michael A. Houlemard, Jr., Executive Officer
Marina Mayor and Council Members