



# FORT ORD REUSE AUTHORITY

## REGULAR MEETING

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

Thursday, February 13, 2020 at 2:00 p.m. | 910 2<sup>nd</sup> Avenue, Marina, CA 93933 (Carpenters Union Hall)

## AGENDA

**ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON FEBRUARY 12, 2020.**

#### 1. CALL TO ORDER

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

#### 3. CLOSED SESSION

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

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

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

#### 6. ROLL CALL

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

#### 7. CONSENT AGENDA

#### INFORMATION/ACTION

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

- a. Approve January 10, 2020 Meeting Minutes [\(p.1\)](#)  
**Recommendation:** Approve January 10, 2020 Meeting Minutes.
- b. Administrative Committee [\(p.5\)](#)  
**Recommendation:** Receive a report from the Administrative Committee.
- c. Veterans Issues Advisory Committee [\(p.11\)](#)  
**Recommendation:** Receive a report from the Veterans Issues Advisory Committee.
- d. Habitat Working Group Ad-Hoc Committee [\(p.14\)](#)  
**Recommendation:** Receive a report from the Habitat Working Group Ad-Hoc Committee.
- e. Execution of Adoption Agreement with MidAmerica to Administer a Health Reimbursement Arrangement (“HRA”) Program [\(p.29\)](#)  
**Recommendation:**  
Authorize the Executive Officer to execute adoption agreement to implement an HRA program with plan administrator, MidAmerica Inc.

- f. Public Correspondence to the Board (p.30)  
**Recommendation:** Receive Public Correspondence to the Board.

## 8. BUSINESS ITEMS

## INFORMATION/ACTION

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

- a. 2018 Transition Plan Implementation **2<sup>nd</sup> Vote** (p.31)
- i. Assignment of; a) FORA-ESCA contract obligation to Successor-In-Interest City of Seaside, b) Economic Development Conveyance (“EDC”) Memorandum of Agreement and c) Local Redevelopment Authority (“LRA”) Obligations and Responsibilities.  
**Recommendation:**
1. Receive a report regarding the FORA Federal government LRA obligations, including the implementation of the June 11, 2000 EDC agreement, and the March 2007 ESCA Agreement.
  2. Approve the attached Memorandum of Agreement with the City of Seaside regarding its acceptance of FORA’s obligations under the EDC and ESCA and designation as federal recognized LRA.
- b. Draft Transition Plan Implementing Agreement (“TPIA”) Review (p.62)  
**Recommendation:**  
Receive a report on the updated Transition Plan Implementing Agreement (“TPIA”) and proposed jurisdiction implementation timeline.
- c. Review Building Removal Bond Status (p.72)  
**Recommendation:**  
Receive a report on the status of FORA’s efforts to issue bonds for the remediation/removal of buildings, and the related validation action.
- d. Consultant Services Contract Amendments (p.94)  
**Recommendation:**  
Direct the Executive Officer to approve contract amendments for Denise Duffy & Associates, ICF Jones & Stokes, Inc., and Regional Government Services.
- e. Special Board Meeting Schedule (p.112)  
**Recommendation:** Approve proposed schedule for additional special Board meetings through June 2020.

## 9. PUBLIC COMMENT PERIOD

## INFORMATION

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

## 10. ITEMS FROM MEMBERS

## INFORMATION

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

## 11. ADJOURNMENT

**NEXT MEETING: Thursday, March 12, 2020 AT 2:00 P.M.**

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



**FORT ORD REUSE AUTHORITY**  
**BOARD OF DIRECTORS REGULAR MEETING MINUTES**  
**2:00 p.m., Friday, January 10, 2020 | Carpenters Union Hall**  
910 2<sup>nd</sup> Avenue, Marina, CA 93933

**1. CALL TO ORDER**

Chair Supervisor Jane Parker called the meeting to order at 2:01 p.m.

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Colonel Gregory Ford.

**3. CLOSED SESSION**

- a. Conference with Legal Counsel—Gov. Code §54956.9(a), (d)(1): Resource Environmental, Inc. v. Fort Ord Reuse Authority. Monterey County Superior Court Case No.: 19CV004499, Pending Litigation
- b. Conference with Legal Counsel—Gov. Code §54956.9(d)(4): Anticipated Litigation, Initiation of litigation, one potential case
- c. Conference with Legal Counsel—Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, two potential cases

Time Entered: 2:03 p.m.

Time Exited: 2:33 p.m.

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

Authority Counsel Jon Giffen reported the following actions taken in closed session:

**Item 3a:** Counsel informed the Board this case will be moving forward with Mediation.

**Item 3b:** The Board heard from Counsel. Nothing to report.

**Item 3c:** The Board heard from Counsel. Nothing to report.

**5. ACKNOWLEDGMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**

- The Base Realignment and Closure (“BRAC”) Fort Ord Cleanup is offering free Tours of Fort Ord with a focus on ground water cleanup and landfill maintenance on Saturday, February 1, 2020. Buses depart from Building 4522 at 10:00 a.m. and 11:45 a.m. For additional information visit [www.fortordcleanup.com](http://www.fortordcleanup.com).
- The Habitat Working Group has begun meeting weekly on Fridays from 10:00 am to 12:00 pm.
- Building Removal Bond Validation Action is moving forward and summonses have been sent to potentially affected agencies. The Board was provided a memo detailing what FORA is requesting of these agencies for Validation Action to proceed.
- Kathleen Lee of Representative Jimmy Panetta’s office reported the House of Representatives passed the PFAS Action Act and thanked Executive Officer Joshua Metz and FORA consultant Kristie Reimer for assisting in their success.

## 6. ROLL CALL

### Voting Members Present:

Supervisor Jane Parker (County of Monterey), Supervisor John Phillips (County of Monterey), Supervisor Mary Adams (County of Monterey), Councilmember John Gaglioti (City of Del Rey Oaks), Councilmember Frank O'Connell (City of Marina), Mayor Pro-Tem Gail Morton (City of Marina), Councilmember Alan Haffa (City of Monterey), David Pacheco (City of Seaside), Councilmember Jon Wizard (City of Seaside), Mayor Joe Gunter (City of Salinas), Councilmember Jan Reimers (City of Carmel-by-the-Sea), Councilmember Cynthia Garfield (City of Pacific Grove), Mayor Mary Ann Carbone (City of Sand City)

### Ex-officio (Non-Voting) Board Members Present:

Kathleen Lee (20<sup>th</sup> Congressional District), Nicole Hollingsworth (17<sup>th</sup> State Senate District), Debbie Hale (TAMC), Steve Matarazzo (University of California, Santa Cruz), Lawrence Samuels (California State University Monterey Bay), Colonel Gregory Ford (United States Army), Bill Collins (BRAC), David Martin (MPC), Lisa Rheinheimer (Monterey-Salinas Transit), Jan Shriner (Marina Coast Water District)

## 7. CONSENT AGENDA

- a. Approve December 13, 2019 Meeting Minutes
- b. Administrative Committee
- c. Habitat Planning Update
- d. Environmental Services Cooperative Agreement Quarterly Report
- e. 2018-19 Fiscal Year Audited Financial Report
- f. Executive Officer Contract
- g. Public Correspondence to the Board

**MOTION:** On motion by Board member Haffa, seconded by Board member Gaglioti and carried by the following vote, the Board moved to approve the consent agenda.

### MOTION PASSED UNANIMOUSLY

## 8. BUSINESS ITEMS

### a. 2018 Transition Plan Implementation

Senior Program Manager Stan Cook introduced Kutak Rock Special Counsel Barry Steinberg and George Schlossberg who provided an in-depth background on Transition Plan Implementation and discussed two upcoming questions the Board must resolve: 1) Will the City of Seaside ("Seaside") assume responsibility as Successor Agency to the Environmental Services Cooperative Agreement ("ESCA"), and the Environmental Protection Agency ("EPA") Administrative Order on Consent ("AOC")? And 2) Will Seaside assume the limited federally imposed responsibilities for the Economic Development Conveyance ("EDC") Agreement? Special Counsel reviewed ESCA's current status and reported Seaside has agreed to be the ESCA Successor, subject to funding adequacy, liability protections, and regional acceptance. Special Counsel provided an in-depth background of the EDC Agreement and discussed key issues that could prevent the Office of Economic Adjustment ("OEA") from recognizing a FORA Successor, noting that community rights, such as those dealing with water/wastewater would likely be lost without an EDC Successor. Staff and consultants discussed these issues and heard public comment.

**MOTION:** On motion by Board member Gaglioti, and seconded by Board member Carbone, the Board moved to approve staff recommendation to approve the Implementing Agreement with the City of Seaside's acceptance for FORA's obligations under the EDC and Environmental Services Cooperative Agreement (ESCA) and designation as federally recognized Local Redevelopment Authority with proposed language to not unreasonably withhold transfer of conveyance.

**SUBMOTION:** On motion by Director Morton and seconded by Director O’Connell, and carried by the following vote, the Board moved to approve the following: Approve the nomination of Seaside as the ESCA Successor, and with regard to any remaining transfers, Seaside would assume FORA’s responsibilities to accept, distribute, and transfer title deeds and amendments not accomplished by June 30, 2020.

*\*Chair Parker restated the motion “So the motion before us is to approve the nomination of Seaside as the Successor to FORA for ESCA and for the EDC agreement as it relates to the federal property obligations solely and that the language for the EDC stuff will come back next month so we can actually see what it says.”*

**Motion Passed by Majority (7 AYES; 6 NOES) 2<sup>nd</sup> Vote Required.**

**MOTION:** On motion by Board member Haffa and seconded by Board member Gunter, the Board approved extending the meeting for five minutes in order to hear items 8b and 8c.

**MOTION PASSED UNANIMOUSLY**

**b. 2020 Elect Board Officers**

Chair Parker introduced the item, stating nominations were proposed unanimously from the Nominating Committee and announced as follows:

- Chair: Monterey County Supervisor Jane Parker
- Vice Chair: Seaside Mayor Ian Oglesby
- Past Chair: Marina Councilmember Frank O’Connell
- Member-at-Large: Del Rey Oaks Councilmember John Gaglioti
- Member-at-Large: Monterey Councilmember Alan Haffa
- Ex-Officio (Non-Voting) Member: CSUMB President Dr. Eduardo Ochoa

**MOTION:** On motion by Board member Morton and seconded by Board member Garfield and carried by the following vote, the Board moved to approve Nominating Committee’s proposed Board nominations.

**MOTION PASSED UNANIMOUSLY**

**c. Economic Planning Systems (“EPS”) Contract Amendments**

Mr. Metz reviewed the item and staff’s recommendation to approve EPS contract amendments for additional work regarding habitat management and building removal fiscal analysis.

**MOTION:** On motion by Board member Garfield and seconded by Board member Morton and carried by the following vote, the Board moved to approve EPS contract amendments for: 1) Additional habitat management fiscal analysis requested by potential permittees not-to-exceed (“NTE”) fifty-eight thousand dollars (\$58,000; and 2) Additional building removal fiscal analysis requested by Administrative Committee, in part to ensure adequate funding for Monterey County Regional Fire District (“MCRFD”) to fulfill their fire protection responsibilities, NTE twenty-five thousand dollars (\$25,000).

**MOTION PASSED UNANIMOUSLY**

**9. PUBLIC COMMENT**

Public comment was received.

**10. ITEMS FROM MEMBERS**

None.

**11. ADJOURNMENT** at 5:24 p.m.

Minutes Prepared by:  
Heidi L. Gaddy  
Deputy Clerk

Approved by:

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Joshua Metz Executive Officer

DRAFT

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

<b>Subject:</b> Administrative Committee	
<b>Meeting Date:</b> February 13, 2020 <b>Agenda Number:</b> 7b	<b>INFORMATION/ACTION</b>

### RECOMMENDATION:

Receive a report from the Administrative Committee.

### BACKGROUND/DISCUSSION:

The Administrative Committee held meetings on January 2, 2020 and January 15, 2020. The approved minutes for these meetings are provided as **Attachments A and B**.

### FISCAL IMPACT:


Reviewed by the FORA Controller 

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

### COORDINATION:

Administrative Committee

Prepared by   
Heidi L. Gaddy

Approved by   
Joshua Metz



**FORT ORD REUSE AUTHORITY**  
**SPECIAL ADMINISTRATIVE COMMITTEE MEETING MINUTES**  
**8:30 a.m. Thursday, January 2, 2020 | FORA Conference Room**  
 920<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

**1. CALL TO ORDER**

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

The following were present:

- |                           |                                |
|---------------------------|--------------------------------|
| Steve Matarazzo (UCMBEST) | Hans Uslar* (City of Monterey) |
| Matt McCluney (CSUMB)     | Layne Long* (City of Marina)   |
| Debbie Hale (TAMC)        | Craig Malin* (City of Seaside) |
| Patrick Breen (MCWD)      | Lisa Rheinheimer (MST)         |
|                           | *Voting Member                 |

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Steve Matarazzo.

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

- City of Monterey City Manager Hans Uslar announced Elizabeth Caraker has accepted a position at the Presidio Trust in San Francisco. A new Monterey City Planning representative will be appointed to replace Ms. Caraker in the Administrative Committee.

**4. PUBLIC COMMENT PERIOD**

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

No public comments were received.

**5. APPROVAL OF MEETING MINUTES**

**ACTION**

- a. December 18, 2019 Meeting Minutes

**MOTION:** On motion by Committee member Malin, seconded by Committee member Uslar and carried by the following vote, the Administrative Committee moved to approve the December 18, 2019 meeting minutes with one abstention from Committee member Debbie Hale and one abstention from Committee member Matt McCluney.

**MOTION PASSED UNANIMOUSLY**

**6. January 10, 2020 BOARD AGENDA REVIEW**

Executive Officer Joshua Metz reviewed the upcoming January 10, 2020 Board Meeting Agenda and responded to comments from members.

*\*Mr. Metz noted Kutak Rock consultants Barry Steinberg and George Schlossberg will hold a workshop at the FORA office on January 9, 2020 from 9:00-12:00 to discuss Environmental Services Cooperative Agreement-Seaside transition issues.*



*\*Deputy Clerk Heidi Gaddy noted a retirement party will be held at The Bayonet and Black Horse Golf Club in honor of former FORA Executive Officer Michael A. Houlemard, Jr. following the January 10, 2020 Board meeting. Tickets may be purchased on or before January 3, 2020 at [www.eventbrite.com](http://www.eventbrite.com).*

## 7. BUSINESS

### a. Building Removal Bond Status Report

Senior Project Manager Peter Said reported the Board of Directors approved pursuing building removal bond issuance at the December Board meeting and will go forward with validation action and notifying all parties in interest. Mr. Said stated staff anticipates obtaining confirmation from the Department of Finance (“DOF”) that DOF will not contest the bond issue at a hearing in January 2020.

#### i. Successor Entity Designation

Mr. Said stated the Administrative Committee recommended to the Board that the City of Marina act as bond administrator successor agency, responsible for bond funds distribution. In order for Marina to formally accept successor entity responsibilities Marina City Council must approve a Resolution confirming Marina’s acceptance of tax increment from the County of Monterey (“The County”) for distribution to trustees.

#### ii. Monterey County Regional Fire District Agreement & Issue Resolution

Mr. Metz reported The County has determined the Cities of Marina and Seaside are responsible for resolving Monterey County Regional Fire District (“MCRFD”) revenue loss issues. Member Malin requested a third-party fiscal analysis performed by Economic & Planning Systems, Inc., which would inform a Seaside-Marina Memorandum of Understanding to make MCRFD “whole.”

### b. Habitat Planning Update

#### i. Draft Habitat Conservation Plan

#### ii. Habitat Working Group

Mr. Metz introduced the item, stating the draft Habitat Conservation Plan (“HCP”) public comment period closed on December 16, 2019. Thirty-two public comment letters were received, including a thirty-six-page letter from Land Watch Monterey County (“Land Watch”) and unexpected comments from California Department of Fish and Wildlife (“CDFW”). Staff and consultants are analyzing these comments to assess the HCP feasibility and CDFW will use them and as guidelines to inform preparations for the Habitat Working Group. Mr. Metz reported the Habitat Working Group will meet weekly on Friday mornings from 10:00-12:00 beginning January 10<sup>th</sup>. Mr. Metz and Denise Duffy & Associates HCP consultant Erin Harwayne responded to questions from members and public.

### c. 2018 Transition Plan Status

No report. Regional Government Services consultant Kendall Flint will provide a 2018 Transition Plan status update at the January 10, 2020 Board meeting.

## 8. ITEMS FROM MEMBERS

None.

## 9. ADJOURNMENT at 9:28 a.m.

Minutes Prepared By:

Natalie Van Fleet  
Administrative Assistant



**FORT ORD REUSE AUTHORITY**  
**ADMINISTRATIVE COMMITTEE MEETING MINUTES**  
**8:30 a.m. Wednesday, January 15, 2020 | FORA Conference Room**  
 920<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

**1. CALL TO ORDER**

Chair Dino Pick called the meeting to order at 8:32 a.m.

The following were present:

Steve Matarazzo (UCMBEST)

Matt McCluney (CSUMB)

Mike Zeller (TAMC)

Patrick Breen (MCWD)

Vicki Nakamura (MPC)

Nicole Hollingsworth (17<sup>th</sup> State Senate)

Hans Uslar\* (City of Monterey)

Melanie Beretti\* (County of Monterey)

Craig Malin\* (City of Seaside)

Dino Pick\* (City of Del Rey Oaks)

Matt Mogensen\* (City of Marina)

\*Voting Member

**2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by City of Monterey City Manager Hans Uslar.

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

- Senior Program Manager Stan Cook provided the Committee with a February 5, 2020 Environmental Services Cooperative Agreement (“ESCA”) Long-Term Obligation (“LTO”) Management Program Meeting draft agenda, including an example ESCA LTO 2020 Management Calendar. The meeting will be held directly following the Administrative Committee meeting in the FORA Community Information Center until 12:00 p.m.

**4. PUBLIC COMMENT PERIOD**

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

No public comments were received.

**5. APPROVAL OF MEETING MINUTES**

**ACTION**

- a. January 2, 2020 Meeting Minutes

**MOTION:** On motion by Committee member Malin, seconded by Committee member Uslar and carried by the following vote, the Administrative Committee moved to approve the January 2, 2020 meeting minutes.

**MOTION PASSED UNANIMOUSLY**

**6. January 10, 2020 Board Meeting Follow-up**

Executive Officer Joshua Metz reviewed the January 10, 2020 Board Meeting and provided the Committee a draft transcription of the Board’s key discussion points surrounding Business Item 8a: 2018 Transition Plan Implementation. Mr. Metz summarized the item and stated the Board’s motion to approve the City of Seaside (“Seaside”) as ESCA Successor and Successor to the Economic Development Conveyance (“EDC”) (with some constraints regarding property transfer) was approved by majority vote (7 aye, 6 no), thus requiring a second vote at the next Board meeting. Staff is working to clarify the motion for the record and video of the meeting may be accessed at [www.fora.org](http://www.fora.org). The

Board unanimously approved the 2020 elected Board officers, as well as an Economic Planning Systems, Inc. ("EPS") contract amendment for additional funds to perform fiscal analysis in support of the Habitat Working Group and to assess Monterey County Regional Fire District ("MCRFD") revenue loss issues. FORA consultants Kendall Flint, Kristie Reimer and staff responded to questions and comments from members.

*\*Noted for the record, Committee member Malin exited the meeting at 8:40 a.m. Quorum maintained.*

*\*Committee member Pick confirmed plans to coordinate meetings between jurisdictions' counsels and FORA consultants to discuss EDC/Local Redevelopment Authority concerns and review revised Transition Plan Implementing Agreements ("TPIA") a week prior to the next Administrative Committee meeting of February 5, 2020.*

## **7. BUSINESS**

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

Mr. Metz reported building removal bond validation action will be filed next week. He and special counsel will travel to Sacramento to meet with Department of Finance ("DOF"), State Treasurer's Office and Attorney General's Office representatives to discuss the summons they will receive, and request no response be submitted. Authority Counsel Jon Giffen stated if DOF contests the validation action, the building removal bond issue will likely fail, due to prolonged litigation extending past FORA's sunset.

#### **i. Successor Entity Designation**

Mr. Metz reported that while the Administrative Committee has consistently recommended the City of Marina ("Marina") as designated building removal bond successor entity, the Board has yet to take action regarding that assignment. Mr. Metz suggested adding this action to the February 13, 2020 Board Meeting Agenda, noting it is a necessary step to move forward in the bond issue process should the validation action go uncontested.

#### **ii. Monterey County Regional Fire District & Issue Resolution**

Mr. Metz reported the Board approved an amendment to EPS's contract in order to perform financial analysis and provide a recommendation as to how to "make MCRFD whole." EPS will examine the County of Monterey's tax procedure as it relates to MCRFD revenues to determine if they are considered "harmed" by FORA's dissolution. If EPS determines MCRFD will require additional funding, the current proposed solution is to split the cost between Seaside and Marina, as they are the two main beneficiaries of the bond issuance.

### **b. Habitat Planning Update**

#### **i. Draft Habitat Conservation Plan**

#### **ii. Habitat Working Group**

Mr. Metz reported the first Habitat Working Group ("HWG") meeting took place on Friday, January 10, 2020 and will recur weekly on Fridays from 10:00 a.m. - 12:00 p.m. in the Carpenter's Hall. He stated the meeting was productive, noting the Group assembled meeting agendas for the next two HWG meetings, which will be jointly-noticed with the Administrative Committee. January 17<sup>th</sup>'s HWG meeting will feature presentations from U.S. Fish & Wildlife Services and Department of Fish & Wildlife representatives. Jurisdictions are encouraged to review the questions included in the HWG meeting packet and provide feedback regarding any "reduced footprint" development scenarios for consideration by FORA's consultant analyst team.

**c. 2018 Transition Plan Status**

Regional Government Services consultant Kendall Flint reported that at the February 5, 2020 meeting, the Committee will review current TPIAs, including ESCA. Ms. Flint stated she is working to create a transition plan flow chart, which will track in two-week increments the proposed schedule of critical tasks left to complete. Ms. Flint noted that approval of all TPIAs must be agreed to and signed by all agencies before FORA sunsets. Mr. Metz stated staff plans to bring the TPIAs to the Board as an information item in February in preparation for possible Board action in March.

**8. ITEMS FROM MEMBERS**

None.

**9. ADJOURNMENT** at 9:27 a.m.

Minutes Prepared By:

Natalie Van Fleet  
Administrative Assistant

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

**Subject:** Veterans Issues Advisory Committee

**Meeting Date:** February 13, 2020

**Agenda Number:** 7c

**INFORMATION/ACTION**

### RECOMMENDATION:

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

### BACKGROUND/DISCUSSION:

The VIAC met on January 23, 2020 and approved the October 24, 2019 minutes. The approved minutes are provided as **Attachment A**.

### FISCAL IMPACT:

Reviewed by FORA Controller 

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

### COORDINATION:

VIAC

Prepared by

  
Natalie Van Fleet

Approved by

  
Joshua Metz



APPROVED

**FORT ORD REUSE AUTHORITY  
VETERANS ISSUES ADVISORY COMMITTEE (VIAC) MEETING MINUTES  
3:00 P.M. January 24, 2019 | FORA Conference Room  
920 2<sup>nd</sup> Avenue, Suite A, Marina CA 93933**

**1. CALL TO ORDER**

Interim-Chair Edith Johnsen called the meeting to order at 3:00 P.M.

**Committee Members Present:**

Ian Oglesby, Mayor of Seaside

Edith Johnsen, Veterans Families/Fundraising

Mary Estrada, United Veterans Council (UVC)

Jack Stewart, Monterey County California Central Coast Veterans Cemetery Advisory Committee

Sid Williams, Monterey County Military & Veterans Affairs

**2. PLEDGE OF ALLEGIANCE** led by Jack Stewart.

**3. ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**

Principal Analyst Robert Norris announced that the new FORA Board Chair will appoint committee heads at the February 8, 2019 Board Meeting. Mr. Norris noted that FORA has submitted the 2018 Transition Plan to LAFCO, and VIAC Committee will continue.

**4. PUBLIC COMMENT PERIOD**

There were no comments from the public.

**5. APPROVAL OF MEETING MINUTES**

a. October 25, 2018 Regular Meeting Minutes

MOTION: On motion by Committee member Williams and seconded by Committee member Stewart the VIAC approved the October 25, 2018 meeting minutes.

**6. BUSINESS ITEMS**

a. **California Central Coast Veterans Cemetery (CCCVC) Status Report**

i. *Cemetery Administrator's Status Report*

Principal Analyst Robert Norris updated the committee stating he participated in a conference call on cemetery design and environmental issues. Unofficially they are currently at 35% working drawings and the Environmental Impact Report (EIR). Nothing has been officially announced and there is no official schedule. Progress is being made, however it's unclear whether or not the Cemetery will apply for federal funds this fiscal year or next.

ii. *Veteran's Cemetery Land Use Status*

Mr. Norris announced that there has been no official document released since the April 2018 report to the Fort Ord Committee on Oak Woodlands Mitigation. The next phase requires an EIR that covers all expected future phases of the cemetery project.

iii. *Fort Ord Committee Verbal Report: Oak Woodlands Mitigation & Endowment MOU*

Nothing to Report

b. **Fundraising Status**

i. *Central Coast Veterans Cemetery Foundation Status Report*

Candy Ingram advised the Committee that there are three major events this year; the Heroes' Open, Epic Ride, and The Honor Our Fallen Run. Mrs. Ingram announced the Central Coast Veterans Cemetery Foundation (CCVCF) has inherited the Honor Our Fallen Run from the Army and thanked the Army for a wonderful run last year and raising the bar. A year end letter was mailed out, resulting in a response of over \$5,000 in donations. The CCVCF has a new brochure that is being distributed. Mrs. Ingram commended the Marina Foundation on working with the cemetery on the vase program and golf cart maintenance, and going forward the CCVCF has agreed to take on those responsibilities.

c. **Veterans Transition Center (VTC) Housing Construction**

Mr. Norris reported that there was an informative article in the Monterey Herald in regards to the VTC housing project. The project is entitled to be a \$30 million, 64-unit permanent housing in Marina for veterans and veteran families in need.

d. **VA-DOD Clinic**

Jack Stewart announced that they are still trying to figure out what to do with the pharmacy location, possibly a study area. Sid Williams informed the Committee that the VA-DOD Clinic will continue to have quarterly Town Hall meetings to answer questions.

e. **Historical Preservation Project**

Mary Estrada reported that the Marina Foundation has established an interim board. They are working on paperwork that is required for the State regarding the transition from one Board to the new Board. Plans are still in place to find a group interested in taking over the Historical Preservation Project.

f. **Calendar of Events**

Looking for volunteers for calendar events.

- Feb 5-10, 2019 Pebble Beach AT&T Pro-Am

**7. ITEMS FROM MEMBERS**

COL. Greg Ford reported that the Army is looking at how to modernize and cut costs. There is the potential for certain programs to be cut in FY 20/21.

Command Sgt. Major Marshall voiced appreciation for the Wreaths Across America program. The number of wreaths received the first year has gone from 6 to last year receiving 300 divided between the Monterey Presidio and Benicia cemeteries. The Presidio will be open to the public during the event, and tours are available upon request.

**8. ADJOURNMENT** at 3:45 p.m.

Minutes Prepared by:  
Heidi Lizarbe

<b>FORT ORD REUSE AUTHORITY BOARD REPORT</b>	
<b>BUSINESS ITEMS</b>	
<b>Subject:</b>	Habitat Working Group Ad-Hoc Committee
<b>Meeting Date:</b>	February 13, 2020
<b>Agenda Number:</b>	7d
<b>INFORMATION</b>	

**RECOMMENDATION:**

Receive report from the Habitat Working Group Ad-Hoc Committee.

**BACKGROUND/DISCUSSION:**

The Fort Ord Reuse Authority Board requested that staff assist and support the Habitat Working Group (HWG) Ad-Hoc Committee to identify possible options for agencies to address environmental compliance with state and federal endangered species laws (**Attachment A**). This would include discussions regarding the viability of implementation via a Habitat Management Plan, a Habitat Conservation Plan and/or other approach if possible.

The HWG consists of Board Members representing member agencies and members of the FORA Administrative Committee. Meetings will be jointly noticed to allow members of the FORA Board and Administrative Committee to attend and share information freely. Public comment will be allowed following each business item discussed.

Meetings were held on January 10: Potential Topics for Discussion (**Attachment B**), January 17: Presentation from Regulatory Agencies (**Attachment C**), January 24: Consideration of Revised Land Use Projections, and January 31: Possible Options for Future Collaboration/Discussion.

After four meetings, the group appears to have reached consensus on a number of items:

- Recommend the Board direct the consultant team complete the Final Environmental Impact Report so that it may be certified by the FORA Board, provided special CEQA and FORA Authority counsel concur with that action resulting in limited liability;
- Explore refinements/revisions to the Draft Habitat Conservation Plan such as phasing, provided it can be demonstrated that the State would be able to issue permits given the removal of BLM lands for mitigation;
- Provide development projections/phasing scenarios based on 15, 25 and 50 years;
- Desire to continue discussions related to the Habitat Management Plan, the Habitat Conservation Plan and/or other options for environmental compliance as a group post-FORA;
- Collaboratively develop a mechanism such as a joint powers authority, to allow for those discussions; and
- Determine the costs associated with these proposed actions and make a request of the FORA Board to provide funding.



The HWG's next two meetings will focus on the potential structure of a joint powers authority and a review of an updated cost model for implementation of the HMP and possible phase one development.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

**COORDINATION:**

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

**ATTACHMENTS:**

- A. HWG Ad-Hoc Committee Charge
- B. January 10, 2020 HWG Minutes
- C. January 17, 2020 HWG Minutes

Prepared by and Approved by

  
Joshua Metz



# FORT ORD REUSE AUTHORITY

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

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## **Habitat Working Group Ad Hoc Committee**

### Committee Charge

The Habitat Working Group (“HWG”) Ad Hoc Committee is comprised of FORA land use jurisdictions and potential Habitat Conservation Plan (“HCP”) permittees, and is charged with understanding and evaluating questions and concerns regarding long-term habitat management options on the former Fort Ord, coming to agreement(s), and reporting back to the full Board. FORA staff supported by consultants will provide technical and administrative support to the HWG. The HWG effort is anticipated to have a limited duration, with goals of formulating agreements and forwarding priority recommendations to the Board in February or March 2020.



## REGULAR MEETING

### FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP

10:00 a.m. Friday, January 10, 2020 | FORA Board Room  
920<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

#### 1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:00 a.m.

The following FORA Board and Administration Committee members were present:

Supervisor Jane Parker (Monterey County)  
Mayor Pro Tem Gayle Morton (City of Marina)  
Councilmember John Gaglioti (City of Del Rey Oaks)  
Councilmember Alan Haffa (City of Monterey)  
Councilmember Ian Oglesby (City of Seaside)  
Layne Long (City of Marina)  
Hans Uslar (City of Monterey)  
Craig Malin (City of Seaside)  
Patrick Breen (MCWD)

Members of the Consultant Team included:

Kendall Flint (RGS)  
Tom Graves (RGS)  
Aaron Gabbe (ICF)  
Erin Harwayne (DDA)  
Ellen Martin (EPS)

#### 2. PUBLIC COMMENT PERIOD

No public comments were received.

#### 3. BUSINESS ITEMS

##### a. Discussion of Meeting Objectives

The group held a brief discussion outlining the purpose of the Habitat Working Group: to identify possible options for agencies to address environmental compliance with state and federal requirements for habitat management and/or mitigation on the former Fort Ord. This would include discussions regarding the viability of implementation via a Habitat Management Plan, a Habitat Conservation Plan and/or a hybrid approach if possible.

**b. Committee Structure**

Co-Chair Parker described the proposed structure of the committee with herself and Executive Officer Josh Metz serving as Co-Chairs. No objections were made.

Meetings will be jointly noticed to allow members of the FORA Board and Administrative Committee to attend and share information freely. Public comment will be allowed following each business item discussed.

Any public agency with property in the former Fort Ord that may require habitat management may participate in the Working Group. It is anticipated that participation would include a Board member representing the agency, an Administrative Committee member representing the agency and/or staff members including but not limited to legal counsel. The group determined that there was no set number of participants per agency as the objective was to achieve consensus as opposed to voting on specific items. Co-Chair Parker said the Working Group would be informing the FORA Board what it has come up with. If actions are taken, they would be shared with the Board as recommendations.

**c. Group Exercise: Define Key Topic Areas for Future Meetings**

The Working Group held a breakout session by Agency to identify key areas of concerns, questions for the Group and its consultant team to address at future meetings, and challenges to the environmental compliance process including fiscal impacts and potential liabilities to each agency. A list of questions already identified by agencies were provided to all participants for review. Each group reported back its concerns with the goal of identifying common concerns for future meeting discussions.

Monterey County***Habitat***

*If we reduce the scale of the HCP, would this reduce the costs and stay ahead provision? Would this reduction in scope lower start-up costs for implementation?*

***Finance***

*What is the mechanism for collection of fees for future development to replace the existing CFD? Who will defend and pay for litigation over HCP/EIR approval? Would this fall to the JPA or to agencies?*

***Take Permits***

*Should we reduce the permit for realistic near-term development over the next 25 years?*

**Other**

*Who would manage the proposed JPA if one is established by July 1, 2020? What can we feasibly accomplish by June 30, 2020? If the EIR is approved but no project (the HCP) has been selected?*

City of Monterey

**Habitat**

*Prefers the JPA concept for governance as it allows for joint management of the habitat at a reduced cost, facilitates access to take permits, offers legal protection and shared risks. The City also noted that the EIR/EIS is almost complete*

*How long (planning horizon) do we really need to plan for?*

City of Marina and City of Del Rey Oaks

**Habitat**

*If we reduce the scale of the HCP would the EIR and EIS still be valid? Can we reopen the HCP to better reflect development assumptions?*

**Finance**

*Marina has already established and set a fee for development yielding a set amount. How will other agencies collect set and collect fees and will they be enough to cover the cost of establishing a proposed endowment to fund the HCP?*

City of Seaside

**Habitat**

*What species does each agency have, where are they located and how many acres must be maintained/restored?*

*What protections do agencies have if others are non-compliant?*

*How can we best optimize mitigation areas within habitat management areas?*

Non-Land Use Agencies

*What liability/responsibilities would these agencies incur if a JPA is formed?*

**d. Approve Draft Schedule**

Co-Chair Metz then focused on upcoming meeting topics and agendas. A series of eight additional meetings are planned. Topics for future meetings will be discussed each week. The group agreed on the next two subject areas for upcoming meetings:

- January 17<sup>th</sup> will focus on compliance requirements with representative from United States Fish & Wildlife Service and California Fish and Game.
- January 24<sup>th</sup> will focus on legal and financial issues related to establishing a “cooperative” and/or other mechanism(s) to address environmental compliance and review options related to reducing the size of the proposed mitigation and management areas.

**4. ITEMS FROM MEMBERS**

None.

**5. ADJOURNMENT 12:00 p.m.**

Co-Chair Parker adjourned the meeting at noon.



## REGULAR MEETING

### FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP And SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE

10:00 a.m. Friday, January 17, 2020 | FORA Board Room  
920 2<sup>nd</sup> Avenue, Suite A, Marina, CA 93933

#### 1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:02 a.m.

#### **The following FORA Board and Administration Committee members were present:**

Supervisor Jane Parker (Co-Chair, Monterey County)  
David Martin (Monterey Peninsula College)  
Mayor Pro Tem Gail Morton (City of Marina)  
Councilmember John Gaglioti (City of Del Rey Oaks)  
Councilmember Alan Haffa (City of Monterey)  
Mayor Ian Oglesby (City of Seaside)  
Dino Pick, (City of Del Rey Oaks)  
Layne Long (City of Marina)  
Hans Usler (City of Monterey)  
Craig Malin (City of Seaside)  
Patrick Breen (Marina Coast Water District)  
Josh Metz, (Executive Officer, Co-Chair)

#### **Members of the Consultant Team included:**

Kendall Flint (RGS)  
Aaron Gabbe (ICF)  
Erin Harwayne (DDA)  
Ellen Martin (EPS)  
David Willoughby, FORA Counsel's Office

#### **Other Attendees included:**

Matt Mogensen, City of Marina, Assistant City Manager  
Sheri Damon, City of Seaside, City Attorney  
Wendy Stribling, Monterey County Sr. Deputy County Counsel  
Mike Langley, Marina Coast Water District, District Engineer

#### 2. PUBLIC COMMENT PERIOD

No public comments were received.

Co-Chair Parker explained that there were actually two Committees in attendance today: The Fort Ord Reuse Authority Habitat Working Group (HWG) as a Regular Meeting and the Fort Ord Reuse Authority Administrative Committee as a Special Meeting.

### 3. BUSINESS ITEMS

a. Approve meeting minutes from January 10, 2020 (No action taken).

b. Today's Meeting Objective

Co-Chair Parker encouraged members to take advantage of the representatives here today from State and Federal agencies, and to listen carefully to their responses.

c. Review of Environmental Compliance Requirements and Address Questions

Staff from California Department of Fish and Wildlife and the US Fish and Wildlife Service were in attendance to answer questions.

Julie Vance Regional Manager, Central Region  
California Department of Fish and Wildlife

Annee Ferranti, Environmental Program Manager Habitat Conservation Planning  
California Department of Fish and Wildlife Central Region

Leilani Takano, Assistant Field Supervisor North Coast Division  
US Fish and Wildlife Service, Ventura Fish and Wildlife Office

Rachel Henry, Habitat Conservation Plan Coordinator  
U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office

*i. What are the basic requirements for each agency to comply with State and Federal provisions?*

Regarding permits in general, pursuant to the California Endangered Species Act (CESA). Fort Ord has been on the Incidental Take Permit (ITP) track. That said, if people are interested it might be worth exploring the Natural Community Conservation Plan as opposed to an HCP, but that can be decided at a later date. The take has to be fully mitigated, which is a pretty high standard, and the way that is done is impacts to the covered species and, in this case, there are several State species. Only State species would be addressed in the State program. The impacts are described in the project. There will be a large list of covered activities and generally the mitigation is in the form of perpetual mitigation land conservation. Typically, that's done with recreation and conservation activities, and an endowment that funds the management of those properties for the purpose of species conservation. The idea is that those management activities provide a lift to those habitats such that impacts are mitigated by enhancing numbers of the species. Otherwise, there would be a net loss.



The State can't issue a take permit to one entity and allow other entities to do the take. That's why the State has always believed that FORA as an umbrella agency would be the perfect transfer agency transitioning to a JPA. The State was assuming that the regional conservation approach was moving forward. If not, for an individual basis, things would have to be looked at differently. Also, on BLM lands, the State has difficulty approving mitigation on Federal land for obvious reasons.

*ii. If we reduce the scale of the HCP - would this reduce the costs and stay ahead provision? Would this reduction in scope lower start-up costs for implementation?*

Yes, but this depends on how the scale is reduced and on which species would be more or less impacted. State permits can also be amended but it depends on the complexity of the change. Regarding start-up costs, the simple answer is yes. Costs can be scaled, starting lower and rising thereafter.

*iii. How long do we really need to plan for?*

Currently, the regional HCP is permitting activities for 50 years. This is very atypical. Normally, the Service is comfortable with permitting projects for 25 or 30 years because we are able to analyze effects on species. Permit length really depends on the needs of the applicant and the covered activities. That said, the mitigation or conservation for selected species should be in perpetuity.

The State added that by shortening the horizon from 50 years to 25 or 30 years, they are able to have more confidence in their analysis.

*iv. Can we reopen the HCP to better reflect development assumptions?*

(Clarified by Co-Chair Metz to add "before we go to final draft.") The answer is definitely yes, since applicants should be comfortable with the final HCP. It not only assures compliance, but now is the time to change things that need to be changed. So just to put the caveat there that yes, it can be reopened.

*v. If we reduce the scale of the HCP would the EIR and EIS still be valid?*

As long as it is within the scope of the original document, then yes.

*vi. Does Borderland management qualify for a different type of take permit?*

From the federal perspective - no.

CESA has another provision under Section 21(a) of the Fish & Game Code that allows take for things that are for management or recovery or for research purposes, but it can't be in association of the project.

*vii. The HCP will cover a subset of the species addressed by the HMP. The HCP will manage natural communities and covered species habitats. Will the permittees still*

*need to implement management, monitoring, and reporting actions for HMP species not covered by the HCP?*

Leilani Takano said that implementation of the HCP was a condition of receiving the land from the Army, and since that is not within the purview of Fish & Wildlife, she didn't want to speak to that. However, USFWS did do an analysis for the Army which resulted in the establishment of the HMP in 1993

*viii. Can you confirm that HCP permittees need to apply for CDFW 2081 permits?*

Yes.

*ix. How will regulatory agencies enforce environmental compliance?*

There are environmental complaints in the context of permit compliance, and then there are environmental complaints in the context of someone deciding to engage in take without authorization. The Committee asked for information on both.

If someone was engaging in take without authorization, there are enforcement options either pursued through the attorney general as a civil or criminal complaint.

If there are complaints in the context of permit compliance, there would be an attempt to resolve those issues through the administrative process. If things remain unresolved, the permit can be suspended or pulled.

*x. Do individual agencies have the ability to mitigate onsite?*

It depends. The State would also want to check in and make sure there was not what is described as "postage stamp mitigation" that really don't contribute to the recovery of the species. Mainly it has to be of sufficient size to support the species.

*xi. Other questions?*

One question was left out: Can you describe the agency view on individual versus collective HMA area management?

CDFW declined to speak about the HMA but did comment on whether it's managed as a unit as opposed to jurisdictions. Ideally, things are being managed consistently and collaboratively, and there's a benefit to the economy of scale that provides. On a per acre basis, it's going to be much more expensive to break it down and do it individually. But that said, it could be done but assurances would be sought that there was a consistent management approach across the landscape.

**Questions to the presenters**

*John Gaglioti asked about the cost of the HCP.*

CDFW responded that there was some flexibility, but ultimately the take has to be mitigated slightly in advance of the impact. They wouldn't require mitigation for things that were yet to occur. Mr. Gaglioti asked if it was even necessary then to open the HCP, or could jurisdictions just live within the boundaries of the Plan? CDFW expressed a willingness to sit and work out the details, and to take another look at the question. Mr. Gaglioti then spoke about the \$40M endowment planning number in everybody's heads, and the "donut hole" between what's available and what needs to be contributed. CDFW cautioned that the costs will go up over time, and if not fully capitalized the agency will not be able to have the benefit of a larger endowment building interest. There are pros and cons to that.

*Wendy Strimling asked if the totality of the mitigation can be scaled back based on a different projection of the development?*

CDFW said maybe. It would necessitate an in-depth discussion but it might be doable. Strimling's other question was on follow-up to two questions: can individual permittees apply for 2081 permits, or does the JPA get the 2081? CDFW said developers would be added to the permit by amendment for their specific element, but it would still all be under the original permit. And finally, Ms. Strimling asked if there was a JPA, and an HCP, and a 2081, and one jurisdiction does something that's out of compliance with the plan, does the permit get revoked or suspended as to all entities? CDFW – Not necessarily. It would depend on the severity of the infraction and the nature of it.

*FORA dissolves June 30, 2020. Will this HCP approval make that deadline?*

CDFW was unable to answer the question. USFWS said it depends. It really depends on whether the applicants want to move forward with the HCP in its entirety and whether minor changes are wanted versus substantial changes. They asked to be informed as soon as possible if major changes are contemplated because there is a Federal Register process as well. In the meantime they can still issue individual permits to individual applicants. If one permit was issued to the JPA, inclusion would be given to each applicant.

*If agencies carve out certain areas where there are endangered species and decide those lands won't be developed – is a take permit still necessary?*

CDFW answered that if developments could be done in a way where endangered species areas were set aside, that would be fantastic. Of course, there would be ways to do less, and obviously if you're setting aside impacted land, this could be phased for really large development projects. In the Central Valley, there are large residential development mixed use projects which are hundreds of acres of development, but it's all going to occur at the same time. What developers will generally say is the first phase will be 75 acres with mitigation land somewhere in the neighborhood of 10-15%. That's the first phase

mitigation. and then have to work toward mitigating those lands and depositing a non-wasting endowment for the perpetual management of those lands. Then they can decide how big phase two will be, phase three and so forth.

*Regarding enforcement, can you outline the plan by which you would enforce the provisions of a habitat management plan, and in particular, how the Service would look at what's going on in management areas?*

The Service believe the agreement states that the Army will be the enforcer. Having said that, the Service did issue files that contained a list of all species that would be impacted by the transfer, and that was part of the biological assessment that the Army submitted in the early 90's. They originally proposed that they would develop the original HMP. The HCP could be a tool for restoration actions that have already been decided on about twenty years ago, so that will help facilitate management.

*Is it fair to say that if a jurisdiction has a HMA within their jurisdictional boundaries and there is no reason for a HCP, would they need to go back and look at your 1993 biological opinion and see what management actions are required under that opinion for certain types of species, and then take those actions to the services?*

It goes back to the Army in that original agreement. If the jurisdiction has been managing all this time through benign neglect, then the Service would step in and try to get that entity into compliance, and to try to do restoration.

*How are violations enforced if we are all collectively responsible for the management of the lands?*

CDFW – You have no obligation with us, aside from the people that have their own permit. And they have their own specific duties. One thing I didn't talk about is that before someone can engage in development, they either have to put up a Letter of Credit for the full amount of mitigation, which we can cash out if necessary, or they have to have it in place in advance. So, it seems if there's a violation and we're all doing it collectively, the entire permit would be pulled. Maybe, but there are remedies besides permit suspension. It's not in the State's interest to blow the whole thing up and start from scratch.

*Going back to the idea of Phasing, in our financial scenario we currently have \$17M. Can we set up Phase A with our \$17M, and then Phase B with, say \$25M, and we decide to stop there. Can you stop there and amend the permit?*

Yes. However, \$17M is not a lot of money. If you're going to phase it, and I understand why you would want to do that, you're going to have to need to redo the financials. The other thing I want to say is that I hope you are all passing these costs on to your developers.

The caveat in the permit says that at the time you begin your second phase and the endowment gets deposited, it's been adjusted for inflation using the CPI.

*Can we really calibrate the totality of the mitigation to the amount of development if the projects are done in phases?*

The permits can be structured any way you want them to be; either everything up front or a structured phase. It's a little bit more complicated to think how that might work on Fort Ord because, in terms of the mitigation of lands, we would have to think about whether that means you're only managing this one area, or perhaps smaller managing levels in larger areas. We can talk about these issues by sitting down with a map and having small conversations.

In Metro Bakersfield there was a developer who did not complete all of the required mitigations. In a series of meetings with staff and the other developers (who were very unhappy about this other developer) sufficient peer pressure was applied to cause this developer to complete their phase of mitigation. So here, too, any conditions of approval for any developer are going to require that they comply with the terms of your permit. And if they don't, you can suspend their permit or red tag them.

At 11:26 a.m., Co-Chair Parker opened the meeting to members of the public.

Kristy Markey, Supervisor Parker's Office

*Looking at the financing questions, it said \$40M seemed like a good deal, and that seems about right. Are there any assumptions about the ROI? And then also, looking at the actual expense of the activity, you require a certain number of years. Did any of you have. Chance to read our letter?*

No.

Fred Watson

*Have public comments been circulated yet? If not, when will they be?*

Comments will be circulated with the Final Environmental Impact Report, Final Environmental Impact Statement and the Final Habitat Conservation Plan.

#### **4. FUTURE AGENDA ITEMS**

The group expressed a desire to immediately explore phasing options but continue to review components of a potential Joint Powers Agreement.

January 24, 2020: Exploration of HCP Reduced Scope & Phasing Options

- i. Opportunity and Constraints Overview (Erin Harwayne DDA)
- ii. Jurisdiction Scenarios – Caucus & Report
- iii. Group Discussion

Proposed Future Topics:

January 31, 2020: Governance Structure & Priorities

February 7, 2020: Finances

February 14, 2020: Revised Governance Agreement

**5. ADJOURNMENT**

Co-Chair Parker adjourned the meeting at 12:09 p.m.

# FORT ORD REUSE AUTHORITY BOARD REPORT

## CONSENT AGENDA

<b>Subject:</b>	Execution of Adoption Agreement with MidAmerica to Administer a Health Reimbursement Arrangement ("HRA") Program	
<b>Meeting Date:</b>	February 13, 2020	<b>ACTION</b>
<b>Agenda Number:</b>	7e	

### RECOMMENDATIONS:

Authorize the Executive Officer to execute adoption agreement to implement an HRA program with plan administrator, MidAmerica Inc.

### BACKGROUND/DISCUSSION:

On November 11, 2019, the FORA Board unanimously approved setting up a health HRA program for administering post-employment health benefits for terminated employees. MidAmerica has been designated as the HRA plan administrator as provided:

[https://fora.org/Board/2020/Packet/Additional/021320 %20Item 7e Attach A.pdf](https://fora.org/Board/2020/Packet/Additional/021320%20Item%207e%20Attach%20A.pdf)

### FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for the HRA program is included in the approved FORA Budget.

### COORDINATION:

None.

Prepared by  Approved by   
Mi Ra Park, RGS Joshua Metz

<b>FORT ORD REUSE AUTHORITY BOARD REPORT</b>	
<b>CONSENT AGENDA</b>	
<b>Subject:</b>	Public Correspondence to the Board
<b>Meeting Date:</b>	February 13, 2020
<b>Agenda Number:</b>	7f
	<b>INFORMATION/ACTION</b>

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

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

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



**FORT ORD REUSE AUTHORITY BOARD  
SUPPLEMENTAL REPORT**

**BUSINESS ITEMS**

<b>Subject:</b>	Economic Development Conveyance/ Local Redevelopment Authority Successor Designation	
<b>Meeting Date:</b>	February 13, 2020	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	8a	

**RECOMMENDATION(S):**

Review report detailing clarifications to the Implementing Agreement designating the City of Seaside as the Successor to the Ford Ord Reuse Authority (“FORA”) under the Economic Development Conveyance (“EDC”) Agreement between the United States Army and FORA.

**BACKGROUND/DISCUSSION:**

Staff and FORA’s legal team were directed by the Board at its January 10, 2020 meeting to provide clarifying language for its review to the proposed FORA and City of Seaside Environmental Services Cooperative Agreement (“ESCA”) and Local Redevelopment Authority (“LRA”) / EDC Agreement - Successor Implementing Agreement (hereinafter “the Agreement”). The Executive Officer, FORA’s legal team, and RGS consultant staff met with representatives from member agencies to identify key areas of concern and develop language to address them in conjunction with the Kutak-Rock legal team.

The Agreement was then vetted at the FORA Administrative Committee at its regular meeting on February 5, 2020 and a continuation of that meeting at 10:30am, February 6, 2020, at which time they recommended Board approval of the Agreement with following modifications:

- 1) Global change to the document title from “Economic Development Agreement” to “Economic Development Conveyance (EDC Agreement)”;
- 2) Global change from “Memorandum of Agreement (“MOA”) to “EDC Agreement”;
- 3) Changes to paragraph 2.0 and throughout the document to “nominate” Seaside as the successor the EDC and LRA.
- 4) Section 3.0 Insurance Policies. FORA will request the transfer of its two pollution legal liability insurance policies and limits to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and claims-related obligations. Seaside acknowledges that these insurance policies will expire in 2022 and 2024, respectively, and that Seaside’s designation will be subject to approval by the insurers. Seaside’s successful designation through December 31, 2024 is a condition precedent to becoming FORA’s ESCA successor. Pollution legal liability insurance will be required by the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be funded by the Army.

- 5) Section 8.4 No Obligation of Other Entities. Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, the Marina Coast Water District (hereinafter collectively "Grantees"), will not be a party to the ESCA, and will not bear any financial liability as a result of the ESCA.
- 6) Section 9.0 establishes the following:
- i. Water Rights Allocations. Until such time as such allocations may be amended by agreements, Seaside agrees to honor and abide by the water rights' allocations set forth in Exhibit A attached hereto, for Government Water Rights as defined in Subsection 5.02 of the EDC Agreement, that may be released by the Government in the future, subject to compliance with all applicable laws.
  - ii. Wastewater Discharge Rights. Until such time as such allocations may be amended by future agreements, Seaside agrees to establish and apply, in consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a fair process to ensure that all Grantees will enjoy equitable utilization of Wastewater Discharge Rights that may be released by the Government in the future, subject to compliance with all applicable laws.
  - iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or EDC Agreement creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's City limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.
  - iv. Seaside shall not require payment of any sale or lease proceeds or revenues (or the equivalent use of property such as licenses, permits, concession agreements etc.), from other entities for the transfer of property, water rights, or wastewater discharge rights received from the Army pursuant to the EDC Agreement.
- 7) Section 22. Third-Party Rights. The Grantees are intended to be third-party beneficiaries of this Agreement as it relates to future transfers of property, water rights, and wastewater discharge rights pursuant to the EDC Agreement, and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the Parties and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

**FISCAL IMPACT:**

None.

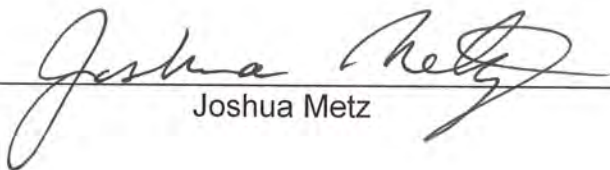
**COORDINATION:**

Authority Counsel, Administrative Committee, Executive Committee, FORA Board, FORA Special Counsel

**ATTACHMENTS:**

- A. DRAFT Fort Ord Reuse Authority and City of Seaside Environmental Services Cooperative Agreement (ESCA) and Local Redevelopment Authority (LRA)/Economic Development Conveyance Agreement (EDC Agreement) Successor Implementing Agreement (*Updated as of February 7, 2020*).

Prepared by and Approved by:

  
Joshua Metz

1                   **FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE-**  
2                   **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND-**  
3                   **LOCAL REDEVELOPMENT AUTHORITY (LRA)-ECONOMIC DEVELOPMENT**  
4                   **CONVEYANCE AGREEMENT (EDC AGREEMENT)**  
5                   **SUCCESSOR**  
6                   **IMPLEMENTING AGREEMENT**  
7

8                   **RECITALS.**

9  
10                   WHEREAS, the Fort Ord Reuse Authority (“FORA”) is a regional agency and a  
11                   Corporation of the State of California established under California State Law Government  
12                   Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord  
13                   property and is acknowledged as the federally recognized local reuse authority for property  
14                   transfers from the Army, to the governing local jurisdictions or their designees.

15  
16                   WHEREAS, the City of Seaside, California (“Seaside”), is a general law Municipal  
17                   Corporation of the State of California.

18  
19                   WHEREAS, FORA and Seaside are each a “Party”, and together the “Parties” to this  
20                   Agreement.

21  
22                   WHEREAS, Fort Ord, California was placed on the National Priorities List  
23                   (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater  
24                   and a 150-acre landfill.

25  
26                   WHEREAS, in 1990, the Army executed a Federal Facility Agreement (“FFA”) under  
27                   CERCLA Section 120 outlining the Army’s Comprehensive Environmental Response,  
28                   Compensation, and Liability Act (“CERCLA”) clean up responsibilities with respect to the  
29                   former Fort Ord. The Army remains responsible for certain actions under that FFA. The  
30                   FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for  
31                   FORA’s ESCA obligations so long as FORA or its successors are in compliance with the  
32                   AOC.

33  
34                   WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to and  
35                   in accordance with the Defense Base Closure and Realignment Act of 1990, as amended  
36                   (Public Law 101-510; hereinafter referred to as the “Base Closure Act”).

37  
38                   WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as  
39                   amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L.  
40                   No. 106-65 (1999), and the implementing regulations of the Department of Defense (32  
41                   CFR Parts 90 and 91), FORA executed an economic development conveyance agreement  
42                   and acquired portions of the former Fort Ord consisting of approximately five thousand two  
43                   hundred (5,200) acres of land, including all buildings, personal property, appurtenances,  
44                   rights-of-way, and drainage areas upon and subject to the terms and conditions of a June  
45                   23, 2000 Memorandum of Agreement (~~MOA~~) with the United States of America (~~“EDC~~

1 Agreement”).

2  
3 WHEREAS, the MOAEDC Agreement provided for transfers of property in  
4 accordance with the Army's clean-up schedule. Subsequent to the MOAEDC Agreement  
5 execution, FORA and the local communities decided to pursue an early transfer process  
6 pursuant to Title 42 United States Code, section 9620(h)(3)(C) in order to expedite the  
7 property transfers and ultimate reuse and economic recovery for the communities affected  
8 by the Fort Ord closure.—

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10 WHEREAS, in furtherance of the early transfer process, the Army, with the approval  
11 of the EPA Administrator and the concurrence of the Governor of California, transferred title  
12 of 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before  
13 all action to protect human health and the environment had been completed. Concurrent  
14 with this transfer without the otherwise required CERCLA covenant mandated by Title 42  
15 United States Code, section 9620 (h)(3)—, FORA accepted title and agreed to perform the  
16 Army's environmental remediation with funding from the Army. Excluded from FORA's  
17 performance obligation are matters related to the groundwater at the former Fort Ord, as  
18 well as other Army responsibilities enumerated in the ESCA and elsewhere.—

19  
20 WHEREAS, in 2007 an “Administrative Order on Consent (“AOC”) [Docket No. R9-  
21 2007-003] [was] entered into voluntarily by the United States Environmental Protection  
22 Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), and the  
23 Fort Ord Reuse Authority. The AOC concerns the preparation and performance of potential  
24 removal actions, one or more remedial investigations and feasibility studies (“RI/FS”) and  
25 one or more remedial designs and remedial actions (“RD/RA”) for contaminants present on  
26 portions of the former Fort Ord located at Monterey, California (“Site”) and the  
27 reimbursement for future response costs incurred by EPA and DTSC in connection with  
28 such CERCLA response actions.”.

29  
30 WHEREAS, in 2007 the Army executed an amendment to the Federal Facilities  
31 Agreement.

32  
33 -WHEREAS, in 2007 the Army and FORA executed an Environmental Services  
34 Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United  
35 States Code, Section 2701(d)— Environmental Restoration Program (10 U.S.C. 2701)  
36 whereby FORA would perform the Army's environmental responsibilities as the Army  
37 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with  
38 the Army providing funding to perform these services.—

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40 WHEREAS, the ESCA has been amended several times, the ESCA Mod 9  
41 amendment in 2017 which provided approximately \$6.8 million for Regulatory Oversight  
42 Through 31 December 2019, FORA ESCA Administrative costs during the EPA/DTSC  
43 remedial-completion documentation, property transfer process through 30 June 2020 and  
44 to perform the required long-term land management tasks, including Munitions and  
45 Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring

1 and reporting through June 30, 2028.-  
 2

ESCA-Mod.-Number	ESCA Contract Line Item Number (CLIN) and-Description	Expiration Date	Amount
MOD 09	CLIN 02 – Department of Toxic Substance Control (DTSC) and United States EPA Technical Oversight Services	31 Dec. 2019	\$745,913
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
	<b>Totals</b>		<b>\$6,846,204</b>

3  
 4 WHEREAS, due to changes and delays in the transfer of properties, modifications  
 5 were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN  
 6 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-Term  
 7 Management and Land Use Control (LUC) management are ~~\$3,705,792~~, \$3,705,792  
 8 (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028)-;  
 9

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
	<b>Totals</b>		<b>\$4,234,443</b>

10  
 11 WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that  
 12 specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the  
 13 ESCA contract.  
 14

15 WHEREAS, the Successor assumes responsibility and will be tasked with  
 16 performing the remaining LTOs under the ESCA, including the recent amendment. It is  
 17 assumed that all work under the previous \$98,000,000 contract will have been  
 18 accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action  
 19 Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army  
 20 Administrative Record located at: [http://fortordcleanup.com/documents/administrative-  
 21 record/-](http://fortordcleanup.com/documents/administrative-record/)  
 22

23 WHEREAS, the City of Seaside is prepared, subject to funding, to assume ESCA  
 24 responsibility and attendant local reuse authority status, including the execution of the AOC  
 25 in order to complete the ESCA obligations and any property-related transfer actions  
 26 required after June 30, 2020.  
 27

28 \*\*\*\*\*

**NOW, THEREFORE, the Parties agree as follows:**

1. Incorporation of Recitals. The above recitals are hereby incorporated herein by reference.

2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the Department of Defense as the LRA Successor.

3. Insurance Policies. FORA ~~agrees to designate and will~~ request the transfer of its two pollution legal liability insurance ~~coverages policies and limits~~ to Seaside. FORA shall also transfer any self-insured retention funds to Seaside to be used exclusively for ESCA and ~~claim~~claims-related obligations. Seaside acknowledges that these ~~coverages insurance policies~~ will expire in 2022 and 2024, respectively, and that ~~successor designations~~Seaside's designation will be subject to approval by the insurers. Seaside's successful ~~receipt of insurance coverage designation~~ through ~~June 30, 2028~~December 31, 2024 is a condition precedent to becoming FORA's ESCA ~~and local reuse authority~~ successor. Pollution legal liability insurance will be required by the ESCA from 1 January 2025 through no earlier than 30 June 2028, a requirement to be funded by the Army.

4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA agrees to provide technical and/or financial assistance to Seaside to meet the terms required by the Army, EPA, and DTSC that the Successor be a single entity and demonstrate technical and financial competence to complete the work.

5. ESCA records and contracts funds. FORA and Seaside shall establish a mechanism for transfer of all ESCA records, back-up documents, computer files and accounting records, and contract funds to Seaside for meeting FORA's ESCA obligations.

6. Technical Assistance. FORA agrees to request the Army extend the funding expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find Assessments and Long Term/LUCs Management) for Seaside to ~~utilize providing~~provide technical assistance and funding to complete the ESCA transfer process through June 30, 2020, including specialized legal, drafting and other staff or contract support. FORA agrees to establish and fund a pool of monies to support Seaside's assumption of responsibilities and obligations of the ~~MOA~~EDC Agreement.

7. Obligations. FORA agrees to nominate and Seaside agrees to assume the Federal local redevelopment authority "LRA" designation and the remaining reporting, monitoring, and stewardship or other identified responsibilities associated with (i) the FORA-Army 2007 ESCA, as FORA's Successor through the end of the ESCA Contract June 30, 2028 in order to complete property transfers and the ESCA to the extent that ESCA performance does not obligate or put at risk Seaside's municipal non-ESCA funds, and (ii) the ~~MOA~~EDC Agreement, as FORA's successor. Exhaustion or unavailability of ESCA funds with which to compensate Seaside for the performance of ESCA obligations will

1 constitute a force majeure under the ESCA and the AOC, thereby relieving Seaside of its  
2 ~~obligations~~responsibility to perform ~~the~~FORA's surviving ~~FORA~~ESCA obligations.-

3  
4 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside  
5 agrees to provide evidence of its fiduciary and technical capability to comply with the terms  
6 of the ESCA and manage the contract financial assets with associated invoicing and  
7 reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA fiduciary  
8 capability.

9  
10 a. ~~To~~Seaside agrees to assume FORA's ESCA Long Term Obligations  
11 Management Program, as approved by the US Army, EPA and DTSC, and:

12  
13 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required  
14 under the contract provisions as currently amended through 2028, but with  
15 allowances for indirect administrative overhead to assure the Army, EPA  
16 and DTSC of continued ESCA technical capacity.-

17  
18 ii. ESCA Long-Term Obligation Support Services Contract. Enter into  
19 Support Services Contracts through 2028 with specialists Arcadis, Weston  
20 Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified vendors),  
21 including allowances for indirect administrative overhead to assure the  
22 Army, EPA and DTSC of continued ESCA technical capacity.

23  
24 iii. Representation. Contract with Counsel reasonably qualified on  
25 environmental issues with experience in working with state and federal  
26 entities (Army, EPA and DTSC) for review and compliance as noted in the  
27 ESCA and the AOC.

28  
29 iv. No Obligation of Other Entities. Monterey Peninsula Community College District,  
30 the Board of Trustees of the California State University (on behalf of the Monterey  
31 Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and  
32 Monterey, the Marina Coast Water District (hereinafter collectively "Grantees"),  
33 will not be a party to the ESCA, and will not bear any financial liability as a result  
34 of the ESCA.

35  
36 9. Coordination with other Entities. Seaside agrees to enter into agreements with  
37 the ~~Monterey Peninsula Community College District, the Board of Trustees of the California State University~~  
38 ~~(on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and~~  
39 ~~Monterey, and the Marina Coast Water District or others~~Grantees for the property transfers and  
40 other necessary property-related rights to effectuate the reuse and the oversight, reporting,  
41 response, and other long-term stewardship obligations listed in and consistent with (a) the  
42 ESCA through 2028 on behalf of the Army ~~or, and~~ (b) the MOAEDC Agreement.

43  
44 i. Water Rights Allocations. Until such time as such allocations may be  
45 amended by agreements, Seaside agrees to honor and abide by the

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water rights' allocations of potable and recycled water set forth in Exhibit A attached hereto, for Government Water Rights as defined in Subsection 5.02 of the EDC Agreement, that may be released by the Government in the future, subject to compliance with all applicable laws.

ii. Wastewater Discharge Rights. Until such time as such allocations may be amended by future agreements, Seaside agrees to establish and apply, in consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a fair process to ensure that all Grantees will enjoy equitable utilization of Wastewater Discharge Rights that may be released by the Government in the future, subject to compliance with all applicable laws.

iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside's designation as the local redevelopment authority or as FORA's successor under the ESCA or MOAEDC Agreement creates in Seaside any land-use decision-making authority with respect to any land not within Seaside's cityCity limits. Further, Seaside shall not require that any land-use decisions of other entities be in compliance with the Fort Ord Base Reuse Plan.

iv. Seaside shall not require payment of any sale or lease proceeds or revenues (or the equivalent use of property such as licenses, permits, concession agreements etc.), from other entities for the transfer of property, water rights, or wastewater discharge rights received from the Army pursuant to the EDC Agreement.

10. ESCA Amendment. The parties agree to work cooperatively to successfully receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and execute the ESCA upon review and approval of terms and conditions. Seaside agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of Engineers ("USACE") oversight and grant management requirements for funding to Seaside under the ESCA terms, provided however, that the Successor activities are fully funded, including without limitation provision for PLL insurance coverage, funding shall be provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement funded by the Army through the end of the ESCA obligations.

11. Administrative Order on Consent. The parties agree to work cooperatively to successfully receive EPA and DTSC approval that Seaside is the formal Successor to execute an AOC upon review of terms and conditions.

12. Amendment. This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.

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1  
2 13. No Waiver. No delay in enforcing or failing to enforce any right under this  
3 Agreement will constitute a waiver of such right. No waiver of any default under this  
4 Agreement will operate as a waiver of any other default or of the same default on a future  
5 occasion.

6  
7 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or  
8 conditions of this Agreement are to any extent declared invalid, unenforceable, void or  
9 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order  
10 or decree of which becomes final, the Parties agree to amend the terms in a reasonable  
11 manner to achieve the intention of the Parties without invalidity. If the terms cannot be  
12 amended, the invalidity of one or several terms will not affect the validity of the Agreement  
13 as a whole, unless the invalid terms are of such essential importance to this Agreement that  
14 it can be reasonably assumed that the Parties would not have contracted this Agreement  
15 without the invalid terms. In such case, the Party affected may terminate this Agreement  
16 by written notice to the other Party without prejudice to the affected Party's rights in law or  
17 equity.

18  
19 15. Entire Agreement. This Agreement is intended by the Parties as a final  
20 expression of their agreement and is intended as a complete and exclusive statement of  
21 the terms and conditions thereof. Acceptance of or acquiescence in a course of  
22 performance rendered under this Agreement shall not be relevant to determine the meaning  
23 of this Agreement even though the accepting or acquiescing Party had knowledge of the  
24 nature of the performance and opportunity for objection.

25  
26 16. Choice of Law. This Agreement will be construed in accordance with the laws  
27 of the State of California.

28  
29 17. Further Assurances. Each Party agrees to execute and deliver all further  
30 instruments and documents and take all further action that may be reasonably necessary  
31 to complete performance of its obligations hereunder and otherwise to effectuate the  
32 purposes and intent of this Agreement.

33  
34 18. Headings. The headings of the sections hereof are inserted for convenience  
35 only and shall not be deemed a part of this Agreement.

36  
37 19. Notices. Any notice, demand, offer, or other written instrument required or  
38 permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving  
39 such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if  
40 not reasonably practicable to send by hand delivery, then by telecopy, overnight courier,  
41 electronic mail, or registered mail, in each case to the other Party at the address for such  
42 Party set forth below (Note: A Party may change its place of notice by a notice sent to all  
43 other Parties in compliance with this section):

44  
45 City of Seaside

Fort Ord Reuse Authority

Attn: City Manager  
440 Harcourt Avenue  
Seaside, CA 93955

Attn: Executive Officer  
920 2nd Avenue, Suite A  
Marina, CA 93933

w/ an email copy to cityattorney@ci.seaside.ca.us

20. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort Ord Reuse Authority.

21. Authorization. Each party affirms that it is fully authorized to enter into this Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to review and approval of documents by the Seaside City Attorney, to enter into the terms and conditions of this ~~Memorandum of~~ Agreement, the AOC and the ESCA and sign related ESCA and AOC reporting and financial documents.

22. Third-Party Rights. ~~Each of the Monterey Peninsula Community College District, the Board of Trustees of the California State University (on behalf of the Monterey Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and Monterey, and the Marina Coast Water District~~ The Grantees are intended to be third-party beneficiaries of this Agreement as it relates to future transfers of property, water rights, and wastewater discharge rights pursuant to the EDC Agreement. and shall have the right to enforce the provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended to confer upon any individual or entity, other than the parties ~~Parties~~ and the above-identified third-party beneficiaries, any rights or remedies whatsoever.

\*\*\*\*\*  
IN WITNESS WHEREOF, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

CITY OF SEASIDE:

\_\_\_\_\_  
Craig Malin  
City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

1  
2  
3 FORT ORD REUSE AUTHORITY:  
4  
5  
6 \_\_\_\_\_ Date: \_\_\_\_\_  
7 Joshua Metz Executive Officer  
8  
9 APPROVED AS TO FORM:  
10  
11  
12 \_\_\_\_\_  
13 AUTHORITY COUNSEL

DRAFT

EXHIBIT A

Current Water Allocations & ~~Potential\*~~ Future Percentage-based Allocations of Future Army Water\*

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

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

1                   **FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE**  
2                   **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) AND**  
3                   **LOCAL REDEVELOPMENT AUTHORITY (LRA)/ECONOMIC DEVELOPMENT**  
4                   **CONVEYANCE AGREEMENT (EDC AGREEMENT)**  
5                   **SUCCESSOR IMPLEMENTING AGREEMENT**

6  
7                   **RECITALS.**  
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9                   **WHEREAS**, the Fort Ord Reuse Authority (“FORA”) is a regional agency and a  
10                  Corporation of the State of California established under California State Law Government  
11                  Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort Ord  
12                  property and is acknowledged as the federally recognized local reuse authority for property  
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15                  **WHEREAS**, the City of Seaside, California (“Seaside”), is a general law Municipal  
16                  Corporation of the State of California.  
17

18                  **WHEREAS**, FORA and Seaside are each a “Party”, and together the “Parties” to this  
19                  Agreement.  
20

21                  **WHEREAS**, Fort Ord, California was placed on the National Priorities List  
22                  (Superfund) in 1990 due to leaking underground storage tanks, contaminated groundwater  
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46

47                  **WHEREAS**, the EDC Agreement provided for transfers of property in accordance

1 with the Army’s clean-up schedule. Subsequent to the EDC Agreement execution, FORA  
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43

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 02 – Department of Toxic Substance	31 Dec. 2019	\$745,913

	Control (DTSC) and United States EPA Technical Oversight Services		
	CLIN 03 – FORA ESCA Administrative Funds	30 June 2020	\$1,865,848
	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		<b>Totals</b>	<b>\$6,846,204</b>

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**WHEREAS**, due to changes and delays in the transfer of properties, modifications were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA CLIN 0004 Post Closure MEC Find Assessments \$528,651 and ESCA CLIN 0005 for Long-Term Management and Land Use Control (LUC) management are \$3,705,792 (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028):

ESCA Mod. Number	ESCA Contract Line Item Number (CLIN) and Description	Expiration Date	Amount
MOD 09	CLIN 04 – Post-Closure MEC Find Assessments	30 June 2028	\$528,651
	CLIN 05 – Long Term/LUCs Management	30 June 2028	\$3,705,792
		<b>Totals</b>	<b>\$4,234,443</b>

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**WHEREAS**, in 2018 FORA adopted a Transition Plan as required by State Law that specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the ESCA contract.

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**WHEREAS**, the Successor assumes responsibility and will be tasked with performing the remaining LTOs under the ESCA, including the recent amendment. It is assumed that all work under the previous \$98,000,000 contract will have been accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army Administrative Record located at: <http://fortordcleanup.com/documents/administrative-record/>.

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21  
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24

**WHEREAS**, the City of Seaside is prepared, subject to funding, to assume ESCA responsibility and attendant local reuse authority status, including the execution of the AOC in order to complete the ESCA obligations and any property-related transfer actions required after June 30, 2020.

25

\*\*\*\*\*

26

**NOW, THEREFORE**, the Parties agree as follows:

27  
28  
29

1. Incorporation of Recitals. The above recitals are hereby incorporated herein by reference.

30  
31  
32  
33

2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA Successor-In-Interest under the 2018 Transition Plan, and nominate Seaside to the



1 Department of Defense as the LRA Successor.

2  
3 3. Insurance Policies. FORA will request the transfer of its two pollution legal liability  
4 insurance policies and limits to Seaside. FORA shall also transfer any self-insured retention  
5 funds to Seaside to be used exclusively for ESCA and claims-related obligations. Seaside  
6 acknowledges that these insurance policies will expire in 2022 and 2024, respectively, and  
7 that Seaside’s designation will be subject to approval by the insurers. Seaside’s successful  
8 designation through December 31, 2024 is a condition precedent to becoming FORA’s  
9 ESCA successor. Pollution legal liability insurance will be required by the ESCA from 1  
10 January 2025 through no earlier than 30 June 2028, a requirement to be funded by the  
11 Army.

12  
13 4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA  
14 agrees to provide technical and/or financial assistance to Seaside to meet the terms  
15 required by the Army, EPA, and DTSC that the Successor be a single entity and  
16 demonstrate technical and financial competence to complete the work.

17  
18 5. ESCA records and contracts funds. FORA and Seaside shall establish a  
19 mechanism for transfer of all ESCA records, back-up documents, computer files and  
20 accounting records, and contract funds to Seaside for meeting FORA’s ESCA obligations.

21  
22 6. Technical Assistance. FORA agrees to request the Army extend the funding  
23 expiration date on any remaining ESCA funds (not dedicated to Post-Closure MEC Find  
24 Assessments and Long Term/LUCs Management) for Seaside to provide technical  
25 assistance and funding to complete the ESCA transfer process through June 30, 2020,  
26 including specialized legal, drafting and other staff or contract support. FORA agrees to  
27 establish and fund a pool of monies to support Seaside’s assumption of responsibilities and  
28 obligations of the EDC Agreement.

29  
30 7. Obligations. FORA agrees to nominate and Seaside agrees to assume the  
31 Federal local redevelopment authority “LRA” designation and the remaining reporting,  
32 monitoring, and stewardship or other identified responsibilities associated with (i) the  
33 FORA-Army 2007 ESCA, as FORA’s Successor through the end of the ESCA Contract  
34 June 30, 2028 in order to complete property transfers and the ESCA to the extent that ESCA  
35 performance does not obligate or put at risk Seaside’s municipal non-ESCA funds, and (ii)  
36 the EDC Agreement, as FORA's successor. Exhaustion or unavailability of ESCA funds  
37 with which to compensate Seaside for the performance of ESCA obligations will constitute  
38 a force majeure under the ESCA and the AOC, thereby relieving Seaside of its responsibility  
39 to perform FORA’s surviving ESCA obligations.

40  
41 8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside  
42 agrees to provide evidence of its fiduciary and technical capability to comply with the terms  
43 of the ESCA and manage the contract financial assets with associated invoicing and  
44 reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA fiduciary  
45 capability.

46  
47 Seaside agrees to assume FORA’s ESCA Long Term Obligations Management

1 Program, as approved by the US Army, EPA and DTSC, and:  
2

- 3 i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required under  
4 the contract provisions as currently amended through 2028, but with allowances  
5 for indirect administrative overhead to assure the Army, EPA and DTSC of  
6 continued ESCA technical capacity.  
7
- 8 ii. ESCA Long-Term Obligation Support Services Contract. Enter into Support  
9 Services Contracts through 2028 with specialists Arcadis, Weston Solutions, Inc.  
10 and Westcliffe Engineers, Inc. (or other qualified vendors), including allowances  
11 for indirect administrative overhead to assure the Army, EPA and DTSC of  
12 continued ESCA technical capacity.  
13
- 14 iii. Representation. Contract with Counsel reasonably qualified on environmental  
15 issues with experience in working with state and federal entities (Army, EPA and  
16 DTSC) for review and compliance as noted in the ESCA and the AOC.  
17
- 18 iv. No Obligation of Other Entities. Monterey Peninsula Community College District,  
19 the Board of Trustees of the California State University (on behalf of the Monterey  
20 Bay campus), the County of Monterey, the Cities of Del Rey Oaks, Marina and  
21 Monterey, the Marina Coast Water District (hereinafter collectively “Grantees”),  
22 will not be a party to the ESCA, and will not bear any financial liability as a result  
23 of the ESCA.  
24

25 9. Coordination with other Entities. Seaside agrees to enter into agreements with  
26 the Grantees for the property transfers and other necessary property-related rights to  
27 effectuate the reuse and the oversight, reporting, response, and other long-term  
28 stewardship obligations listed in and consistent with (a) the ESCA through 2028 on behalf  
29 of the Army, and (b) the EDC Agreement.  
30

- 31 i. Water Rights Allocations. Until such time as such allocations may be amended  
32 by agreements, Seaside agrees to honor and abide by the water rights’  
33 allocations set forth in Exhibit A attached hereto, for Government Water Rights  
34 as defined in Subsection 5.02 of the EDC Agreement, that may be released by  
35 the Government in the future, subject to compliance with all applicable laws.  
36
- 37 ii. Wastewater Discharge Rights. Until such time as such allocations may be  
38 amended by future agreements, Seaside agrees to establish and apply, in  
39 consultation with Grantees, pursuant to Section 5.04 of the EDC Agreement, a  
40 fair process to ensure that all Grantees will enjoy equitable utilization of  
41 Wastewater Discharge Rights that may be released by the Government in the  
42 future, subject to compliance with all applicable laws.  
43
- 44 iii. Creates No Land-Use Authority. Nothing in this Agreement, nor Seaside’s  
45 designation as the local redevelopment authority or as FORA’s successor under  
46 the ESCA or EDC Agreement creates in Seaside any land-use decision-making  
47 authority with respect to any land not within Seaside’s City limits. Further,

1 Seaside shall not require that any land-use decisions of other entities be in  
2 compliance with the Fort Ord Base Reuse Plan.

- 3  
4 iv. Seaside shall not require payment of any sale or lease proceeds or revenues (or  
5 the equivalent use of property such as licenses, permits, concession agreements  
6 etc.), from other entities for the transfer of property, water rights, or wastewater  
7 discharge rights received from the Army pursuant to the EDC Agreement.

8  
9 10. ESCA Amendment. The parties agree to work cooperatively to successfully  
10 receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor and  
11 execute the ESCA upon review and approval of terms and conditions. Seaside agrees to  
12 execute an ESCA Agreement and to comply to comply with the U.S. Army Corps of  
13 Engineers (“USACE”) oversight and grant management requirements for funding to  
14 Seaside under the ESCA terms, provided however, that the Successor activities are fully  
15 funded, including without limitation provision for PLL insurance coverage, funding shall be  
16 provided from January 1, 2024 through June 30, 2028 or the completion of the ESCA  
17 obligations. Seaside will not pay for Regulatory Oversight unless it is a reimbursement  
18 funded by the Army through the end of the ESCA obligations.

19  
20 11. Administrative Order on Consent. The parties agree to work cooperatively  
21 to successfully receive EPA and DTSC approval that Seaside is the formal Successor to  
22 execute an AOC upon review of terms and conditions.

23  
24 12. Amendment. This Agreement or any provision hereof may be changed,  
25 waived, or terminated only by a statement in writing signed by the Party against which such  
26 change, waiver or termination is sought to be enforced.

27  
28 13. No Waiver. No delay in enforcing or failing to enforce any right under this  
29 Agreement will constitute a waiver of such right. No waiver of any default under this  
30 Agreement will operate as a waiver of any other default or of the same default on a future  
31 occasion.

32  
33 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or  
34 conditions of this Agreement are to any extent declared invalid, unenforceable, void or  
35 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order  
36 or decree of which becomes final, the Parties agree to amend the terms in a reasonable  
37 manner to achieve the intention of the Parties without invalidity. If the terms cannot be  
38 amended, the invalidity of one or several terms will not affect the validity of the Agreement  
39 as a whole, unless the invalid terms are of such essential importance to this Agreement that  
40 it can be reasonably assumed that the Parties would not have contracted this Agreement  
41 without the invalid terms. In such case, the Party affected may terminate this Agreement  
42 by written notice to the other Party without prejudice to the affected Party’s rights in law or  
43 equity.

44  
45 15. Entire Agreement. This Agreement is intended by the Parties as a final  
46 expression of their agreement and is intended as a complete and exclusive statement of  
47 the terms and conditions thereof. Acceptance of or acquiescence in a course of

1 performance rendered under this Agreement shall not be relevant to determine the meaning  
2 of this Agreement even though the accepting or acquiescing Party had knowledge of the  
3 nature of the performance and opportunity for objection.  
4

5 16. Choice of Law. This Agreement will be construed in accordance with the laws  
6 of the State of California.  
7

8 17. Further Assurances. Each Party agrees to execute and deliver all further  
9 instruments and documents and take all further action that may be reasonably necessary  
10 to complete performance of its obligations hereunder and otherwise to effectuate the  
11 purposes and intent of this Agreement.  
12

13 18. Headings. The headings of the sections hereof are inserted for convenience  
14 only and shall not be deemed a part of this Agreement.  
15

16 19. Notices. Any notice, demand, offer, or other written instrument required or  
17 permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving  
18 such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if  
19 not reasonably practicable to send by hand delivery, then by telecopy, overnight courier,  
20 electronic mail, or registered mail, in each case to the other Party at the address for such  
21 Party set forth below (Note: A Party may change its place of notice by a notice sent to all  
22 other Parties in compliance with this section):  
23

24 City of Seaside  
25 Attn: City Manager  
26 440 Harcourt Avenue  
27 Seaside, CA 93955  
28

Fort Ord Reuse Authority  
Attn: Executive Officer  
920 2nd Avenue, Suite A  
Marina, CA 93933

29 w/ an email copy to [cityattorney@ci.seaside.ca.us](mailto:cityattorney@ci.seaside.ca.us)  
30

31 20. Term of Agreement: This Agreement shall be effective on the Effective Date  
32 specified at the beginning of the Agreement and shall remain in effect unless and until  
33 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort Ord  
34 Reuse Authority.  
35

36 21. Authorization. Each party affirms that it is fully authorized to enter into this  
37 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to  
38 review and approval of documents by the Seaside City Attorney, to enter into the terms and  
39 conditions of this Agreement, the AOC and the ESCA and sign related ESCA and AOC  
40 reporting and financial documents.  
41

42 22. Third-Party Rights. The Grantees are intended to be third-party beneficiaries  
43 of this Agreement as it relates to future transfers of property, water rights, and wastewater  
44 discharge rights pursuant to the EDC Agreement, and shall have the right to enforce the  
45 provisions hereof as if they were direct parties hereto. Nothing in this Agreement is intended  
46 to confer upon any individual or entity, other than the Parties and the above-identified third-  
47 party beneficiaries, any rights or remedies whatsoever.

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**IN WITNESS WHEREOF**, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

**CITY OF SEASIDE:**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Craig Malin  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**FORT ORD REUSE AUTHORITY:**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Joshua Metz Executive Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
AUTHORITY COUNSEL

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EXHIBIT A

Current Water Allocations & Percentage-based Allocations of Future Army Water\*

	Current Water Allocations in Acre Feet	Allocation of Future Army Water Based on Percentage of Current Water Allocation
City of Marina	1340	<b>29%</b>
City of Monterey	65	<b>1%</b>
City of Seaside	1012.5	<b>22%</b>
County of Monterey	720	<b>15%</b>
CSUMB	1035	<b>22%</b>
City of Del Rey Oaks	242.5	<b>5%</b>
CA State Parks	44.5	<b>1%</b>
UCMBEST	230	<b>5%</b>

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

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

**Subject:** 2018 Transition Plan Implementation – 2<sup>nd</sup> Vote

**Meeting Date:** February 13, 2020

**Agenda Number:** 8a

### INFORMATION/ACTION

- i. Assignment of a) Fort Ord Reuse Authority (“FORA”) – Environmental Services Cooperative Agreement (“ESCA”) contract obligation to Successor-In-Interest City of Seaside, b) 2000 Economic Development Conveyance (“EDC”) Memorandum of Agreement between The United States of America, acting by and through the secretary of the Army, United States Department of the Army and FORA, and c) Local Redevelopment Authority (“LRA”) Obligations and Responsibilities.

### RECOMMENDATION:

- 1) Receive a report regarding the FORA federal government LRA obligations, including the implementation of the June 11, 2000 EDC Agreement and the March 2007 ESCA Agreement.
- 2) Approve the attached Implementing Agreement with the City of Seaside regarding its acceptance of FORA’s obligations under the EDC and ESCA and designation as federally recognized LRA.

### BACKGROUND:

FORA was created under state law to be the LRA as required in federal law. Under the terms of that federal law, FORA was eligible to receive funding from the Department of Defense (“DoD”) in the 1990s as well as in the last decade. Further, as the, FORA was the designated agency for receiving federal property under federal law that created EDCs of former military properties closed under the Base Realignment and Closure Act (BRAC”). As well, in 2005, special federal provisions allowed the U.S. Army (“Army”) to negotiate contracts with federally recognized LRAs for cooperative services including environmental cleanup.

Given the federal provisions noted above, FORA implemented its three county obligations in compliance with these federal provisions. In particular, FORA negotiated the EDC for significant portions of the former Fort Ord for the purpose of creating jobs, housing, services, enterprises and other purposes under an adopted base reuse plan. FORA also negotiated an ESCA contract with the Army to complete munitions and explosives removal for 3,340 acres of former Fort Ord property. Each of these agreements require a FORA Successor-In-Interest (“Successor”) be appointed and contain provisions outlining the terms and conditions for assigning FORA’s responsibilities.

### Discussion/Report:

As reported last month, Army BRAC Headquarters (“HQ”) Chief Thomas Lederle requested FORA and City of Seaside (“Seaside”) meet with BRAC and U.S. Secretary of DoD Office of Economic Adjustment (“OEA”) to discuss ESCA status and FORA Successor requirements. Seaside has expressed interest in becoming FORA’s Successor and sent Mayor Ian Oglesby, Councilmember Jon Wizard, City Manager Craig Malin, Assistant City Manager Leslie Milton-Rerig and Assistant City Attorney Sheri Damon to attend those meetings with the FORA Executive Officer and Senior Program Manager.


- On November 18, 2019, FORA and Seaside met with the Army BRAC HQ staff to discuss the following ESCA Successor Issues:
  - FORA Transition/FORA Successor process/progress
  - Seaside – as the proposed ESCA Successor
  - ESCA Long-Term Obligation Management Program
  - ESCA Pollution Legal Liability Insurance
  - ESCA Successor and EDC authorities, obligations and interdependence

At the meeting, FORA staff and Special Counsel provided an ESCA status and FORA Board Members, Executive Officer and Seaside Counsel Members/staff provided Mr. Lederle with an update on the ESCA Successor efforts. Mr. Lederle and Army attorneys provided FORA and Seaside with guidance on the Army's ESCA Successor requirements.

On November 19, 2019, FORA and Seaside met with Mr. Patrick Obrien, Director, OEA to discuss FORA's June 30, 2020 closure and FORA ESCA Successor plans. Since many of the ESCA obligations include multiple real property conveyance documentation and transfers that directly grow from the EDC, the attendees discussed the coordination required between these FORA responsibilities. An outgrowth of that conversation was the suggestion that FORA explore and conclude on the assignment of the EDC agreement obligations, the OEA LRA designation as well as the ESCA Successor issue.

Attached is an agreement between the FORA and Seaside outlining the basic terms for Seaside to become FORA's ESCA, EDC and LRA Successor. If Seaside were to become FORA's Successor, this has implications for future potential funding.

**FISCAL IMPACT:**

Reviewed by FORA Controller 

Funding for the ESCA contract is provided by the Army and funding for the 2018 transition plan are included in the 2019/2020) budget.

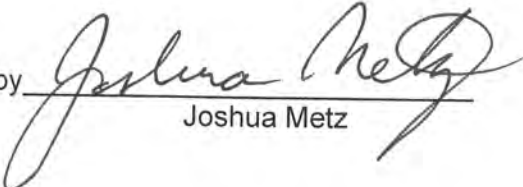
**COORDINATION:**

Administrative Committee; Executive Committee; Authority Counsel; Special Authority Counsel, Arcadis; Westcliffe Engineering, Inc., Weston Solutions, Inc., Army; EPA; and DTSC.

**ATTACHMENTS:**

Attachment A: Draft Implementing Agreement

Prepared by   
Stan Cook

Approved by   
Joshua Metz



1                                   **FORT ORD REUSE AUTHORITY AND CITY OF SEASIDE**  
2                                   **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT SUCCESSOR**  
3                                   **TRANSITION PLAN IMPLEMENTING AGREEMENT**  
4  
5

6                   **RECITALS**  
7

8                   WHEREAS, the Fort Ord Reuse Authority (“FORA”) is a regional agency and a  
9 Corporation of the State of California established under California State Law Government  
10 Code Sections 67650, et seq., to plan, facilitate and manage the transfer of former Fort  
11 Ord property and is acknowledged as the federally recognized local reuse authority for  
12 property transfers from the Army, to the governing local jurisdictions or their designees;  
13 and  
14

15                   WHEREAS Fort Ord, California was placed on the National Priorities List  
16 (Superfund) in 1990 due to leaking underground storage tanks, contaminated  
17 groundwater and a 150-acre landfill; and  
18

19                   WHEREAS, in 1990, the Army executed a Federal Facility Agreement (FFA) under  
20 CERCLA Section 120 outlining the Army’s Comprehensive Environmental Response,  
21 Compensation, and Liability Act (“CERCLA”) clean up responsibilities with respect to the  
22 former Fort Ord. The Army remains responsible for certain actions under that FFA. The  
23 FFA was amended on or about July 26, 2007, the effect of which suspends the FFA for  
24 FORA’s ESCA obligations so long as FORA or its successors are in compliance with the  
25 AOC; and  
26

27                   WHEREAS, the former Fort Ord was closed on September 30, 1994 pursuant to  
28 and in accordance with the Defense Base Closure and Realignment Act of 1990, as  
29 amended (Public Law 101-510; hereinafter referred to as the “Base Closure Act”).  
30

31                   WHEREAS, in accordance with Section 2905(b)(4) of the Base Closure Act, as  
32 amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L.  
33 No. 106-65 (1999), and the implementing regulations of the Department of Defense (32  
34 CFR Parts 90 and 91), FORA acquired portions of the former Fort Ord consisting of  
35 approximately five thousand two hundred (5,200) acres of land, including all buildings,  
36 personal property, appurtenances, rights-of-way, and drainage areas upon and subject to  
37 the terms and conditions of a June 23, 2000 Memorandum of Agreement (MOA) with the  
38 United States of America.  
39

40                   WHEREAS, the MOA provided for transfers of property in accordance with the  
41 Army’s clean-up schedule. Subsequent to the MOA execution, FORA and the local  
42 communities decided to pursue an early transfer process pursuant to Title 42 United  
43 States Code, section 9620(h)(3)(C) in order to expedite the property transfers and ultimate  
44 reuse and economic recovery for the communities affected by the Fort Ord closure.  
45

46                   WHEREAS, in furtherance of the early transfer process, the Army, with the approval of the

1 EPA Administrator and the concurrence of the Governor of California, transferred title of  
2 3,337 acres of munitions impacted Fort Ord property by quitclaim deed to FORA before all  
3 action to protect human health and the environment had been completed. Concurrent with  
4 this transfer without the otherwise required CERCLA covenant mandated by Title 42  
5 United States Code, section 9620 (h)(3) , FORA accepted title and agreed to perform the  
6 Army's environmental remediation with funding from the Army. Excluded from FORA's  
7 performance obligation are matters related to the groundwater at the former Fort Ord, as  
8 well as other Army responsibilities enumerated in the ESCA and elsewhere.

9  
10 WHEREAS, in 2007 an *“Administrative Order on Consent (“AOC”) [Docket No. R9-  
11 2007-003] [was] entered into voluntarily by the United States Environmental Protection  
12 Agency (“EPA”), the California Department of Toxic Substances Control (“DTSC”), and  
13 the Fort Ord Reuse Authority. The AOC concerns the preparation and performance of  
14 potential removal actions, one or more remedial investigations and feasibility studies  
15 (“RI/FS”) and one or more remedial designs and remedial actions (“RD/RA”) for  
16 contaminants present on portions of the former Fort Ord located at Monterey, California  
17 (“Site”) and the reimbursement for future response costs incurred by EPA and DTSC in  
18 connection with such CERCLA response actions.”*, and

19  
20 WHEREAS, in 2007, the Army executed an amendment to the Federal Facilities  
21 Agreement; and

22  
23  
24  
25 WHEREAS, in 2007 the Army and FORA executed an Environmental Services  
26 Cooperative Agreement W9128F 07 2-0162 (“ESCA”) under the authority of Title 10 United  
27 States Code, Section 2701(d)- Environmental Restoration Program (10 U.S.C. 2701)  
28 whereby FORA would perform the Army's environmental responsibilities as the Army  
29 Response Action Contractor pursuant to Title 42 United States Code, section 9619, with  
30 the Army providing funding to perform these services; and

31  
32 WHEREAS, the ESCA has been amended several times, the amendment in 2017  
33 which provides approximately \$6.8 million to complete the property transfer process and  
34 to perform the required long-term land management tasks, including Munitions and  
35 Explosives of Concern (“MEC”) Find Assessments, inspections, enforcement, monitoring  
36 and reporting through June 30, 2028; and

37  
38 WHEREAS, due to changes and delays in the transfer of properties, modifications  
39 were made to the ESCA grant leaving post-June 30, 2020 funds available are ESCA Line  
40 Item Number 0004 Post Closure MEC Find Assessments \$528,651 and ESCA Line Item  
41 Number 0005 for Long-Term Management and Land Use Control (LUC) management are  
42 \$3,705,792, (Totaling \$4,234,443 available from June 30, 2020 through June 30, 2028),  
43 [need Stan and Helen to confirm these numbers. Stan/FORA/ARMY to confirm that Mods  
44 10,11 and 12 do not affect the ability to fully implement the original task list of LTO which  
45 were estimated to require \$6.8 to complete (i.e. that Mods 10-12 do not re-allocate a  
46 portion of the 6.8 to current tasks]; and

1  
2 WHEREAS, in 2018 FORA adopted a Transition Plan as required by State Law that  
3 specifies that FORA engage the Successor-in-Interest (“Successor”) provisions of the  
4 ESCA contract, and

5  
6 WHEREAS, the Successor assumes responsibility and will be tasked with  
7 performing the remaining LTOs under the ESCA, including the recent amendment. It is  
8 assumed that all work under the previous \$98,000,000 contract will have been  
9 accomplished prior to FORA’s dissolution as evidenced by the 2019 EPA Remedial Action  
10 Completion letters, per AOC Section XVII, Certification of Completion, housed in the Army  
11 Administrative Record located at: [http://fortordcleanup.com/documents/administrative-  
12 record/](http://fortordcleanup.com/documents/administrative-record/), and

13  
14 WHEREAS, the City of Seaside is prepared, subject to Army funding, to assume  
15 ESCA responsibility and attendant local reuse authority status, including the execution of  
16 the AOC in order to complete the ESCA obligations and any property-related transfer  
17 actions required after June 30, 2020;

18  
19  
20 \*\*\*\*\*

21 **NOW, THEREFORE,**

22  
23 1. Incorporation of Recitals. The above recitals are hereby incorporated herein by  
24 reference.

25  
26 2. Acknowledgement. FORA agrees to acknowledge Seaside as the ESCA  
27 Successor-In-Interest under the 2018 Transition Plan.

28  
29 3. Insurance Policies. FORA agrees to designate or transfer its insurance  
30 coverages to Seaside under the **Coverage A under the AIG PLL and the CHUBB policy.**  
31 FORA shall also transfer any self-insured retention funds to Seaside to be used  
32 exclusively for ESCA and claim-related obligations. Seaside acknowledges that these  
33 coverages will expire in 2022 and 2024, respectively, and that successor designations will  
34 be subject to approval by the insurers. Seaside’s successful receipt of insurance  
35 coverage is a condition precedent to becoming FORA’s ESCA and local reuse authority  
36 successor.

37  
38 4. ESCA LTO Program Evidence of Fiduciary and Technical Capability. FORA  
39 agrees to provide technical and/or financial assistance to Seaside to meet the terms  
40 required by the Army, EPA, and DTSC that the Successor be a single entity and  
41 demonstrate technical and financial competence to complete the work.

42  
43 5. ESCA records and contracts funds. FORA and Seaside shall establish a  
44 mechanism for transfer of all ESCA records, back-up documents, computer files and  
45 accounting records, and contract funds to Seaside for meeting FORA’s ESCA obligations.  
46

1           6. Technical Assistance. FORA agrees to continue to provide technical assistance  
2 and funding to complete the ESCA transfer process through June 30, 2020, including  
3 specialized legal, drafting and other staff or contract support.  
4

5           7. Obligations. Seaside agrees to assume the local reuse authority designation  
6 and the remaining reporting, monitoring, and stewardship or other identified  
7 responsibilities associated with the FORA-Army 2007 ESCA as FORA's Successor  
8 through the end of the ESCA Contract June 30, 2028 in order to complete property  
9 transfers and the ESCA to the extent that ESCA performance does not obligate or put at  
10 risk Seaside's municipal non-ESCA funds. Exhaustion or unavailability of ESCA funds  
11 with which to compensate Seaside for the performance of ESCA obligations will constitute  
12 a force majeure under the ESCA and the AOC, thereby relieving Seaside of its obligations  
13 to perform the surviving FORA obligations.  
14

15           8. ESCA LTO Program Evidence of Fiduciary and Technical Capability. Seaside  
16 agrees to provide evidence of its fiduciary and technical capability to comply with the  
17 terms of the ESCA and manage the contract financial assets with associated invoicing  
18 and reporting responsibilities, to assure the Army, EPA and DTSC of continued ESCA  
19 fiduciary capability.  
20

21           a. To assume FORA's ESCA Long Term Obligations Management Program,  
22 as approved by the US Army, EPA and DTSC  
23

24           i. Personnel. Hire (2) full-time qualified staff to manage ESCA as required  
25 under the contract provisions as currently amended through 2028, but  
26 with allowances for indirect administrative overhead to assure the Army,  
27 EPA and DTSC of continued ESCA technical capacity.  
28

29           ii. ESCA Long-Term Obligation Support Services Contract. Enter into  
30 Support Services Contracts through 2028 with specialists Arcadis,  
31 Weston Solutions, Inc. and Westcliffe Engineers, Inc. (or other qualified  
32 vendors), including allowances for indirect administrative overhead to  
33 assure the Army, EPA and DTSC of continued ESCA technical capacity.  
34

35           iii. Representation. Contract with Counsel reasonably qualified on  
36 environmental issues with experience in working with state and federal  
37 entities (Army, EPA and DTSC) for review and compliance as noted in  
38 the ESCA and the AOC.  
39

40           9. Coordination. Enter into agreements with the ESCA underlying jurisdictions  
41 (Monterey Peninsula College, California State University Monterey Bay, Monterey County,  
42 the cities of Del Rey Oaks and Monterey and Marina Coast Water District) for the property  
43 transfers and other necessary property-related rights to effectuate the reuse and the  
44 oversight, reporting, response, and other long-term stewardship obligations listed in the  
45 ESCA through 2028 on behalf of the Army.  
46

1           10. ESCA Amendment. The parties agree to work cooperatively to successfully  
2 receive Army, EPA and DTSC concurrence that Seaside is the formal ESCA Successor  
3 and execute the ESCA upon review and approval of terms and conditions. Seaside  
4 agrees to execute an ESCA Agreement and to comply to comply with the U.S. Army  
5 Corps of Engineers (“USACE”) oversight and grant management requirements for funding  
6 to Seaside under the ESCA terms, provided however, that the Successor activities are  
7 fully funded, including without limitation provision for PLL insurance coverage, funding  
8 shall be provided from January 1, 2024 through June 30, 2028 or the completion of the  
9 ESCA obligations. Seaside will not pay for Regulatory Oversight unless it is a  
10 reimbursement funded by the Army through the end of the ESCA obligations.

11  
12           11. Administrative Order on Consent. The parties agree to work cooperatively to  
13 successfully receive EPA and DTSC approval that Seaside is the formal Successor to  
14 execute an AOC upon review of terms and conditions.

15  
16           12. Amendment. This Agreement or any provision hereof may be changed,  
17 waived, or terminated only by a statement in writing signed by the Party against which  
18 such change, waiver or termination is sought to be enforced.

19  
20           13. No Waiver. No delay in enforcing or failing to enforce any right under this  
21 Agreement will constitute a waiver of such right. No waiver of any default under this  
22 Agreement will operate as a waiver of any other default or of the same default on a future  
23 occasion.

24  
25           14. Partial Invalidity. If any one or more of the terms, provisions, covenants or  
26 conditions of this Agreement are to any extent declared invalid, unenforceable, void or  
27 voidable for any reason whatsoever by a court of competent jurisdiction, the finding or  
28 order or decree of which becomes final, the Parties agree to amend the terms in a  
29 reasonable manner to achieve the intention of the Parties without invalidity. If the terms  
30 cannot be amended, the invalidity of one or several terms will not affect the validity of the  
31 Agreement as a whole, unless the invalid terms are of such essential importance to this  
32 Agreement that it can be reasonably assumed that the Parties would not have contracted  
33 this Agreement without the invalid terms. In such case, the Party affected may terminate  
34 this Agreement by written notice to the other Party without prejudice to the affected Party’s  
35 rights in law or equity.

36  
37           15. Entire Agreement. This Agreement is intended by the Parties as a final  
38 expression of their agreement and is intended as a complete and exclusive statement of  
39 the terms and conditions thereof. Acceptance of or acquiescence in a course of  
40 performance rendered under this Agreement shall not be relevant to determine the  
41 meaning of this Agreement even though the accepting or acquiescing Party had  
42 knowledge of the nature of the performance and opportunity for objection.

43  
44           16. Choice of Law. This Agreement will be construed in accordance with the  
45 laws of the State of California.

1 17. Further Assurances. Each Party agrees to execute and deliver all further  
2 instruments and documents and take all further action that may be reasonably necessary  
3 to complete performance of its obligations hereunder and otherwise to effectuate the  
4 purposes and intent of this Agreement.

5  
6 18. Headings. The headings of the sections hereof are inserted for convenience  
7 only and shall not be deemed a part of this Agreement.

8  
9 19. Notices. Any notice, demand, offer, or other written instrument required or  
10 permitted to be given pursuant to this Agreement shall be acknowledged by the Party  
11 giving such notice, and shall to the extent reasonably practicable be sent by hand  
12 delivery, and if not reasonably practicable to send by hand delivery, then by telecopy,  
13 overnight courier, electronic mail, or registered mail, in each case to the other Party at the  
14 address for such Party set forth below (Note: A Party may change its place of notice by a  
15 notice sent to all other Parties in compliance with this section):

16  
17 City of Seaside  
18 Attn. City Manager  
19 440 Harcourt Avenue  
20 Seaside, CA 93955

Fort Ord Reuse Authority  
Attn: Executive Officer  
920 2nd Avenue, Suite A  
Marina CA

21  
22 w/ an email copy to cityattorney@ci.seaside.ca.us

23  
24 20. Term of Agreement: This Agreement shall be effective on the Effective Date  
25 specified at the beginning of the Agreement and shall remain in effect unless and until  
26 terminated by mutual agreement of the Parties or upon the legal dissolution of the Fort  
27 Ord Reuse Authority. [Do we need to provide for survival beyond 30 June 2020? And  
28 expiration in 2028?] [Not sure what/who would take the survivorship beyond FORA?  
29 LAFCO?]

30  
31 21. Authorization. Each party affirms that it is fully authorized to enter into this  
32 Agreement. The Seaside City Manager is designated on behalf of Seaside, subject to  
33 review and approval of documents by the City Attorney, to enter into the terms and  
34 conditions of this Memorandum of Agreement, the AOC and the ESCA and sign related  
35 ESCA and AOC reporting and financial documents.

36  
37  
38  
39 \*\*\*\*\*

40 IN WITNESS WHEREOF, each Party has executed the Agreement with the  
41 approval of its governing body as of the date first written above.

42  
43 CITY OF SEASIDE:

44  
45  
46 \_\_\_\_\_

Date: \_\_\_\_\_

1 Craig Malin  
2 City Manager

3  
4 APPROVED AS TO FORM:

5  
6  
7 \_\_\_\_\_

8 CITY ATTORNEY

9  
10  
11 FORT ORD REUSE AUTHORITY:

12  
13  
14 \_\_\_\_\_ Date: \_\_\_\_\_

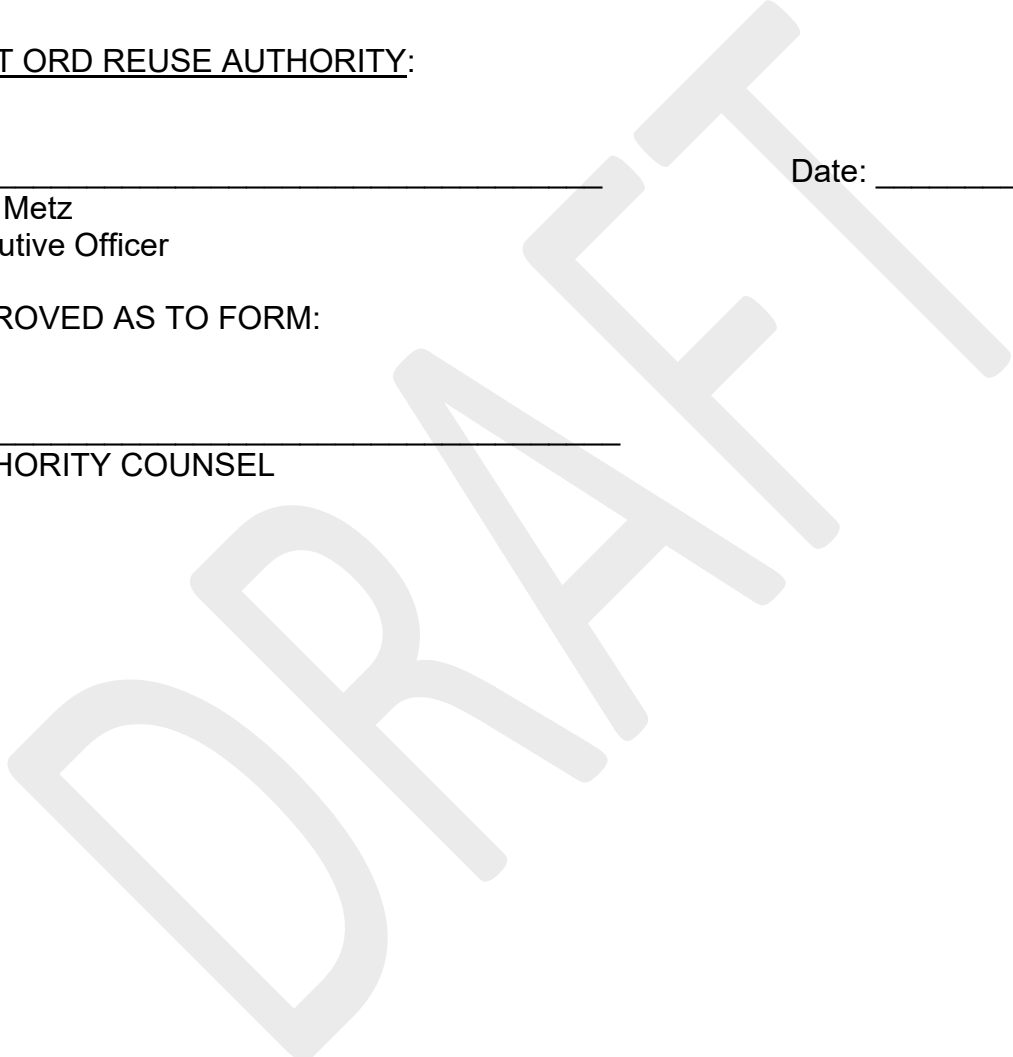
15 Josh Metz  
16 Executive Officer

17  
18 APPROVED AS TO FORM:

19  
20  
21 \_\_\_\_\_

22 AUTHORITY COUNSEL

23  
24



# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEMS

**Subject:** Draft Transition Plan Implementing Agreement (TPIA) Review

**Meeting Date:** February 13, 2020

**Agenda Number:** 8b

**INFORMATION**

### RECOMMENDATION(S):

Receive report on the updated Transition Plan Implementing Agreement (“TPIA”) and proposed jurisdiction implementation timeline.

### BACKGROUND/DISCUSSION:

The purpose of the TPIA is to memorialize responsibilities of local jurisdictions and agencies following sunset of the Fort Ord Reuse Authority (“FORA”) on June 30, 2020. The RGS consultant team, Authority Counsel, and FORA Executive Officer have reviewed the document and made changes to reflect input and concerns expressed by jurisdictions and members; as well as legal requirements related to FORA’s sunset. Upon execution by all jurisdictions and agencies, this agreement will supersede the 2001 Implementation Agreements which will become null and void.

The Multi-Agency TPIA addresses issues relevant to each FORA land use jurisdiction (Del Rey Oaks, Marina, Monterey, Monterey County, Seaside) and agencies with property on the former Fort Ord (University of California Santa Cruz, California State University Monterey Bay, Transportation Agency of Monterey County, Marina Coast Water District and Monterey Peninsula College).

The intent is to have legal representatives from each signatory review the document and provide final comments to FORA not later than March 15, 2020. Should any revisions be required, FORA will coordinate with signatories and provide a final agreement for execution not later than March 30, 2020. FORA will request that all agencies provide an executed copy not later than May 30, 2020.

### FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for staff time and RGS Consultants included in the approved FORA budget.

### COORDINATION:

Executive Officer, Authority Counsel, City of Del Rey Oaks, City of Marina, City of Monterey, Monterey County, University of California Santa Cruz, California State University Monterey Bay, Transportation Agency of Monterey County, Marina Coast Water District and Monterey Peninsula College.

### ATTACHMENTS:

A. Draft Transition Implementing Agreement (*Updated as of February 7, 2020*)

Prepared by and Approved by

  
Joshua Metz



## TRANSITION PLAN IMPLEMENTING AGREEMENT

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

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

### RECITALS

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

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

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

### AGREEMENT

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

#### **1.0 2001 IMPLEMENTATION AGREEMENTS SUPERSEDED.**

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

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

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

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

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

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

## **2.0 WATER ALLOCATIONS**

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

## **3.0 ROADWAY PROJECTS**

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

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

#### **4.0 HABITAT MANAGEMENT**

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

#### **5.0 RECORDS RETENTION AND MANAGEMENT**

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

#### **6.0 COMMUNITY FACILITIES DISTRICT REVENUES**

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

## **7.0 OUTSTANDING DEBT**

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

## **8.0 SEVERABILITY**

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

## **9.0 DISPUTE RESOLUTION**

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

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

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

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

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

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

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

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

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

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

## **10.0 MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

COUNTY OF MONTEREY

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

Approved as to form:

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

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

CITY OF MARINA

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

Approved as to form:

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

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

CITY OF SEASIDE

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

Approved as to form:

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

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

CITY OF DEL REY OAKS

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

Approved as to form:

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

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

CITY OF MONTEREY

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

Approved as to form:

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

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

UNIVERSITY OF CALIFORNIA

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

Approved as to form:

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

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

CALIFORNIA STATE UNIVERSITY

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

Approved as to form:

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

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

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

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

Approved as to form:

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



## EXHIBIT A

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

	Current Potable Water Allocation in Acre Feet	Current Recycled Water in Acre Feet
City of Marina	1340	345
City of Monterey	65	0
City of Seaside	1012.5	453
County of Monterey	720	134
CSUMB	1035	87
City of Del Rey Oaks	242.5	280
CA State Parks	44.5	0
UCMBEST	230	60

\* These allocations reflect previously agreed water distribution as per FORA Board Resolution No. 07-1 (potable water) and No. 07-10 (recycled water) (2007), and are consistent with the Marina Coast Water District Urban Water Management Plan (2105). They also incorporate the Memorandum of Understanding between the County of Monterey, the City of Seaside, and the FORA allocating 10 acre-feet (af) to the Central Coast Veterans Cemetery (2009), and includes the transference of 15 af to the City of Marina for Veterans Transition Center housing (effective Nov 20, 2017).

# FORT ORD REUSE AUTHORITY BOARD REPORT

## BUSINESS ITEM

**Subject:** Review Building Removal Bond Status

**Meeting Date:** February 13, 2020

**Agenda Number:** 8c

**INFORMATION/ACTION**

### RECOMMENDATION:

Receive a report on the status of FORA's efforts to issue bonds for the remediation/removal of buildings, and the related validation action.

### BACKGROUND:

At the December 13, 2019 Fort Ord Reuse Authority ("FORA") Board meeting, the FORA Board adopted Resolution No. 19-13, authorizing the issuance and sale of bonds in a principal amount not to exceed \$55,000,000 to finance building removal and related costs, approving the form and authorizing the execution of an indenture of trust, authorizing judicial validation proceedings relating to the issuance of such bonds, and authorizing actions related thereto.

FORA Staff, working with Authority Counsel, have proceeded to implement the Board's direction by meeting with various State and local entities to inform them of FORA's efforts relating to the bond issuance and validation action, and instituting the validation action itself.


On January 28, 2020, Authority Counsel filed the Complaint for Validation in the Superior Court of the State of California, County of Monterey, captioned *Fort Ord Reuse Authority v. All Persons Interested in the Matter of the Issuance and Sale of Bonds by the Fort Ord Reuse Authority and the Tax Increment Revenue Pledged to, and to be Used For, the Repayment of Such Bonds* (Case No.: 20CV000381) (the "Validation Action") (**Attachment A**). At its core, the Validation Action seeks to obtain judicial validity of (1) the legality of FORA's proposed issuance of bonds, and (2) the associated availability and use of FORA's tax increment revenues to repay the Bonds, even post-dissolution. On January 30, 2020, Authority Counsel obtained an Order of Publication of Summons and Other Notice in Validation Action, authorizing FORA to proceed with service of the Validation Action by publication in the *Monterey Herald*, and service of the summons and complaint upon various State and local entities who may have an interest in the action. FORA is proceeding with this endeavor. The deadline for any interested parties to respond to the Validation Action is March 9, 2020.

In conjunction with FORA's efforts relating to the Validation Action, FORA Staff and Authority Counsel have begun meeting with various individuals and representatives of various entities, to educate them on the benefits that the bond issuance would bring to the region. To date, this includes the following individuals/representatives of the following entities:

- California Department of Finance
- California Treasurer's Office
- California Attorney Generals Office
- Governors Office of Business and Economic Development
- Senator Bill Monning
- Assemblymember Mark Stone
- Assemblymember Robert Rivas

FORA Staff and Authority Counsel are implementing a strategic outreach effort to all potentially affected parties to proactively inform them of pending summons service for the validation action (**Attachment B**). The outreach is intended to inform these agencies of the intent of the validation action and desired outcomes (**Attachment C**). In addition to this effort, FORA Staff and Authority Counsel have distributed a letter template for potential use by interested Board members in communicating with State leadership on this effort (**Attachment D**).

**FISCAL IMPACT**

Reviewed by FORA Controller 

Staff time to support the proposed bond issuance is included in the approved annual budget.

**COORDINATION:**

Authority Counsel, Bond Counsel, County of Monterey, the County Fort Ord Committee, Cities of Seaside and Marina, Administrative Committee, Executive Committee, NHA Advisors.

**ATTACHMENTS:**

- A. Complaint for Validation
- B. List of Public Entities to be Noticed
- C. Building Removal Bond Information Memo
- D. State Leadership Letter Template

Prepared by and Approved by

  
Joshua Metz

1 Jon R. Giffen (SBN 142158)  
2 Robert G. Simpson (SBN 67556)  
3 Crystal M. Gaudette (SBN 247712)  
4 KENNEDY, ARCHER & GIFFEN  
5 Attorneys at Law  
6 24591 Silver Cloud Court, Suite 200  
7 Monterey, CA 93940  
8 Telephone (831) 373-7500  
9 Facsimile (831) 373-7555  
10 jgiffen@kaglaw.net / cgaudette@kaglaw.net

Fee Exempt—Public Entity, Gov. Code §6103

ELECTRONICALLY FILED BY  
Superior Court of California,  
County of Monterey  
On 1/28/2020 3:18 PM  
By: Christina Flores, Deputy

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13 FORT ORD REUSE AUTHORITY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF MONTEREY

17 FORT ORD REUSE AUTHORITY,

18 Plaintiff,

19 vs.

20 ALL PERSONS INTERESTED IN THE  
21 MATTER OF THE ISSUANCE AND SALE  
22 OF BONDS BY THE FORT ORD REUSE  
23 AUTHORITY AND THE TAX INCREMENT  
24 REVENUE PLEDGED TO, AND TO BE  
25 USED FOR, THE REPAYMENT OF SUCH  
26 BONDS,

25 Defendants.

Case No:20CV000381

**COMPLAINT FOR VALIDATION**  
**(§860 *et seq.* of the Code of Civil  
Procedure)**

**Entitled to Calendar Preference Under  
Code of Civil Procedure Section 867**

1 Plaintiff, Fort Ord Reuse Authority (“FORA”), brings this action against all interested  
2 persons pursuant to § 860 *et seq.* of the Code of Civil Procedure and § 53511 of the Government  
3 Code and alleges as follows:

4 **INTRODUCTION**

5 1. FORA was created by the California Legislature in 1994, pursuant to the Fort Ord  
6 Reuse Authority Act (“FORA Act”), to facilitate the transfer and reuse of certain real and other  
7 property comprising the Fort Ord Military Reservation after its closure by the federal  
8 government. Gov. Code, § 67650 *et seq.* When the government shut down the Fort Ord military  
9 base, the United States Army left behind several thousand abandoned buildings. While FORA  
10 has successfully removed or reused approximately 90% of the former military buildings, the  
11 remaining 10% – mostly fire-prone buildings (some remote) contaminated with friable asbestos,  
12 lead-based paint, and other toxins – remains in the region. The cost of removal of these buildings  
13 is estimated to range between \$50–\$60 million based on the historical per square foot cost of  
14 remediation in the former Fort Ord project area over the last fifteen years.

15 2. On December 13, 2019, the FORA Board of Directors (“Board”), at a regular  
16 meeting of the Board, adopted Resolution No. 19-13 (“Bond Resolution”) by a unanimous vote  
17 of the Board, which Bond Resolution approved the issuance of bonds (“Bonds”) by FORA under  
18 the Marks-Roos Local Bond Pooling Act (“Marks-Roos Act”), codified at Government Code  
19 Section 6584 *et seq.* The Bonds have the immediate potential to raise up to \$55 million in net  
20 Bond proceeds, which proceeds will be expended towards the remediation of the remaining  
21 blighted property at the former Fort Ord military base.

22 3. FORA is scheduled by statute to dissolve on June 30, 2020. As such, the issuance  
23 of the Bonds is a matter of the highest priority both to FORA and the general public in the  
24 Monterey Bay area.

25 4. An inseparable part of the validity of the Bonds under the Marks-Roos Act is  
26 confirmation of the revenues that will be used to repay the Bonds. The Bonds are to be secured  
27 by a pledge of, and are to be repaid with, tax increment funds that are allocated by statute to  
28 FORA under Health and Safety Code (“HSC”) Section 33492.71, subdivision (c)(1). These tax

1 increment funds have been allocated and remitted to FORA for its governmental purposes each  
2 year. This same statute provides that, after FORA's dissolution, these funds continue to be paid  
3 to the accounts of FORA as needed to pay any debt obligations of FORA incurred before its  
4 dissolution.

5 5. The purpose of this action is to obtain a judicial validation of the legality of the  
6 Bonds and the associated availability and use of the tax increment revenues to repay the Bonds.  
7 Such an action is authorized by Code of Civil Procedure Section 860 *et seq.* and Government  
8 Code Section 53511, as well as Section 7 of the Bond Resolution.

9 **PARTIES**

10 6. Plaintiff FORA was established, pursuant to the Fort Ord Reuse Authority Act,  
11 Title 7.85 of the Government Code, to oversee the economic recovery of the Monterey Bay area  
12 from the closure of and reuse planning of the former Fort Ord military base. FORA is governed  
13 by the Board composed of representatives of the public agencies with land use jurisdiction over  
14 property within the boundaries of Fort Ord and includes representatives from the County of  
15 Monterey, local cities and other taxing entities. FORA's principal office is in Monterey County.

16 7. Defendants ALL PERSONS INTERESTED IN THE MATTER OF THE  
17 ISSUANCE AND SALE OF BONDS BY THE FORT ORD REUSE AUTHORITY AND THE  
18 TAX INCREMENT REVENUE PLEDGED TO, AND TO BE USED FOR, THE  
19 REPAYMENT OF SUCH BONDS are an undefined class of persons who have an interest in the  
20 validation of the subject matter herein. Naming and serving these Defendants is authorized by  
21 Sections 861.1 and 862 of the Code of Civil Procedure.

22 **JURISDICTION AND VENUE**

23 8. This Court has jurisdiction over these validation proceedings pursuant to Code of  
24 Civil Procedure Section 860 *et seq.*, and Government Code Section 53511, subdivisions (a) and  
25 (b).

26 9. Venue is proper in this Court in the first instance, under Code of Civil Procedure  
27 Section 860, because FORA's principal office is in Monterey County.



1           16.     One particularly urgent goal of FORA is to remediate blighted structures on the  
2 former Fort Ord military base. Some of these structures are clearly visible to the casual observer  
3 from State Route 1 – a scenic byway that is otherwise known as one of the most recognizable  
4 roads in the nation. Based on FORA’s hazardous material surveys of the buildings, substantially  
5 all the remaining blighted structures harbor materials hazardous to human health and the public  
6 welfare, such as friable asbestos, lead paint, and creosote. Remediation of this blight falls  
7 squarely within FORA’s mandate from the State Legislature and is an urgent matter of the  
8 highest priority. Remediation activities consist of building removal, including the costs of waste  
9 characterization, abatement, building demolition, building removal, building repair, waste  
10 disposal, and remediation of buildings and building sites located at certain parcels of property  
11 within the boundaries of the former Fort Ord; and building removal costs, including costs of all  
12 planning, engineering, management and risk management including but not limited to insurance  
13 premiums, legal fees and litigation costs associated with building removal, and the associated  
14 administrative services required to remove blighted buildings from certain parcels of property  
15 within the boundaries of the former Fort Ord.

16           17.     The State Legislature has, in HSC Section 33030, subdivision (a), a statute  
17 governing redevelopment agencies that were established pursuant to the Health and Safety Code,  
18 found that remediation of blight is necessary in the interest of health, safety, and the general  
19 welfare. While FORA does not meet the statutory definition of a redevelopment agency under  
20 the HSC, remediating blight is an equally crucial component of its governmental mission.

21           18.     FORA has limited time in which to commence work on this vital goal stated by  
22 the State Legislature. Pursuant to Government Code Section 67700, subdivision (a), FORA will  
23 be dissolved effective June 30, 2020.

24           19.     In October 2018, the Board directed FORA staff to investigate the legality and  
25 feasibility of issuing debt to be repaid with FORA’s statutory share of property tax revenue  
26 provided to FORA by the State Legislature as codified in Section 33492.71 of the California  
27 Health and Safety Code. This code section gives FORA authority to encumber the tax revenues  
28 allocated to it as necessary to repay indebtedness incurred by FORA.



1           20.     FORA engaged the municipal advisory firm of NHA Advisors (“NHA”) to  
2 determine the feasibility of the issuance of bonds by FORA to be repaid with its statutorily  
3 allocated tax revenues. In June 2019, NHA provided a legal and financial feasibility  
4 memorandum regarding FORA’s statutory property tax authority. NHA found that FORA is able  
5 to issue up to \$55 million in bonds under the authority of the Marks-Roos Act.

6           21.     At July 3, 2019 and July 17, 2019 meetings of the FORA Administrative  
7 Committee, the Committee voted to recommend that the Board authorize all necessary  
8 preparatory work to issue bonds the proceeds of which would be used for remediation of blighted  
9 buildings and related costs.

10          22.     On August 9, 2019, the Board met and received the Administrative Committee’s  
11 recommendation. At that meeting, the Board authorized its Executive Officer at that time,  
12 Michael Houlemard, to commence the work to prepare the documents necessary for the issuance  
13 of bonds by FORA to provide funds for blight remediation activities.

14          23.     After holding a duly noticed public hearing on December 10, 2019, the Monterey  
15 County Board of Supervisors unanimously voted to adopt Resolution No. 19-412, determining  
16 that FORA’s assistance in financing the project by the issuance and delivery of the Bonds would  
17 result in significant public benefits of the type described in Section 6586(a)–(d), inclusive, of the  
18 Marks-Roos Act. The Board of Supervisors expressly approved the project and the financing of  
19 the project using proceeds of the Bonds. The foregoing action satisfied a procedural requirement  
20 of Section 6586.5(a)(2) of the Mars-Roos Act, to be accomplished prior to the issuance of bonds  
21 under the Marks-Roos Act.

22          24.     On December 13, 2019 the FORA Board unanimously voted to adopt Resolution  
23 No. 19-13, previously identified as the “Bond Resolution,” authorizing issuance of up to \$55  
24 million dollars in bonds, approving the bond indenture, retaining bond and disclosure counsel,  
25 and approving the executive officer to issue sale and deliver bonds pursuant to validation.

26          25.     HSC Section 33492.71, subdivision (c) provides for the allocation of a portion of  
27 certain property tax revenues to FORA and various other taxing entities, and further provides  
28 that such revenues will continue to be paid to the accounts of FORA to the extent needed to pay

1 FORA’s debt obligations following FORA’s dissolution.

2 26. FORA’s member agencies, which include the Cities of Seaside and Marina and  
3 the County of Monterey, and whose several redevelopment project areas generate property tax  
4 revenues, including those allocated to FORA, have consistently treated FORA as being entitled  
5 to a share of tax increment as prescribed by statute.

6 27. Remediation of blight is in the best interest of Monterey County, all the cities in  
7 the area of and surrounding the former Fort Ord military base, and the entire Monterey Bay  
8 region. If the Bonds are issued, all such public agencies as well as all citizens of Monterey  
9 County will benefit from the remediation of blight.

10 28. FORA’s allocation of property tax revenue has remained unaffected by the  
11 February 2012 dissolution of redevelopment agencies in California. Health and Safety Code  
12 Section 34189, subdivision (a) provides that as of February 1, 2012, “all provisions of the  
13 Community Redevelopment Law that depend on the allocation of tax increment to  
14 redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, and 33645,  
15 and subdivision (b) of Section 33670, shall be inoperative.” (emphasis added). However, under  
16 the plain terms of this section of the HSC, FORA’s allocation of tax increment revenues is  
17 unaffected by the dissolution of redevelopment agencies because FORA is not a redevelopment  
18 agency and because Section 33492.71 is not listed as one of the inoperative sections of the HSC.

19 29. A “redevelopment agency” is defined in HSC Section 33003 as an “agency  
20 created by this part or its predecessor, or a legislative body which has elected to exercise the  
21 powers granted to an agency by this part.” FORA was created by Section 67650 *et seq.* of the  
22 Government Code, a fact explicitly recognized by HSC Section 33492.70, subd. (b). FORA is  
23 not a redevelopment agency under the HSC, and only bears superficial resemblance to a  
24 redevelopment agency by virtue of its allocation of tax increment revenue.

25 30. FORA’s entitlement to the tax increment revenue that has been allocated to it for  
26 many years is fully supported by the following:

- 27 • First, the FORA Act and HSC Section 33492.78, which provide for the allocation of tax  
28 increment revenues generated within Fort Ord to school and community college districts,

1 have both been amended by the State Legislature since the dissolution of redevelopment  
2 agencies in February 2012. The act of amendment indicates that the Legislature knew that  
3 FORA existed and intended that it continue to receive its tax increment pursuant to HSC  
4 Section 33492.71 following the dissolution of redevelopment agencies. A contrary  
5 interpretation would render the Legislature's amendments a nullity.

- 6 • Second, HSC Sections 33492.71 and 33492.78, which provides for the allocation of  
7 property tax increment to FORA and school entities, respectively, both provide that  
8 redevelopment agencies will make the payments provided for in those sections instead of  
9 the otherwise-applicable statutory pass-through payments provided for under HSC  
10 Sections 33607.5 and 33676. This indicates that the allocations of property tax revenues  
11 generated within local agency redevelopment project areas provided for under HSC  
12 Sections 33492.71 and 33492.78 serve the same purpose and apply in lieu of the typical  
13 statutory pass-through provisions set forth in the HSC. The State Legislature presumably  
14 assumed that this explicit statutory guidance would be enough to ensure FORA's  
15 continuing receipt of allocated tax revenues and thereby its financial ability to carry out its  
16 governmental purposes.
- 17 • Finally, to date, all entities interested in the allocation of tax revenues to FORA, including  
18 the County of Monterey and the cities of Seaside and Marina, have treated FORA as being  
19 entitled to tax increment payments and the Monterey County Auditor-Controller has  
20 distributed these payments to FORA every year since redevelopment agencies were  
21 dissolved in 2012. The Monterey County Auditor-Controller has indicated to FORA that  
22 the California Department of Finance has been aware of the tax increment payments to  
23 FORA and has effectively acquiesced in them.

24 31. Because FORA is statutorily entitled to receive property tax increment revenue to  
25 the extent necessary to pay principal and interest on FORA's debt incurred pre-dissolution, the tax  
26 revenue will continue to be allocated to FORA as long as debt remains outstanding.

1           32.     In order to issue the Bonds, FORA requires that the Court issue a judgment  
2 validating not only the legality of the Bonds themselves, but also the continuing validity of the tax  
3 increment revenues pledged by FORA to repay the Bonds.

4           33.     The Monterey Herald is a newspaper of general circulation published in the County  
5 of Monterey and is the newspaper most likely to give notice to persons interested in these  
6 proceedings. Publication of the summons for these proceedings in said newspaper should be  
7 ordered by the Court pursuant to § 861 of the Code of Civil Procedure and § 6063 of the  
8 Government Code. The only other notice of this action reasonably practicable is notice given by  
9 (1) posting a copy of the Summons in FORA’s administrative office, (2) mailing a copy of the  
10 Summons and this Complaint to the State Department of Finance, the Monterey County Auditor-  
11 Controller, the Cities of Seaside, Marina, Monterey, and Del Rey Oaks, the Marina Coast Water  
12 District, Monterey Peninsula College, California State University – Monterey Bay, the Monterey  
13 Peninsula Unified School District, the Transportation Agency for Monterey County, the  
14 Monterey-Salinas Transit District, the Monterey County Water Resources Agency, the Monterey  
15 Peninsula Regional Parks District, the Monterey Peninsula Waste Management District, the Moss  
16 Landing Harbor District, the Monterey County Regional Fire District, the North Salinas Valley  
17 Mosquito Abatement District, the Castroville Cemetery District, the Monterey County Library,  
18 Hartnell College, the Monterey Peninsula Airport District, the Monterey County Office of  
19 Education, the Monterey Peninsula Water Management District, Salinas-Union High School  
20 District, Salinas Valley Memorial Healthcare System, Spreckels Union School District, and  
21 Washington Union School District, being entities known to FORA to be interested in the tax  
22 increment revenues otherwise allocated to FORA to repay the Bonds; (3) as required by Section  
23 6599(a) of the Government Code, mailing a copy of the Summons and this Complaint to the State  
24 Attorney General and State Treasurer; and (4) mailing copies of the Summons and Complaint to  
25 those persons, if any, or their attorneys of record, who either have expressly notified the attorneys  
26 of record herein of their interest in this matter or have filed and served legal actions against  
27 Plaintiff challenging, inter alia, the validity of the Bonds and the allocation of tax revenues to  
28 FORA to repay the Bonds.

1 **CAUSE OF ACTION FOR VALIDATION**

2 **(By Plaintiff FORA Against Defendants All Persons Interested)**

3 34. FORA realleges and incorporates by reference the facts stated in Paragraphs 1  
4 through 33, inclusive, above.

5 35. FORA has completed all the steps necessary to issue the Bonds under the Marks-  
6 Roos Act. At a December 10, 2019 regularly-scheduled public hearing before the Monterey  
7 County Board of Supervisors, the Board of Supervisors voted unanimously to approve the  
8 remediation project and the funding of the remediation with the Bonds and made a finding of  
9 significant public benefit that would arise from the project as funded by the Bonds.

10 36. The State Legislature provided for an allocation of tax revenues to FORA  
11 pursuant to Health and Safety Code Section 33492.71. Subdivision (c)(1)(D) of that Section  
12 expressly provides that FORA may continue to receive this allocation of tax revenues following  
13 FORA's dissolution, as necessary to pay FORA's obligations incurred before its dissolution,  
14 including any bonded indebtedness of FORA.

15 37. FORA is able to issue bonds to be repaid from the tax revenues allocated to  
16 FORA. FORA desires a judgment of validation from the Court affirming the validity of FORA's  
17 present and future allocation of tax revenues under HSC Section 33492.71, subdivision (c), as a  
18 payment authorized to be distributed by the Monterey County Auditor-Controller continuing  
19 until the Bonds have been paid in full.

20 38. Whereupon, FORA prays for relief as set forth below.

21 **PRAYER**

22 Wherefore, on the foregoing cause of action, FORA prays as follows:

23 1. That the Court order that the jurisdiction of interested persons be by publication  
24 of the summons pursuant to § 861 of the Code of Civil Procedure and § 6063 of the Government  
25 Code in the Monterey Herald commencing as soon as is practicable; by mailing a copy of the  
26 Summons and this Complaint to the State Department of Finance, the Monterey County Auditor-  
27 Controller, the Cities of Seaside, Marina, Monterey, and Del Rey Oaks, the Marina Coast Water  
28 District, Monterey Peninsula College, California State University – Monterey Bay, the Monterey

1 Peninsula Unified School District, the Transportation Agency for Monterey County, the  
2 Monterey-Salinas Transit District, the Monterey County Water Resources Agency, the Monterey  
3 Peninsula Regional Parks District, the Monterey Peninsula Waste Management District, the  
4 Moss Landing-Harbor District, the Monterey County Regional Fire District, the North Salinas  
5 Valley Mosquito Abatement District, the Castroville Cemetery District, the Monterey County  
6 Library, Hartnell College, the Monterey Peninsula Airport District, the Monterey County Office  
7 of Education, the Monterey Peninsula Water Management District, Salinas-Union High School  
8 District, Salinas Valley Memorial Healthcare System, Spreckels Union School District, and  
9 Washington Union School District; by posting a copy of the Summons in FORA's executive  
10 offices prior to completion of publication; and by mailing a copy of the Summons and this  
11 Complaint to the State Attorney General and the State Treasurer; and that said jurisdiction shall  
12 be complete ten (10) days after completion of publication of the Summons pursuant to § 6063 of  
13 the Government Code and the mailing of a copy of the Summons and this Complaint to the  
14 entities described above.

15         2.       That the Court find that this action is properly brought under § 860 et seq. of the  
16 Code of Civil Procedure.

17         3.       That judgment be entered determining that:

18                 (a)       This action is properly brought under § 53511 of the Government  
19 Code and § 860 of the Code of Civil Procedure;

20                 (b)       All proceedings by and for Plaintiff in connection with the Bond  
21 Resolution and the Bonds and any related agreements approved by the Bond  
22 Resolution in connection with the issuance of the Bonds, including the Indenture  
23 of Trust referenced therein, were and are valid, legal and binding obligations in  
24 accordance with their terms and were and are in conformity with the applicable  
25 provisions of all laws and enactments at any time in force or controlling upon  
26 such proceedings, whether imposed by law, constitution, statute or ordinance, and  
27 whether federal, state or municipal;  
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(c) That all conditions, things and acts required by law to exist, happen or be performed precedent to the adoption of the Bond Resolution, and the terms and conditions thereof, and including the authorization for the issuance of the Bonds and the execution and delivery of all related agreements approved by the Bond Resolution, including the Indenture of Trust, have existed, happened and been performed in the time, form and manner required by law;

(d) FORA has the authority under California law to issue the Bonds and to execute and deliver all agreements enacted pursuant thereto, including the Indenture of Trust;

(e) The Bonds and the Indenture of Trust, and any and all contracts and agreements executed and delivered in connection therewith, are valid and binding obligations of FORA under the Constitution and laws of the State of California;

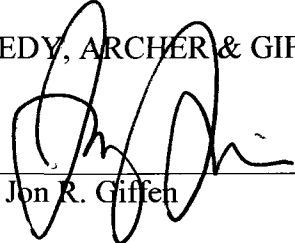
(f) That the payments to FORA under HSC Section 33492.71(c)(1)(A) and (D) are valid payments and shall continue as necessary to repay the Bonds at issue herein; and

(g) That the Monterey County Auditor-Controller is entitled and obligated to distribute amounts described in HSC Section 33492.71, subdivisions (c)(1)(A) or (D), as applicable, to FORA to repay the Bonds until the Bonds have been paid in full.

- 4. For litigation costs under Code of Civil Procedure Section 868;
- 5. For attorney fees under Code of Civil Procedure Section 1021.5; and
- 6. For such other and further relief as this Court believes just and appropriate.

Dated: January 28, 2020

KENNEDY, ARCHER & GIFFEN

By  \_\_\_\_\_  
 Jon R. Giffen

Attorneys for Plaintiff  
 FORT ORD REUSE AUTHORITY

## FORA Validation Action – List of Public Entities to be Noticed

### I. Sacramento Entities

#### A. State Attorney General

<https://oag.ca.gov/services-info>

Office of the Attorney General

1300 “I” Street

Sacramento, CA 95814

(916) 445-9555

#### B. State Treasurer

<https://www.treasurer.ca.gov/inside/directory.asp>

State Treasurer's Office

Physical Address:

915 Capitol Mall C-15

Sacramento, CA 95814

Office Location and Telephone Number:

915 Capitol Mall, Room 110

Sacramento, CA 95814

(916) 653-2995

#### C. State Department of Finance

<http://www.dof.ca.gov/documents/ChartofResponsibilities.pdf>

Jennifer Whitaker, Program Budget Manager

State Capitol, 8<sup>th</sup> Floor

Sacramento, CA 95814

(916) 445-3274, ext. 3102

### II. Monterey County Entities

#### 1. Monterey County Auditor-Controller

<https://www.co.monterey.ca.us/government/departments-a-h/auditor-controller>

168 West Alisal Street, 3<sup>rd</sup> Floor

Salinas, CA 93901

(831) 755-5040

#### 2. City of Seaside

<http://www.ci.seaside.ca.us/>

City Clerk

City of Seaside City Hall

440 Harcourt Avenue

Seaside, CA 93955

(831) 899.6700



3. City of Marina  
<https://cityofmarina.org/16/City-Clerk>  
City Clerk  
211 Hillcrest Ave  
Marina, CA 93933  
(831) 884-1278
4. City of Monterey  
<https://monterey.org/City-Hall/City-Clerks-Office>  
City Clerk's Office  
City Hall  
580 Pacific Street, Room 6  
Monterey, CA 93940-2806  
(831) 646-3935
5. City of Del Rey Oaks  
<https://www.delreyoaks.org/cityhall>  
City Clerk  
659 Canyon Del Rey Blvd  
Del Rey Oaks, CA 93940  
(831) 394-8511
6. Marina Coast Water District  
[https://www.mcwd.org/customer\\_service\\_contact.html](https://www.mcwd.org/customer_service_contact.html)  
Paula Riso  
Executive Assistant/Clerk to the Board  
11 Reservation Road  
Marina, CA 93933-2099  
(831) 384-6131
7. Monterey Peninsula College  
<https://www.mpc.edu/admissions/contact-us-hours>  
Monterey Peninsula College  
980 Fremont St  
Monterey, CA 93940  
(831) 646-4002
8. California State University – Monterey Bay  
<https://csumb.edu/everything>  
California State University, Monterey Bay  
5108 Fourth Avenue, Marina, CA 93933  
Office of the CSU System Chancellor  
401 Golden Shore  
Long Beach, CA 90802-4210  
(562) 951-4000

9. Monterey Peninsula Unified School District  
<https://www.mpusd.net/apps/staff/>  
700 Pacific St.  
Monterey, CA 93942  
(831) 645-1200
  
10. Transportation Agency for Monterey County  
<https://www.tamcmonterey.org/contact/staff/>  
Elouise Rodriguez  
Senior Administrative Assistant & Clerk of the Board  
(831) 775-4401  
55-B Plaza Circle  
Salinas, CA 93901  
(831) 775-0903
  
11. Monterey-Salinas Transit District  
<https://mst.org/contact-us/>  
Administrative Offices  
19 Upper Ragsdale Drive, Suite 200  
Monterey, CA 93940  
(888) 678-2871
  
12. Monterey County Water Resources Agency  
[www.mcwra.co.monterey.ca.us](http://www.mcwra.co.monterey.ca.us)  
1441 Schilling Pl., North Bldg.  
Salinas, CA 93901  
(831) 755-4860
  
13. Monterey Peninsula Regional Parks District  
<https://www.mprpd.org/contact-us>  
4860 Carmel Valley Rd  
Carmel-By-The-Sea, CA 93923  
(831) 372-3196
  
14. Monterey Peninsula Waste Management District  
<https://www.mrwmd.org/contact-us/>  
14201 Del Monte Blvd  
Marina, CA 93933  
Administration:  
(831) 384-5313
  
15. Moss Landing Harbor District  
<http://www.mosslandingharbor.dst.ca.us/contact.htm>  
7881 Sandholdt Road  
Moss Landing, CA 95039  
(831) 633-5417

- 16. Monterey County Regional Fire District**  
<https://www.mcrfd.org/administrative-staff>  
Administrative Staff:  
19900 Portola Drive  
Salinas CA 93908  
(831) 455-1828
- 17. North Salinas Valley Mosquito Abatement District**  
<https://www.montereycountymosquito.com/contact-us/>  
342 Airport Blvd  
Salinas, CA 93905  
(831) 422-6438
- 18. Castroville Cemetery District**  
<https://capc.info/members.html>  
8442 Moss Landing Rd  
Moss Landing, California 95039  
(831) 633-5186
- 19. Monterey County Free Libraries**  
<https://www.co.monterey.ca.us/government/departments-i-z/library/locations/administration-office>  
188 Seaside Circle  
Marina, CA 93933  
831-883-7573
- 20. Hartnell College**  
<https://www.hartnell.edu/about/president/presidents-profile-cv.html>  
Patricia C. Hsieh - Superintendent/President  
411 Central Avenue  
Salinas, CA 93901  
(831) 755-6700
- 21. Monterey Peninsula Airport District**  
<https://montereyairport.specialdistrict.org/the-airport-district>  
200 Fred Kane Drive, Suite 200  
Monterey CA 93940  
(831) 648-7000
- 22. Monterey County Office of Education**  
<https://www.montereycoe.org/about/>  
Dr. Deneen Guss, County Superintendent  
901 Blanco Circle  
Salinas, CA 93901  
(831) 755-0300

- 23. Monterey Peninsula Water Management District**  
<https://www.mpwmd.net/who-we-are/about-mpwmd/>  
5 Harris Court, Building G  
Monterey, CA 9394  
(831) 658-5600
- 24. Salinas Union High School District**  
<https://www.salinasuhd.org/>  
431 W. Alisal Street  
Salinas, CA 93901  
831-796-7000
- 25. Salinas Valley Memorial Healthcare System**  
<https://www.svmh.com/about-us/>  
<https://www.svmh.com/about-us/healthcare-district-information-reports/board-of-directors/>  
450 E Romie Lane  
Salinas, CA 93901  
(831) 757-4333
- 26. Spreckels Union School District**  
<https://spreckelsdistrict.org/>  
PO Box 7362  
130 Railroad Ave.  
Spreckels, CA 93962  
(831) 455-2550
- 27. Washington Union School District**  
<https://www.washingtonusd.org/domain/3>  
43 San Benancio Road  
Salinas, CA 93908  
(831) 484-2166



# FORT ORD REUSE AUTHORITY

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

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

## MEMORANDUM

**TO:** Potential Bond Issue Stakeholders  
**FROM:** Josh Metz, Executive Officer  
**RE:** Building Removal/Remediation Bond Validation Action  
**DATE:** *January 8, 2020*

One of the primary governmental purposes of the Fort Ord Reuse Authority (“FORA”) is removal and remediation of buildings located on the former Fort Ord military base. While FORA has successfully removed or reused approximately 85% of the former military buildings, the remaining 15% not only comprise fire hazards, but are contaminated with lead-based paint, asbestos and other hazardous materials. FORA seeks to issue bonds, prior to its June 30, 2020 dissolution, in order to provide funds to the public agencies that now own the land on which the buildings are located for the sole purpose of enabling these public agencies to remove and remediate these buildings. Without FORA’s proposed bond issue, these public agencies will not otherwise have the funds needed to remove and remediate these buildings.

In furtherance of this effort, at its December 13, 2019 meeting, FORA’s Governing Board unanimously approved the issuance of bonds and start what is called a “judicial validation” process for the proposed FORA bond issue. A judicial validation is a way provided under state law for public entities to clarify potentially ambiguous legal issues, by asking the local superior court to “validate” such legal issues in their favor. In this case, as has been reported to the FORA Board, recent statements made by staff members of the State Department of Finance (“DOF”) have called into question the legal ability of FORA to use tax increment to pay debt service on the proposed bonds. FORA intends to use the judicial validation process to resolve this question in a way that enables it to issue these bonds before it dissolves on June 30, 2020.

The judicial validation process here requires (1) that FORA file a complaint in Monterey County Superior Court clearly stating the legal issue in question, and (2) that potential stakeholders be notified in writing of their ability to challenge the validation process. Importantly, if no stakeholders file a challenge to FORA’s validation action, this will enable FORA to request the Court’s validation of FORA’s proposed course of action. *Based on long experience with judicial validations, FORA’s finance team believes it to be very likely that if there is no response to the validation action from*

*potential stakeholders, then the Monterey County Superior Court will grant FORA's request for a validation. This will then enable FORA to issue the bonds.*

There is a schedule for a validation process specified in the statutes. The entire process usually takes about 60 days. Potential stakeholders are formally notified at the beginning of the validation process. The notices include a required summons regarding the validation litigation. *FORA staff and finance team want to make it clear to the many stakeholders in FORA's bond issuance that if they want the bond issuance to go forward, they should not respond to the validation summons. The only consequence of not responding to the validation summons for any FORA stakeholder is that the FORA bond issuance is more likely to take place.*

It is very important to note in this regard that DOF, the State Treasurer and the State Attorney General's office will be notified of the judicial validation process for the FORA bond issue. It is the hope of both the FORA Board and FORA staff that neither DOF, nor the State Treasurer, nor the Attorney General, or any other entity will respond to the summons in any way challenging the validation action. If that is the case, it is very likely that FORA will be able to issue the bonds to fund building removal and remediation before it dissolves.

***Please call Jon Giffen, FORA Authority Counsel, at 831-373-7500 with any questions.***



# FORT ORD REUSE AUTHORITY

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

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

Dear \_\_\_\_\_,

I write in support of the issuance and sale of bonds of the Fort Ord Reuse Authority (“FORA”). FORA’s bonds are both legally valid and practically necessary in order to fund the elimination of blight and hazards to public health. The bonds are presently in the process of being validated in judicial proceedings to affirm their validity. The most important act necessary to support this endeavor is to allow FORA to validate its bonds without legal interference.

One of the primary governmental purposes of FORA is the removal and remediation of buildings located on the former Fort Ord military base. While FORA has successfully removed or reused approximately 85% of the former military buildings, the remaining 15% not only comprise fire hazards, but are also contaminated with lead-based paint, asbestos and other hazardous materials. FORA seeks to issue bonds before its June 30, 2020 dissolution date in order to provide funds to remediate these blighted buildings. Absent the issuance and sale of FORA’s bonds, remediation is unlikely in the foreseeable future.

FORA’s Governing Board unanimously approved the issuance of bonds on December 13, 2019, and on January 28, 2020, FORA commenced what is called a “judicial validation” process. A judicial validation is a way provided under state law for public entities to clarify potentially ambiguous legal issues, by asking the local superior court to “validate” such legal issues in the agency’s favor.

FORA will be providing notice of this action by publication, as well as courtesy mail notice to certain public entities that may be interested in the issue. If no other party responds to the validation action, then the bonds may be issued and the much-needed remediation project can begin.

I hope that you will join me in supporting this important endeavor.

Respectfully,

\_\_\_\_\_

FORT ORD REUSE AUTHORITY BOARD REPORT	
BUSINESS ITEMS	
<b>Subject:</b>	Consultant Services Contract Amendments
<b>Meeting Date:</b>	February 5, 2020
<b>Agenda Number:</b>	8d
	<b>ACTION</b>

**RECOMMENDATION(S):**

Direct the Executive Officer to approve contract amendments for Denise Duffy & Associates, ICF Jones & Stokes, Inc., and Regional Government Services.

**BACKGROUND/DISCUSSION:**

As the Fort Ord Reuse Authority (FORA) moves towards sunset, staff continues to shrink while projects and tasks related to sunset continue to require increased support. This includes work to support the Habitat Working Group, delivery and conveyance of remaining Capital Improvement Projects, completion of the Habitat Conservation Plan (HCP) Environmental Impact Report (EIR), legal services and strategic Executive Officer support.

**Denise Duffy & Associates (DDA)** is requesting contract amendment #13 increasing its contract by \$224,252. DDA was contracted to prepare the environmental documentation for the Fort Ord HCP in February, 2005. This amendment includes the required tasks to complete the environmental review process in compliance with NEPA and CEQA, securing CEQA attorney services, as well as anticipated meetings and coordination to support habitat planning efforts through June 30, 2020 (**Attachment A**).

**ICF Jones & Stokes, Inc. (ICF)** is requesting additional funding (\$68,470) to continue supporting the FORA on the Fort Ord Multi-Species HCP. This addendum, #11, revises tasks from the original ICF contract from May 2007 and subsequent addendums, and adds new tasks including working closely with FORA staff, other HCP consultants, USFWS and CDFW, and the Habitat Working Group to identify solutions to address permittee's and the public's concerns about the HCP. The additional funds are in addition to the \$67,535 remaining from Addendum #10 for a total not-to-exceed contract amount of \$136,005 for labor and direct expenses (**Attachment B**).

**Regional Government Services (RGS)** is seeking \$30,000 increase in its current not-to-exceed contract of \$100,000 to provide additional support to the Habitat Working Group and management support to the Executive Officer through June 30, 2020 (**Attachment C**).

**FISCAL IMPACT:**

Reviewed by FORA Controller 

Total requested additional funding is \$322,722



**COORDINATION:**

Executive Officer

**ATTACHMENTS:**

- A. Denise Duffy & Associates Contract Amendment Request
- B. ICF Jones & Stokes, Inc. Contract Amendment Request
- C. Regional Government Services Contract Amendment Request

Prepared by and approved by   
Joshua Metz

**DENISE DUFFY & ASSOCIATES, INC.**

**SCOPE OF WORK  
for the  
FORT ORD HCP  
ENVIRONMENTAL IMPACT STATEMENT/ ENVIRONMENTAL IMPACT REPORT  
Amendment #13  
February 3, 2020**

**Introduction**

Denise Duffy & Associates, Inc. (DD&A) is currently contracted to prepare the environmental documentation for the Fort Ord Habitat Conservation Plan (HCP) (February 1, 2005). Due to changes in the documentation approach and the HCP consultant, DD&A prepared a Scope of Work that assumed the preparation of a joint National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA) environmental document, dated July 21, 2008 (Amendment #1 to the original contract). Since the approval of contract amendment #1, additional revisions to the scope of work and budget occurred, which were approved as Amendments #2-4. To reflect these revisions to the original contract and provide a budget to complete the environmental review process through a Screencheck Draft Environmental Impact Statement/Environment Impact Report (EIS/EIR), DD&A prepared a Revised Scope of Work, dated January 3, 2012, which was referred to as "Amendment #5." Amendment #5 included: Tasks 1-7 of the Revised Scope of Work; and the tasks described in Amendment #4. The Fort Ord Reuse Authority (FORA) approved Amendment #6, which included revising the impact analysis for the California Tiger Salamander (CTS). Due to completion of several tasks and increased technical discussions and analyses, DD&A prepared contract amendment #7, which included a revised Scope of Work and budget amendment to update the HCP impact analysis and the 2<sup>nd</sup> Administrative Draft EIS/EIR and Screencheck Draft EIS/EIR to reflect the results of the technical discussions.

Amendment #8 was prepared to complete a few outstanding covered species issues, address additional proposed covered activities not previously considered in the HCP, and prepare and distribute the Public Draft EIS/EIR. Amendment #9 was issued to reallocate the remaining budget from Task 10 2<sup>nd</sup> Administrative Draft EIS/EIR to Task 11 Public Draft EIS/EIR.

Amendment #10, included 1) a new subtask (Task 11A) to address impact analysis comments received on the Screencheck Draft HCP and 2<sup>nd</sup> Administrative Draft EIS/EIR; 2) amending the production assumptions associated with distributing the Public Draft EIS/EIR in Task 11; 3) tasks required after the Draft EIS/EIR public review period to finalize the Draft EIS/EIR and complete the environmental review process. These tasks were not included in previous contracts.

Amendment #11 included: 1) additional budget to incorporate HCP revisions resulting from USFWS comments into the Public Draft EIS/EIR; 2) a new subtask (Task 11B) to revise the HCP take assessment based on USFWS comments; and 3) additional budget for agency coordination and meetings. Amendment #12 included the required tasks to prepare the public review draft EIS/EIR, distribute for public review, conduct a public meeting, and review and compile public comments.

This amendment, Amendment #13, includes the required tasks to complete the environmental review process in compliance with NEPA and CEQA, as well as anticipated meetings and coordination to support habitat planning efforts through June 30, 2020.

## **TASK 15. PREPARE FINAL EIS/EIR DOCUMENTATION**

### **Task 15A. Prepare 1<sup>st</sup> Administrative Draft Final EIS/EIR**

Task 13 of Amendment #12 included review and assignment of public comments received on the Draft EIS/EIR and HCP. This task includes the preparation of the Final EIS/EIR, which includes responses to comments received and changes to the Draft EIS/EIR. DD&A will work with the USFWS, FORA, ICF, CDFW, BLM, and the other participants as needed to prepare draft initial responses on the public comments on the Public Draft EIS/EIR and HCP. DD&A will retain Holland & Knight (HK) to provide legal review of the responses to comments related to the EIS/EIR and HCP and changes to the Draft EIS/EIR, and coordinate Kennedy, Archer, & Giffen (KAG) to provide legal review of FORA-related issues.

It is anticipated that some revisions to the Public Draft HCP will be required as a result of public comment, which will be completed by ICF in coordination with the project team. Therefore, DD&A will require the revised HCP prior to completing the 1<sup>st</sup> Administrative Draft Final EIS/EIR to ensure consistency between documents. After review of the revised HCP, DD&A will finalize and submit the 1<sup>st</sup> Administrative Draft Final EIS/EIR electronically to the USFWS, CDFW, FORA, and legal counsel (i.e., CDFW Counsel, USFWS Solicitor, and FORA Counsel) for review and comment. This scope of work assumes one round of comments. This task includes four (4) in-person meetings and eight (8) conference calls to support this effort.

*Responsibility: DD&A*

*Deliverable(s): 1<sup>st</sup> Administrative Draft Final EIS/EIR*

### **Task 15B. Prepare Screencheck Draft Final EIS/EIR and MMRP**

In response to comments on the 1<sup>st</sup> Administrative Draft Final EIS/EIR and Draft HCP, DD&A will prepare a Screencheck Draft Final EIS/EIR (electronic copy) for review by the project team and legal counsel for review and comment. DD&A will also prepare a Draft Mitigation Monitoring and Reporting Program (MMRP) in accordance with CEQA requirements, including the identification all mitigation measures, and implementation and monitoring responsibility, timing, and schedule. DD&A will provide an electronic copy of the Draft MMRP to the project team and legal counsel for review and comment. This scope of work assumes one round of comments. This task includes two (2) in-person meetings and four (4) conference calls to support this effort.

*Responsibility: DD&A*

*Deliverable(s): Screencheck Draft Final EIS/EIR and MMRP*

### **Task 15C. Prepare Final EIS/EIR and MMRP/Hearing Attendance**

DD&A will incorporate the comments from the project team and legal counsel on the Screencheck Draft Final EIS/EIR and MMRP, and prepare the Final EIS/EIR and MMRP. The anticipated tasks required for FORA Board decision/action on the EIR (e.g., project approval or denial and EIR certification or not) include the preparation and review of staff reports, resolutions, CEQA Findings/Statement of Overriding Considerations, as well as the preparation, posting, and distribution of the notices (e.g., Notice of Determination and Notice of Completion). DD&A will prepare and assist with these tasks in coordination with FORA as the CEQA lead agency, and with USFWS as the NEPA lead agency as needed. DD&A will provide drafts of each of these documents to the project team and legal counsel for review and comment prior to finalization. DD&A will provide one complete electronic copy of the Final EIS/EIR and MMRP to FORA. This scope assumes that all public mailings and posting of

documentation, notices, etc. will be conducted and paid for by FORA, including County Clerk and CDFW filing fees. Additional copies beyond those identified above are not included in this scope of work. DD&A will attend the public hearing for FORA Board decision/action on the project and EIR, and will be available to present and/or answer questions, as needed. In consultation with FORA, DD&A will be responsible for coordinating with the project team to prepare and provide hearing and presentation materials.

DD&A will provide copies of the documents on CD in PDF format so that they can be posted on the FORA and USFWS websites and distributed. DD&A will provide seventy-five (75) CDs of the Final EIS/EIR and HCP to FORA and ten (10) CDs of the Final EIS/EIR and HCP to the USFWS. No hard copies are included in this scope of work. FORA will be responsible for posting any notices in the local newspaper(s) (e.g., the Monterey Herald, Californian, and/or Monterey Weekly) and at the FORA office, as well as providing the sufficient number of hard copies at various locations for public to access (locations will be identified in the distribution list).

This scope of work assumes ICF will be responsible for the production of the Final HCP and provide the requested number of copies to FORA for distribution. This scope of work also assumes that the USFWS will be responsible for preparing, publishing, distributing, and noticing of the Final EIS/EIR and HCP in accordance with USFWS NEPA Procedures and NEPA regulations.

During this task, DD&A will also submit to FORA all of the GIS data relevant to this project. DD&A will provide the requested metadata as applicable to the various GIS data. This scope assumes that any DD&A proprietary information will not be shared with FORA.

*Responsibility: DD&A, ICF, USFWS, and FORA*

*Deliverable(s): Final EIS/EIR, Noticing, and GIS files*

#### **TASK 16. AGENCY COORDINATION AND MEETINGS**

DD&A will continue coordinating with the Habitat Working Group (HWG), wildlife agencies, potential permittees, and other interested parties as needed to resolve issues and concerns associated with habitat planning on the former Fort Ord. This may include, but is not limited to, revisions to the take assessment in the Draft HCP. However, this scope does not include revisions to the Draft HCP.

DD&A will attend and participate in meetings as necessary through June 30, 2020, either in-person or on telephone conferences, including regular communication with the USFWS and CDFW to address key issues and confer on environmental issues. For meetings where DD&A is the lead, we will prepare agendas with the action items, give presentations, and provide presentation materials, as needed. FORA staff will be responsible for meeting minutes that identify action items. FORA staff will maintain a log of all action items to ensure that the required actions occur. DD&A will review FORA's action item log to ensure accuracy.

This scope of work assumes time for meeting preparation and follow-up tasks for the not-to-exceed amount shown in the attached budget. Any request(s) for meeting attendance by DD&A not provided for within this scope will be billed on a time and materials basis.

*Responsibility: DD&A in coordination with project team*

*Deliverables: Various Meeting Tasks including but not limited to: Meeting Materials, Follow-up Items, Agendas, and Review of Meeting Minutes*

**DD&A Cost Estimate for Fort Ord HCP EIS/EIR - Amendment #13**

	<i>Billing Title</i>	Principal	Senior Project Manager	Senior Planner/Scientist	Assoc Planner or Scientist	Assist Planner or Scientist	Admin Assistant	GIS/Graphics	Hours Per Task	Cost Per Task
<b>15</b>	<b>Prepare Final EIS/EIR Documentation</b>									
15A	Prepare 1st Admin Draft Final EIS/EIR	20	80	100	80	120	18	40	458	\$ 59,212
15B	Prepare Screencheck Draft Final EIS/EIR and MMRP	10	60	60	40	60	20	16	266	\$ 34,740
15C	Prepare Final EIS/EIR and MMRP/Hearing Attendance	16	80	60	26	40	20	20	262	\$ 36,340
<b>16</b>	<b>Agency Coordination and Meetings</b>	5	180	40	60	20	20	60	385	\$ 53,310
	Total Hours	51	400	260	206	240	78	136	1371	
	Hourly Rate	\$ 230	\$ 166	\$ 153	\$ 110	\$ 99	\$ 64	\$ 105		
	Total Labor	\$ 11,730	\$ 66,400	\$ 39,780	\$ 22,660	\$ 23,760	\$ 4,992	\$ 14,280		\$ 183,602
<b>Expenses:</b>										
	CEQA Attorney									\$ 40,000
	Printing/Mileage/Communication									\$ 650
										<b>TOTAL EXPENSES</b>
										\$ 40,650
									<b>TOTAL</b>	\$ 224,252



January 27, 2020

Mr. Josh Metz  
Executive Officer  
Fort Ord Reuse Authority  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, California 93933

SUBJECT: Addendum #11 Request for Funding to Complete the Public Draft Habitat Conservation Plan

Dear Mr. Metz,

ICF Jones & Stokes, Inc. ("ICF") is pleased to submit this addendum to request funding to continue support the Fort Ord Reuse Authority on the Fort Ord Multi-Species Habitat Conservation Plan (Plan). This addendum revises tasks from the original ICF contract (May 30, 2007), and subsequent addendums, and adds new tasks to finish the Plan.

Key tasks ICF conducted under Amendment #10 include, but are not limited to the following:

- 1) Finalized the Public Draft HCP for submission to USFWS and for public circulation
- 2) Helped organize and present at an all-permittee meeting
- 3) Attended the Fort Ord HCP and HCP EIR/EIS public meeting
- 4) Worked closely with FORA staff, other HCP consultants, USFWS and CDFW, and the permittees to identify solutions to address permittee's and the public's concerns about the HCP

After numerous discussions with the permittees and other stakeholders, it became apparent that a number of issues, including those related to cost of implementing the HCP, need to be resolved before the permittees move forward with adopting an HCP. This addendum is intended to fund ICF's work to support FORA and the permittees in determining a path forward with their habitat management requirements on their lands and endangered and threatened species permitting needs and finalizing an HCP if the permittees determine to proceed with an HCP. Because the permittees have not yet determined a path forward, ICF cannot precisely scope all the work needed to finish the HCP. Therefore, ICF will manage work to adhere to the overall not-to-exceed amount, rather than the amount estimated in this scope to complete each task. This will allow ICF to be more responsive to the needs of FORA and the permittees.

As of the week ending January 17, 2029, ICF has \$67,535 remaining under Addendum #10 (Labor = \$65,542 and Expense Reimbursement = \$1,993). This amount is not sufficient to

complete the Plan-related tasks through FORA sunset on June 30, 2020. Funds requested under this addendum are intended to complete work described in the attached scope of work through June 30, 2020.

The amount of new funds requested in Addendum #11 is \$68,470. This is in addition to the \$67,535 remaining from Addendum #10 for a total not-to-exceed contract amount of \$136,005 for labor and direct expenses. Existing funds that are no longer needed for certain tasks described in Addendum #10 will be transferred to tasks identified in the attached scope of work. The proposed cost estimate is provided at the end of the attached scope of work (Table 1).

This contract addendum runs through June 30, 2020 to facilitate ICF's support of FORA until sunset. This cost estimate is valid for thirty (30) days from the date of this proposal. ICF shall provide services, as outlined in the attachment, under the terms and conditions of its existing agreement number FC-052107 dated May 21, 2007. Thank you again for the opportunity to work on this important project. If you have any questions about this proposal, please contact David Zippin at (415) 677-7179 or [david.zippin@icf.com](mailto:david.zippin@icf.com) or Aaron Gabbe at (831) 291-1880 or [aaron.gabbe@icf.com](mailto:aaron.gabbe@icf.com).

Sincerely,



Trina L. Fisher

Contracts Administrator

## **Addendum #11, Fort Ord Multi-Species Habitat Conservation Plan**

This draft scope of work outlines the work required to assist FORA and the permittees (as represented by permittee staff participants in the Habitat Working Group [HWG]) evaluate options for habitat management in the Habitat Management Areas (HMA) and federal and California state endangered species (ESA and CESA, respectively) act compliance for development and habitat management actions on the former Fort Ord. Analyses may include assessments of cost and funding strategies under different habitat management and ESA and CESA compliance strategies, including habitat management without an HCP, habitat management and ESA and CESA compliance under an HCP with a smaller amount of take, fewer covered species, or fewer permittees. ICF will perform analyses under the direction of FORA and the permittees.

This scope also includes a cost estimate to prepare the Final Draft HCP and assist Denise Duffy & Associates (DD&A) with responding to public comments on the HCP EIR/EIS and preparing the Final Draft HCP EIR/EIS. The Final Draft HCP will need to be revised to address changes requested by the permittees, public comments, and comments from CDFW. The full nature and extent of revisions that will be requested by the permittees is not yet known. The analyses ICF and other consultants will provide the permittees will be used by the permittees to determine whether they will finalize and approve an HCP and HCP EIR/EIS, and if so, how ICF will revise the Final HCP.

The HWG is currently scheduled to meet through April, with FORA sunsetting at the end of June 2020. Given the timeline to prepare suitable analyses and for the permittees to make decisions about whether and how to finalize an HCP, there may not be sufficient time to complete the Final Draft HCP and form a joint powers agreement (JPA) authority to implement the HCP before FORA sunsets. If that is the case, completion of the Final HCP and CDFW 2081(b) incidental take permit application will be the responsibility of the local jurisdictions or JPA, should they form one and decide to finalize the HCP. The funding requested with this Addendum is expected to be sufficient to finalize the HCP and 2081(b) permit application; however, additional funds may be needed depending on the full extent of revisions to the HCP requested by the permittees.

The following scope includes existing tasks in ICF's current contract and new tasks added in this Addendum: Task 017, Refinements to Cost and Funding Strategy and Task 018, Prepare 2081(b) Permit Application. Completed tasks are not included below, except for tasks 011 and 013, which were completed in fall 2019. ICF requests that funds remaining for these tasks be transferred to Task 017 and Task 018. The description of the additional work needed for these



tasks, including assumptions about how they will be completed, is included on the following pages.

The work needed to complete tasks is very dynamic as we respond to evolving concerns that the permittees and wildlife agencies have with the HCP, HCP EIR/EIS, and JPA within the compressed time-frame to finish the Plan. ICF will support FORA as-needed, so work and funds expended may not correspond directly with the tasks described below.

An estimate of the funds needed to complete the following tasks through June 2020 is provide in Table 1 at the end of this scope of work. The amounts in Table 1 are in addition to the \$67,535 remaining as of January 17, 2020. Table 2 shows existing funds for each task remaining as of January 17, funds that will be transferred to different tasks, and funds requested in this addendum.

## Task 005, Strategic Advice and Project Management

ICF will use funds for this task to coordinate and plan strategies to address issues related to the HCP and HCP EIR/EIS, prepare for and attend meetings, and conduct basic project management tasks such as budget tracking and invoicing.

### Subtask 005.01, Strategic Advice and Project Management

No new funds requested for this subtask.

- Assess strategies for funding and managing HMAs and ESA and CESA compliance.
- Support FORA with writing HCP and HCP EIR/EIS-related staff reports.
- Invoicing and budget management.

### Subtask 005.02, Internal Team Meetings and Coordination

Additional funds requested for this subtask.

- Attend 1.5 hour all-consultant team meetings every week, in-person (Friday after HWG meeting). One ICF staff attends each meeting and a second ICF staff attends 2 meetings.
- Attend 5, 1-hour team check-in calls approximately once a month with FORA and DD&A. One ICF staff attends each weekly call.
- Attend four FORA Board meetings in-person (through June). One ICF staff attends five Board meetings in-person and a second ICF staff attends one Board meeting in-person.

### *Assumptions*

- Two hours of preparation time for each Board meeting.
- Travel time to FORA office: 1.5 hours round trip for Aaron Gabbe; 4 hours for David Zippin.

### Subtask 005.03, Coordination Meetings with Wildlife Agencies

Additional funds requested for this subtask.

Close coordination with the wildlife agencies will be necessary to resolve permittee issues and determine a workable path forward for the permittees.

ICF will prepare for and attend four 2-hour coordination meetings with the wildlife agencies. One ICF staff will attend each meeting. Additional, as-needed discussions via conference call will also be needed to vet issues with the wildlife agencies and to help them prepare to attend HWG meetings.

#### *Assumptions*

- Two of the 4 meetings will be in-person at FORA. The other meetings will be held via conference call.
- Two hours of preparation time for each meeting.

#### **Task 011, Prepare Public Draft**

ICF requests that funds remaining in Task 011, Prepare Public Draft be transferred to Task 017, Refinements to Cost and Funding Strategy. Task 011 is complete; the public draft was completed in Fall 2019.

#### **Task 013, Public Outreach**

ICF requests that funds remaining in Task 013, Public Outreach be transferred to Task 018, Prepare 2081(b) Application. Task 011 is complete; ICF supported DD&A with planning and holding the public meeting on November 20, 2019.

#### **Task 014, Outreach and Coordination with Permittees**

Additional funds requested for this task.

ICF will assist FORA and the permittees with the HCP and HCP EIR/EIS process and will support FORA and Regional Government Services (RGS) with managing the completion of the JPA Agreement. This process will be driven by the agendas and outcomes of weekly Habitat Working Group (HWG) meetings. ICF will evaluate strategies for habitat management on the HMAs, alternative HCP strategies (e.g., reduced take, fewer permittees), and alternative approaches to ESA and CESA compliance, such as project-by-project permitting, as directed by FORA and the Habitat Working Group (HWG).

#### *Assumptions*

- Attend 14 weekly Habitat Working Group (HWG) meetings through April 2020. One ICF staff attends each meeting and a second ICF staff attends 1 meeting. All meetings will be attended in-person.
- Each meeting will be 2 hours long.
- One hour of preparation time for each meeting.

- Four hours of preparation time for each HWG meeting, including supporting analyses.

### Task 015, Prepare Final HCP

Funds requested for this task. This task was not previously funded

The nature and extent of revisions needed to prepare the Final HCP will be determined by the FORA Board, permittees, and FORA staff. Revisions to the Final HCP may include a phased approach to development, a reduced footprint of development, and revisions to the conservation strategy to correspond to a reduced footprint of development and satisfy the wildlife agency's mitigation requirements. Other revisions may include changes to the cost and funding and plan implementation chapters.

CDFW provided extensive comment on the HCP and Draft EIR/EIS that indicate revisions to the conservation strategy in the HCP and 2081(b) application will be necessary for issuance of a 2081(b) permit for Sand Gilia and California Tiger Salamander. ICF will work with CDFW to integrate necessary revisions into the HCP and 2081(b) application at the direction of the permittees, the HWG, and FORA.

#### *Assumptions*

A moderate amount of revisions will be necessary, though revisions are not expected to be substantial enough to require a recirculation for public review.

### Task 016, HCP EIR/EIS Support

No new funds requested for this task.

ICF will support DD&A with the timely completion of the HCP EIR/EIS. These tasks include the following.

- Make the Public Draft HCP EIR/EIS compliant with Section 508 of the Rehabilitation Act and California state requirements (Government Code Section § 11546.7). Work needed to make the Public Draft HCP and Final Draft HCP compliant with these requirements will be done under Task 011, Subtask 011.03. USFWS indicated to ICF that making the Public Draft HCP 508-compliant is optional, but subject to change. This task is included here as a safeguard against this uncertainty.
- Identify and track all HCP-related comments.
- Coordinate with wildlife agencies on responses.
- Respond to public comments on the HCP and support DD&A with responses to comments specific to the HCP EIR/EIS.

#### *Deliverables*

- Section 508- and California state requirement- compliant Public Draft EIR/EIS.

- Public comment tracking matrix populated with all HCP-related comments.

### *Assumptions*

- Documents cannot be edited once they have been made compliant. The compliance must come at the end of the document writing process to ensure that the compliance process does not need to be redone to accommodate additional edits. We assume that there will be only one Section 508-compliance process before submitting the Public Draft HCP EIR/EIS and that DD&A will provide ICF with the Public Draft EIR/EIS by September 25th, at least eight full business days in advance of the day the document is due for submission to USFWS and CDFW (October 4).
- Funds to make the Final Draft HCP EIR/EIS Section 508-compliant will be requested in the next amendment proposal.

### **Task 017, Refinements to Cost and Funding Strategy**

ICF requests that funds remaining in Task 013 be transferred to Task 018 to complete this task. Additional funds are also requested for this task.

Under this new task, ICF will assist EPS with Refinements to Cost Model and Allocation and Funding Strategies

- Assist EPS in refining the cost model
- Review cost assumptions
- Support EPS in its estimate of cost for reduced take or reduced permittee scenarios
- Support EPS in developing cost allocation strategies and funding mechanisms for the permittees

### **Task 018, Prepare 2081(b) Application**

ICF requests that funds remaining in Task 011 be transferred to Task 018. No additional funds are requested for this task

Under this new task, ICF will prepare the necessary CDFW permit applications for incidental take coverage under the California Endangered Species Act for HCP Covered Activities. The budget for this task assumes the 2081(b) application will be based almost entirely on the contents of the Final HCP, which will be prepared under Task 015, thus will only require “repackaging” the Final HCP.

### *Assumptions*

ICF will produce two drafts of the 2081(b) application. Because the first draft will be a repackaging of the Final HCP, we expect CDFW to request only minor edits to the first draft 2081(b) application.

### **Cost Estimate**

We estimate that these tasks will require a budget augment of \$68,388. This cost estimate (Table 1) is based on ICF's 2020 labor rates. This budget augment is in addition to what remains from budget addendum #10 (Table 2). Previous amendments were based on older rates dating back to 2007. ICF proposes to invoice costs monthly, on a time and materials basis.

Table 1. Cost estimate for Addendum #11

Task	Consulting Staff					Subtotal	ICF Production Staff		Subtotal	Labor Total	Total Price	
	Employee Name	Zippin	Gabbe	Tannourji	Clueit		Giffen	Editor TBD				Pub Spec TBD
	Project Role	David	Aaron	Danielle	Sarah		Teresa					
	Labor Classification	Project Director	Project Manager	Conservation Planner	Conservation Planner		Graphics	Editor				Pub Spec
	Sr Proj Dir	Sr Consult III	Sr Consult II	Assoc Consult III	Assoc Consult I							
Task 005, Strategic Advice and Project Management						\$0			\$0	\$0		
Subtask 005.01, Strategic Advice and Project Management						\$0			\$0	\$0		
Subtask 005.02, Internal Team Meetings and Coordination	8.0	54.0				\$12,880			\$0	\$12,880		
Subtask 005.03, Coordination Meetings with Wildlife Agencies	6.0	26.0				\$6,760			\$0	\$6,760		
Task 014, Outreach to Permittees	8.0	27.0				\$7,480			\$0	\$7,480		
Task 015, Prepare Final HCP	6.0	60.0	26.0	26.0	12.0	\$23,510	50.0	70.0	\$16,000	\$39,510		
Task 016, HCP EIR/EIS Support						\$0			\$0	\$0		
Task 017, Refinements to Cost and Funding Strategy	4.0	4.0				\$1,840			\$0	\$1,840		
Task 018, Prepare 2081(b) Permit Application						\$0			\$0	\$0		
Total hours	<b>387.0</b>	32.0	171.0	26.0	26.0	12.0	50.0	70.0				
Billing Rates		\$260.00	\$200.00	\$175.00	\$150.00	\$125.00	\$145.00	\$125.00				
Subtotal		\$8,320	\$34,200	\$4,550	\$3,900	\$1,500	\$52,470	\$7,250	\$8,750	\$16,000	\$68,470	
Total price											\$68,470.00	

Table 2. Existing funds and funds requested under Addendum #11

<b>TASK</b>	<b>Requested</b>	<b>Remaining</b>	<b>Transferred</b>	<b>Total for Task</b>
Task 005, Strategic Advice and Project Management				
Subtask 005.01, Strategic Advice and Project Management	\$0	\$6,711	--	\$6,711
Subtask 005.02, Internal Team Meetings and Coordination	\$12,880	\$658	--	\$13,538
Subtask 005.03, Coordination Meetings with Wildlife Agencies	\$6,760	(\$1,559)	--	\$5,201
Task 011, Prepare Public Draft	\$0	\$13,468	(\$13,468)	\$0
Task 013, Public Outreach	\$0	\$12,500	(\$12,500)	\$0
Task 014, Outreach to Permittees	\$7,480	\$7,233	--	\$14,713
Task 015, Prepare Final HCP	\$39,510	--	--	\$39,510
Task 016, HCP EIR/EIS Support	\$0	\$26,531	--	\$26,531
Task 017, Refinements to Cost and Funding Strategy	\$1,840	--	\$13,468	\$15,308
Task 018, Prepare 2081(b) Application	\$0	--	\$12,500	\$12,500
Direct Expenses	\$0	\$1,993		\$1,993
	<b>\$68,470</b>	<b>\$67,535</b>	<b>--</b>	<b>\$136,005</b>

February 5, 2020

Mr. Joshua Metz  
Executive Officer  
Fort Ord Reuse Authority  
620 2<sup>nd</sup> Ave, Suite A  
Marina, CA 93933

**SUBJECT: EXECUTIVE OFFICER SUPPORT PROPOSAL**

Dear Mr. Metz,

Thank you for giving Regional Government Services (RGS) the opportunity to provide this letter proposal for Executive Officer Support for the Fort Ord Reuse Authority (FORA). We understand that with staff departures, FORA's Executive Officer has limited staff resources for support but also has a number of time-sensitive projects that need to be completed. The purpose of this contract is to provide on-site assistance as needed and ensure a successful process as FORA moves toward its sunset.

**SCOPE OF WORK**

RGS' designated staff, Kendall Flint, will provide ongoing support as requested by the Executive Officer. These may include but are not limited to:

- Assisting in efforts required as a result of the dissolution of the Fort Ord Reuse Authority.
- Representing the Executive Officer at meeting, presentations and/or other activities as requested.
- Attending and participation in FORA staff meetings and others as requested by the Executive Officer.
- Contributing to the strategic planning process as it applies to cessation of FORA operations.
- Provide support for Habitat Working Group.

**TIME COMMITMENT**

Working with the Executive Officer, RGS staff will allocate approximately 10 hours per week onsite at FORA. Hours may be increased or decreased based on project demands through June 30, 2020.

**TERM**

The term of the contract would be from January 27, 2020 through June 30, 2020.



**BUDGET**

RGS requests a not-to-exceed budget of \$30,000.

**BILLING RATES**

Kendall Flint, Project Manager \$150

**SUMMARY**

The proposed work plan is separate from our existing role in transition plan management and will be billed under separate invoice.

Please feel free to contact me with any questions or clarifications. Thank you!

Sincerely,

*KB Flint*

Kendall Flint  
Director of Strategic Planning and  
Communications  
**REGIONAL GOVERNMENT SERVICES**

FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEMS		
<b>Subject:</b>	Special Board Meeting Schedule	
<b>Meeting Date:</b>	February 13, 2020	<b>INFORMATION/ACTION</b>
<b>Agenda Number:</b>	8e	

**RECOMMENDATION:**

Approve proposed schedule for additional special Board meetings through June 2020.

**BACKGROUND/DISCUSSION:**

As the Fort Ord Reuse Authority (“FORA”) moves towards its June 30, 2020 sunset there are a significant number of time sensitive Board policy decisions. Staff recommends the Board consider scheduling a 2nd special meeting each month. The proposed schedule would be for those meetings to occur the 3<sup>rd</sup> Friday of each month from 1:00-3:00pm. This schedule would accommodate the weekly Habitat Working Group (“HWG”) meetings, scheduled from 10:00am-12:00pm, and allow time for post-meeting recovery/administrative reset. Other options that were discussed include Fridays from 9:00-10:00am or 12:00-1:00pm, but the problem with these times have to do with the intensity of the HWG and the possibility that there might be agenda items that are not a simple second vote, and time might be needed to resolve them.

**COORDINATION:**

Authority Counsel and Executive Committee.

**ATTACHMENTS:**

A. Proposed Meeting Schedule

Prepared by and Approved by

  
 Joshua Metz



# FORT ORD REUSE AUTHORITY

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

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

## Proposed Updated 2020 FORA BOARD OF DIRECTORS MEETING SCHEDULE

~~Special January 10~~

February 13

Special February 21

March 12

Special March 20

April 9

Special April 17

May 14

Special May 22

June 11

Special June 19

Board meetings are held on the 2<sup>nd</sup> Thursday of each month at 2:00 p.m. at the Carpenter's Union Hall on the former Fort Ord (910 2<sup>nd</sup> Avenue, Marina, California), unless otherwise noticed/announced.

Meeting dates and times are subject to change. Agendas and other meeting materials are posted on the FORA website [www.fora.org](http://www.fora.org) and are available upon request