



FORT ORD REUSE AUTHORITY

SPECIAL MEETING
FORT ORD REUSE AUTHORITY (FORA) BOARD OF DIRECTORS
Friday, April 17, 2020 at 1:00 p.m.
AGENDA

ALL ARE ENCOURAGED TO SUBMIT QUESTIONS/CONCERNS BY NOON APRIL 16, 2020.

THIS MEETING MAY BE ACCESSED REMOTELY USING THE FOLLOWING ZOOM LINK:
[HTTPS://ZOOM.US/J/956115894](https://zoom.us/j/956115894)

PLEASE REVIEW FORA'S UPDATED REMOTE MEETINGS PROTOCOL AND BEST PRACTICES HERE:
[HTTPS://FORA.ORG/REMOTE_MEETINGS_PROTOCOLS](https://fora.org/remote_meetings_protocols)

1. CALL TO ORDER

2. CLOSED SESSION

- a. Conference with Legal Counsel – Gov. Code §54956.9(d)(2): Anticipated Litigation, Significant Exposure to Litigation, one potential case

3. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

4. ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE

5. 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.

6. BUSINESS ITEMS

INFORMATION/ACTION

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

- a. Habitat Working Group (HWG) Ad-Hoc Committee Report & Set Aside Funds Distribution Recommendation - 2nd vote (p. 3)

Recommendation(s):

- i. Receive HWG Ad-Hoc Committee Report
- ii. Approve HWG 3/13 & 3/27 meeting minutes
- iii. Adopt a habitat set-aside funds distribution

- b. Building Removal Bond Distribution Methodology Review - 2nd vote (p. 50)

Recommendation(s):

- i. Review building removal bond distribution methodology
- ii. Provide staff direction

- c. 2020 Transition Plan (p. 94)

Recommendation: Approve 2020 Transition Plan

- d. Mechanics of Habitat Funds Distribution (p. 117)

Recommendation(s):

- i. Receive report on mechanics of habitat funds distributions
- ii. Approve mechanism

- e. Federal Wildlife Agency Notification ([p. 126](#))

Recommendation: Authorize Executive Officer to transmit letter to United States Fish & Wildlife Service (“USFWS”) regarding current habitat conservation directions.

7. 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 and will not receive Board action. Due to the [Governors Stay at Home Order](#) and recent [Executive Order related to Public Meetings Protocols](#), all FORA Meetings will now be conducted via Zoom. Public comments should be emailed to board@fora.org. Thank for your patience and understanding during these unprecedented times.

8. ITEMS FROM MEMBERS

INFORMATION

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

9. ADJOURNMENT

NEXT SPECIAL MEETING: Thursday, April 30, 2020 AT 2:00 P.M.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Habitat Working Group (HWG) Ad-Hoc Committee Report & Set Aside Funds Distribution Recommendation - 2nd Vote	
Meeting Date:	April 17, 2020	INFORMATION/ACTION
Agenda Number:	6a	

RECOMMENDATION(s):

- i. Receive HWG Ad-Hoc Committee Report.
- ii. Approve HWG 3/13 & 3/27 minutes.
- iii. Approve habitat set-aside funds distribution.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority (“FORA”) Board requested that staff assist and support the Habitat Working Group (“HWG”) Ad-Hoc Committee to evaluate options for agencies to address environmental compliance with state and federal endangered species laws (**Attachment A**). These options included the viability of implementation via the Fort Ord Habitat Management Plan (“HMP”), basewide Habitat Conservation Plan (“HCP”) and/or other approaches if possible.

The HWG consisted of Board Members representing member agencies, and meetings were jointly noticed as Special Meetings of the FORA Administrative Committee to allow members of the FORA Board and Administrative Committee to attend and share information freely. Public comment was allowed following each business item.

Meetings were held on January 10: Potential Topics for Discussion , January 17: Presentation from Regulatory Agencies , January 24: Consideration of Revised Land Use Projections , January 31: Possible Options for Future Collaboration/Discussion , February 14: Discussion of Possible JPA , February 21: HMP Cost Model Presentation and HCP Options , February 28: EIR Options and Phasing Discussion , March 6: Habitat Formula Review and Draft JPA agreement , March 13: Habitat Formula Review Update , and March 27: Final Review of Habitat Funds Distribution. Compiled approved minutes for Jan 10- March 6, 2020 are attached (**Attachment B**). Draft minutes for March 13 (**Attachment C**) and March 27 (**Attachment D**) are attached separately.

During the March 27, 2020 meeting, the HWG considered 5 alternative approaches to allocating habitat conservation set aside funds collected under the FORA Community Facilities District (“CFD”). Alternatives 1-4 were developed by HCP consultants ICF & Denise Duffy & Associates (“DDA”) and used habitat acres as a proxy for need (**Attachment E**). Alternative 5 was developed by the City of Seaside, and allocated funds based on a combination of a) where funds were generated, and b) habitat need (**Attachment F**). The HWG recommended the Board adopt Alternative 5 and allocate the habitat funds to individual land use jurisdictions as shown in Table 1 below:

Table 1. Alternative 5 Habitat Set Aside Funds Allocation

Jurisdiction	Habitat Set Aside Funds Allocation
Monterey County	\$6,700,082 or 40% ¹
City of Marina	\$6,544,643 or 39%
City of Seaside	\$2,722,319 or 16%
City of Del Rey Oaks	\$598,456 of 4%
City of Monterey	\$36,042 or 1%

Over the course of HWG meetings, members and Authority Counsel discussed a range of possible avenues for conveying the CFD funds within the constraints of the Mello-Roos Community Facilities Act of 1982. Those alternatives are summarized in the attached memo for discussion (**Attachment G**).

At the conclusion of the March 27 meeting, it was recommended that the HWG conclude its meetings and encourage member agencies with interest in a potential post-FORA, habitat conservation and management joint powers authority to organize meetings as soon as possible.

FISCAL IMPACT:

Reviewed by FORA Controller  _____

COORDINATION:

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

ATTACHMENTS:

- A. HWG Committee Charge
- B. Jan10-Mar 6, 2020 Approved Minutes
- C. DRAFT HWG Mar 13, 2020 Minutes
- D. DRAFT HWG Mar 27, 2020 Minutes
- E. ICF Habitat Set Aside Funds Allocation Alternative 1-4
- F. City of Seaside - Habitat Set Aside Funds Allocation, Alternative 5
- G. April 3, 2020 – Authority Counsel memo regarding CFD Fund Transfer Options

Prepared by Kendall Flint RGS and Approved by


Joshua Metz

¹ In each case funds would be allocated by the total amount of percentage, whichever is higher.

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
920nd 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 17th will focus on compliance requirements with representative from United States Fish & Wildlife Service and California Fish and Game.
- January 24th 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 2nd 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 Uslar (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 Strimling, Monterey County Sr. Deputy County Counsel
Mike Wegley, 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.



REGULAR MEETING

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

And

SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE

10:00 a.m. Friday, January 24, 2020 | FORA Board Room

910^{2nd} Avenue, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:05 a.m.

The following FORA Board and Administration Committee members were present:

Supervisor Jane Parker (Monterey County)
David Martin (Monterey Peninsula College)
Mayor Pro Tem Gail Morton (City of Marina)
Councilmember Frank O'Connell (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)
Josh Metz (Executive Director, Co-Chair)

Members of the Consultant Team included:

Kendall Flint – Regional Government Services (“RGS”)
Tom Graves –RGS
Aaron Gabbe – ICF International
Erin Harwayne – Denise Duffy & Associates
Ellen Martin – Economic & Planning Systems (“EPS”)
David Willoughby – Kennedy Archer & Giffen

2. PUBLIC COMMENT PERIOD

No public comments were received.

Co-Chair Parker explained that there are two Committees in attendance today: The FORA HWG as a Regular Meeting and the FORA Administrative Committee as a Special Meeting.

3. BUSINESS ITEMS

- a. Approve meeting minutes of January 10, 2020.

MOTION Haffa/Gaglioti Unanimous

- b. Approve meeting minutes of January 17, 2020.

MOTION Oglesby/Gaglioti Unanimous

- c. Today's Meeting Objective
INFORMATION

Co-Chair Metz reminded attendees that what was agreed upon previously was a simple discussion within jurisdictional teams to bring everyone up to speed and to review what has been done. If that isn't necessary, then jurisdictions can step up to their whiteboards and put up three to five key points to share with the other jurisdictions. In addition, he would like jurisdictions to identify which parcels, or parts of parcels, might be kept on the development side, and which might be kept in perpetuity for wildlife habitat. For the parcels designated for development, designate those as short-term, with 10-15-year windows. And then designate the rest of the development parcels as the second phase, sometime in the next 15-20 years. Those initial development parcels would be included in the initial impact assessment, and therefore mitigation and cost allocations would be necessary. The goal is that the HWG wants to be able to look at a map and see instead of all red, see Phase 1, Phase 2, and so forth. And that in turn will help inform our costs model and/or our impact assessments.

The group broke into jurisdictional working groups at 10:30 for 15 minutes.

- d. Exploration of HCP Reduced Scope and Phasing Options **INFORMATION**

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

Co-Chair Metz pointed out there was one hour left and urged members to take the opportunity to be as succinct as possible in their report out.

Seaside (City Manager Malin) reported out that they don't intend to develop all of their developable land and see a Phase One of about 164 acres out of 526, and they see Phase Two as being about 60 acres longer term.

Del Rey Oaks (City Councilmember Gaglioti) said they have 175 acres in commercial/residential and a 60% impact, so that works out to 105 acres for Phase One, short term 15-20 years.

Marina (Mayor pro tem Morton) said they are looking to restrict development north of the airport, which is 575 acres. North of the airport would be placed into Phase Three, fifty years. Most of the other project are already entitled, and it's not possible right now to say which other areas would be Phase One and Phase Two.

Monterey City Councilmember (Alan Haffa) said there are 25 or so acres which abut Open Space. This open space will create a wildland corridor, which is already in the general plan. For Phase One, the area is adjacent to Ryan Ranch; Phase Two would be to the south.

Monterey County (Co-Chair Parker) remarked that many of the areas in the County are open space already for habitat and trails; it's a relatively wide footprint. But there are also salamanders and other species and the County recognizes that it has to mitigate these. All of these parcels, excepting designated open space, are Phase One and all others will be Phase Two.

CSUMB (Anya Spear) spoke next, with similar results as those for Co-Chair Parker.

Steve Matarazzo (UC Santa Cruz) commented that his predecessor got an incidental Take Permit from California Department of Fish and Wildlife with concurrence from US Fish & Wildlife. So, UCSC is in good shape, with 500 acres considered developable, and about 600 acres of habitat area controlled by the Fort Ord Natural Preserve.

Co-Chair Metz said the foregoing information had been very useful, and that discussions would continue with consultants to reach very fine grain cost analyses. Those cost analyses would be brought back to future meetings with the kind of financial analysis that members have been requesting.

Responding to a question asked by Marina a couple of meetings go, he said using the fee scenario of \$8,000/unit, that could be a starting point of discussion of potential revenues. Also needed is an analysis that would come up with this phased approach, breaking up this map into parcels that could be Phase One or Phase Two or Three and generate an analysis of habitat, and then talk about what will be needed to accommodate the Phase One. Those are some of the ways that we will be working to bring back information that would inform our conversation vis-à-vis what was discussed.

Ellen Martin (EPS) said that this discussion is to become familiar with the areas that have been or will be impacted. But what we will ultimately need in order to evaluate the financial feasibility of the plan is a more detailed development of projections.

Co-Chair Metz – In view of the discussions this morning about parcel designations are roll-out of development, asked each of the members here today to come back with potential land use designation like Monterey.

The group agreed to a common timeline for phasing with 15, 25- and 50-year plans.

The group discussed the potential need to form a governance structure to carry on these discussions post-FORA.

4. FUTURE AGENDA ITEMS.

DISCUSSION

Co-Chair Parker reviewed the following proposed topics for the group's next three meetings:

- 1/31/20: Governance Structure & Priorities
- 2/7/20: Finances
- 2/14/20: Revised Governance Agreement

5. ADJOURNMENT – 12:09 p.m.



APPROVED

REGULAR MEETING

FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP

10:00 a.m. Friday, January 31, 2020 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:01 a.m.

The following FORA Board and Administration Committee members were present:

Melanie Beretti (County of Monterey)
Patrick Breen (MCWD)
Councilmember John Gaglioti (City of Del Rey Oaks)
Councilmember Alan Haffa (City of Monterey)
Layne Long (City of Marina)
Craig Malin (City of Seaside)
Steve Martin (MPC)
Steve Matarazzo (UCSC)
Mayor Pro Tem Gail Morton (City of Marina)
Councilmember Ian Oglesby (City of Seaside)
Supervisor Jane Parker (Monterey County)
Dino Pick (City of Del Rey Oaks)
Anya Spear (CSUMB)
Hans Uslar (City of Monterey)

Members of the Consultant Team included:

Kendall Flint (RGS)
Aaron Gabbe (ICF)
Tom Graves (RGS)
Erin Harwayne (DDA) (via phone)
Kristie Reimer (RMA)
David Willoughby (KAG)

2. PUBLIC COMMENT PERIOD

No public comments were received.

3. BUSINESS ITEMS

a. Today's Meeting Objective

Not discussed.

b. Review and next steps on Habitat discussion

i. Recap discussion from January 24th

Not discussed.

ii. Pros and Cons of continued discussions on reduced scope HCP – Should discussions continue?

Co-Chair Parker asked the HWG whether they want to continue working as a group on habitat issues, or would they like to tackle the issues on their own. Mr. Haffa and Mr. Gaglioti noted that the City of Monterey and the City of Del Rey Oaks, respectively, are interested in a Joint Powers Authority (“JPA”) for a Habitat Conservation Plan (“HCP”), not a Habitat Management Plan (“HMP”). Co-Chair Parker noted that the County of Monterey is interested in a reduced scope or phased HCP. Ms. Morton stated that the City of Marina supports moving forward with an interim JPA with a cutoff date. Ms. Damon stated that the City of Seaside is interested in creating a structure that allows the basic habitat management functions to be funded. Mr. Martin of MPC said that they are very interested in continuing the discussion and moving the HCP forward. Mr. Matarazzo (UCSC), Mr. Breen (MCWD), Mr. Bachman (California State Parks), and Dr. Payan (Monterey Peninsula Regional Parks) affirmed their organizations’ support of an HCP. After receiving supportive comments, Co-Chair Parker stated that it is worth it to continue having this conversation. Co-Chair Metz stated that FORA staff will put together an agenda and that he’ll have Ms. Flint set up items for discussion, with Co-Chair Parker and himself moderating.

Ms. Flint stated to the group that they have three possible options moving forward: Option 1: certify the EIR and adopt the HCP in current form; Option 2: not adopt the HCP and consider certifying the EIR. Continue coordinated habitat planning beyond FORA via formation of a new JPA. Revise & republish HCP to reflect a “phased” approach and more closely align with development; or Option 3: do not adopt the HCP and continue individual implementation of the Habitat Management Plan. A discussion took place among the members regarding the three options and the legal ramifications for each, with Mr. Willoughby providing FORA Authority Counsel’s perspective on the issues. Ms. Morton asked CDFW if they are prepared to give the group a basewide permit. Ms. Vance noted that without the BLM lands for California Tiger Salamander and Sand Gilia, the basewide permit is an option, pending some revisions.

iii. If yes to ii, what steps needs to be taken in the next few weeks to preserve this option post June 30, 2020?

Mr. Haffa motioned for the HWG to move forward with Option 2 including the EIR/EIS and Mr. Gaglioti seconded. Mr. Pick noted that it seems the HWG is in agreement on most of the core tenets of Option 2 and that the HWG should move forward by recommending that the FORA board certifies the EIR/EIS. Ms. Flint made a recommendation to table the motion until the HWG hears back from FORA consultants regarding the financial and legal details of executing Option 2. She noted that the HWG could have that feedback by the end of February in time for the March 12 FORA board meeting. Ms. Morton asked that this recommendation be moved to the FORA Finance Committee so they can examine how it will impact the midyear budget. Mr. Oglesby suggested that the HWG move the recommendation to the Executive Committee so that it can then move to the Finance Committee. A discussion took

place regarding whether the HWG should move forward with Mr. Haffa’s motion, and if not, how to capture the group’s consensus so that it is officially recorded. Co-Chair Parker recommended taking a straw poll on the various points of the motion to see where the group stands on them.

Points	Consensus
1. FORA staff and consultants to contract with CEQA attorney to opine on legality and risks of certifying an EIR without approving a project (HCP).	YES
2. Interest in forming a legal entity (i.e. JPA) that could be delegated FORA Board’s habitat management and conservation responsibilities (Option 2).	YES
3. Establish an escrow account to hold funds currently planned to for use as HCP endowment while JPA-based habitat planning efforts continue.	YES
4. Request FORA Executive and Finance committees consider habitat endowment funds for the JPA process.	YES

iv. If no to ii, what steps needs to be taken convey the \$17M for existing habitat obligations?

Not applicable.

c. Review of option for focus of future working group

Co-Chair Metz stated that FORA can direct its Authority Counsel to start preparing a draft JPA for the HWG to consider. Mr. Willoughby stated that he can circulate a skeletal version of the last draft JPA to the various jurisdictions’ attorneys and have it serve as a clearinghouse for their comments and suggestions.

Co-Chair Parker suggested that the HWG discuss financial details in the next week’s meeting, however, Co-Chair Metz noted that FORA consultant Ellen Martin has not received any feedback from the jurisdictions and that she would be hard-pressed to bring back anything of substance by the February 7 HWG meeting. The HWG heard from Ms. Harwayne and Mr. Gabbe regarding the timing and substance of their analyses that they are preparing for the HWG. Based on this feedback, Ms. Morton recommended that the HWG not meet on February 7, and that instead the jurisdictions take the time to meet with Ms. Harwayne and hone in on phasing projections.

d. Review of options for staffing and meetings

Co-Chair Metz noted the following tentative meeting schedule and topics:

- February 7 – meeting cancelled
- February 14 – discussion of the JPA draft document and its language
- February 21 – discussion of finances and the HMP management cost model

- February 28 – discussion of the phasing (hopefully with feedback from regulators and consultants)

Co-Chair Metz noted that the points listed in the straw poll will be included in the next meeting's agenda for members to review.

e. Other discussion

None

4. ITEMS FROM MEMBERS

None

5. ADJOURNMENT at 11:57 a.m.



REGULAR MEETING
FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP (HWG)
10:00 a.m. Friday, February 14, 2020 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:05 a.m.

The following FORA Board and Administration Committee members were present:

Melanie Beretti (County of Monterey)
Councilmember John Gaglioti (City of Del Rey Oaks)
Councilmember Alan Haffa (City of Monterey)
Layne Long (City of Marina)
Craig Malin (City of Seaside)
David Martin (MPC)
Steve Matarazzo (UCSC)
Mayor Pro Tem Gail Morton (City of Marina)
Vicki Nakamura (MPC)
Frank O'Connell (City of Marina)
Mayor Ian Oglesby (City of Seaside)
Supervisor Jane Parker (Monterey County)
Dino Pick (City of Del Rey Oaks)
Anya Spear (CSUMB)
Hans Uslar (City of Monterey)
Mike Wegley (MCWD)

Members of the Consultant Team included:

Kendall Flint (RGS)
Erin Harwayne (DDA)
Kristie Reimer (RMA)
David Willoughby (KAG)

2. PUBLIC COMMENT PERIOD

No public comments were received.

3. BUSINESS ITEMS

a. Approve meeting minutes from January 31, 2020

MOTION: On motion by Mr. Gaglioti, seconded by Mr. Haffa and carried by the following vote, the Habitat Working Group moved to approve the January 31, 2020 HWG meeting minutes.

MOTION PASSED UNANIMOUSLY

b. Today's Meeting Objective

Not discussed.

c. **Recap discussion from January 31, 2020 meeting**

Not discussed.

d. **Discussion of JPA draft document and its language (Attachment A)**

Co-Chair Parker started the item by noting that Mr. Willoughby will be leading the HWG through the draft JPA paragraph by paragraph. Mr. Willoughby walked the HWG through the contents of the document, answering questions from members of the HWG when asked, and noting any requested changes. Once Mr. Willoughby finished, members of the HWG discussed the language used in sections throughout the draft document. Mr. Haffa opined that it would be helpful if all members of the HWG spoke about whether they would feel comfortable bringing it to their agencies for approval. Representatives from each jurisdiction expressed their thoughts on the idea, with some voicing their approval, some voicing their rejection, and some voicing approval pending some changes and clarifications.

Members of the HWG began to discuss next steps as far as the HWG's responsibilities go to carry on this process. Co-Chair Parker recommended that Mr. Willoughby and attorneys from the various jurisdictions hold a meeting to go over the draft JPA and bring forward a new draft of the documents to the HWG meeting on February 28, so that the HWG can discuss a document that has been approved by its jurisdictions' attorneys. This would give the HWG the ability to make a recommendation to the FORA Board. Co-Chair Metz suggested conducting a straw poll on various ideas so that when the attorneys meet, they have some policy direction to base their work off of. The HWG continued the discussion of the draft document, going over legal ramifications, the schedule of how the JPA will be implemented, and ways that the \$17 million can be protected. Co-Chair Parker recommended that the group come to an agreement on consensus points and listed them as follows:

- Clarifying the purpose in recital C to include more explicit language about the negotiations that the JPA was going to be undertaking.
- The handling and possible disposition of the \$17 million.
- Put in a more explicit end date for the JPA for this particular purpose.
- Have the attorneys look into the risk of liability.

MOTION: On motion by Mr. Gaglioti, seconded by Mr. Oglesby and carried by the following vote, the Habitat Working Group moved to memorialize those consensus points.

MOTION PASSED UNANIMOUSLY

e. Other discussion

None

4. FUTURE AGENDA ITEMS

Not discussed

5. ADJOURNMENT at 12:04 p.m.

REGULAR MEETING

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

And

SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE

10:00 a.m. Friday, February 21, 2020 | Carpenters Union Hall
910 2nd Avenue, Marina, CA 93933

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:05 a.m.

The following FORA Board and Administration Committee members were present:

Supervisor Jane Parker (Monterey County) – Co-Chair

Melanie Beretti (County of Monterey)

Patrick Breen (MCWD)

Councilmember John Gaglioti (City of Del Rey Oaks)

Councilmember Alan Haffa (City of Monterey)

Layne Long (City of Marina)

Craig Malin (City of Seaside)

David Martin (MPC)

Steve Matarazzo (UCSC)

Mayor Pro Tem Gail Morton (City of Marina)

Vicki Nakamura (MPC)

Councilmember Frank O’Connell (City of Marina)

Mayor Ian Oglesby (City of Seaside)

Supervisor Jane Parker (Monterey County)

Dino Pick (City of Del Rey Oaks)

Anya Spear (CSUMB)

Hans Uslar (City of Monterey)

Members of the Consultant Team included:

Kendall Flint (RGS)

Aaron Gabbe (ICF)

Erin Harwayne (DDA)

Ellen Martin (EPS)

David Willoughby (KAG)

FORA Staff:

Joshua Metz – Co-Chair

Harrison Tregenza

2. PUBLIC COMMENT PERIOD

Public comment was received.

3. BUSINESS ITEMS

a. Today’s Meeting Objective

Ms. Parker went over the agenda for the meeting and noted that the objective was to have a good conversation.

b. February 14, 2020 meeting recap

Mr. Metz noted that FORA attorneys are reviewing the JPA document with the jurisdictions' redlines and that they will bring it back for review and consideration at subsequent meetings.

c. Habitat Management Plan (HMP) – Cost Model presentation

Mr. Gabbe gave a presentation on the HMP cost model. He started by going over the methods and assumptions that he used to create the HMP cost model. He broke down the cost model by jurisdiction, species, acreage, and responsibilities and answered questions from the committee. He discussed the differences between the HMP and HCP, and the details regarding species' takes and mitigation. Ms. Morton asked if it would be possible for the Bureau of Land Management (BLM) to compile all reports from the last five years and have them posted on FORA's website. Mr. Metz affirmed that he'd work with Mr. Morgan of BLM to get all the reports and put them on the website for jurisdictions to access. Mr. Pick noted that the regulatory agencies will be in charge of these things, and would like them on the phone next time. Ms. Parker wrapped up the item due to time constraints and noted that this was a good conversation, but that it will need to be discussed in future meetings.

d. CEQA Attorney – Habitat Conservation Plan (HCP) / EIR options

Mr. Metz noted that as instructed by the FORA Board, FORA staff requested Holland & Knight (HK) provide a legal opinion regarding CEQA/NEPA ramifications regarding the HCP EIR/EIS. Mr. Willoughby walked the HWG through the legal memo provided by HK. He broke down the five options as laid out in the memo as well as the details of EIR certification. Mr. Willoughby then answered questions from members of the HWG regarding the contents of the memo. Following this, Ms. Flint gave a presentation on HCP/EIR considerations. She broke down HK's five options in terms of who the lead agency would be and the benefits and challenges of each. She then showed the HWG an action calendar for all the steps that would need to take place to publish and certify an EIR before FORA's sunset.

e. Other discussion

None

4. FUTURE AGENDA ITEMS

Not discussed.

5. ADJOURNMENT at 12:15 p.m.

**REGULAR MEETING
FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP (HWG)
and
SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE**

Friday, February 28, 2020 at 10:00 a.m.
910 2nd Avenue, Marina, CA 93933 (Carpenters Hall)

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:03 a.m.

The following FORA Board and Administration Committee members were present:

Supervisor Jane Parker (Monterey County) – Co-Chair

Melanie Beretti (County of Monterey)

Patrick Breen (MCWD)

Councilmember John Gaglioti (City of Del Rey Oaks)

Councilmember Alan Haffa (City of Monterey)

Layne Long (City of Marina)

Craig Malin (City of Seaside)

David Martin (MPC)

Steve Matarazzo (UCSC)

Mayor Pro Tem Gail Morton (City of Marina)

Vicki Nakamura (MPC)

Councilmember Frank O'Connell (City of Marina)

Mayor Ian N. Oglesby (City of Seaside)

Dino Pick (City of Del Rey Oaks)

Hans Uslar (City of Monterey)

Members of the Consultant Team included:

Kendall Flint (RGS)

Aaron Gabbe (ICF)

Erin Harwayne (DDA)

David Willoughby (KAG)

FORA Staff:

Joshua Metz – Co-Chair

Harrison Tregenza

2. PUBLIC COMMENT PERIOD

Public comment was received.

3. APPROVAL OF MEETING MINUTES

a. February 14, 2020

MOTION: On motion by Mr. Gaglioti, seconded by Mr. Haffa and carried by the following vote, the Habitat Working Group moved to approve the February 14, 2020 HWG meeting minutes with one correction.

MOTION PASSED UNANIMOUSLY

4. BUSINESS ITEMS

a. February 21, 2020 meeting recap

Mr. Metz recapped the previous meeting for the HWG. He discussed the Holland & Knight memo that the HWG had received last week. He noted that the memo provided a significant amount of discussion, so much so that the HWG was not able to make a recommendation. He continued, noting that the FORA Board took action on the memo and recommended moving ahead with the certification of the EIR. He also discussed the business items on today's agenda.

b. EIR Options Review & Recommendation

Mr. Metz opened the item by asking if the HWG could hear from Ms. Harwayne regarding her conversations with the regulators and then hear from each jurisdiction regarding how they see the potential utility of this EIR. Ms. Harwayne spoke to the HWG regarding a phone call she had with the state and federal regulators regarding phasing. She then went over the schedule: the phasing information will be provided to the agencies next week and then will bring the info to the HWG on March 13. She answered questions from members of the HWG. Mr. Pick asked if certification can be achieved by June 30. Ms. Harwayne said it was feasible to get that to the board and passed with two votes. He also asked if there would be additional cost and she noted that DDA and ICF will not be needing additional funds.

c. Phasing discussion with feedback from regulators and consultants

Mr. Metz noted that the phasing discussion has been delayed. Ms. Parker noted that at the next meeting the HWG will hear about the draft JPA from authority counsel and jurisdictions' counsel.

d. 2018 Transition Plan Review & Recommendation(s)

Mr. Metz started the item and noted that Ms. Flint will be giving a presentation. Ms. Flint gave a presentation on the Transition Plan and answered questions from HWG members. Mr. Willoughby opined on the topic of litigation, backing up Ms. Flint on legal questions that she received. The HWG had a robust discussion on the topic and implications of the habitat language in the Transition Plan. Ms. Morton asked that a formula for the species, acreage, and mitigation ratios be identified before the HWG moves forward with the JPA. Ms. Harwayne opined on the formula, noting that it is complex, and that it is determined by borderlands, HMAs, and land management, not just acreage or species.

MOTION: On motion by Mr. Uslar, seconded by Mr. Pick and carried by the following vote, the Habitat Working Group moved that FORA staff and consultants bring to the HWG, within a week, the aforementioned formula based on percentages of species, acreage, borderlands, land monitoring, and already existing projects.

Public comment was received on this item.

MOTION PASSED UNANIMOUSLY

Mr. Gabbe shared his initial thoughts on this formula. He said it could be something very simple, proportionally based on species, acreage, land management, borderland management, and assumptions. He thought that overall, it could be a very simple set of equations or equation.

e. Other discussion

Ms. Flint strongly encouraged the Co-Chairs to come up with decision points over the next several meetings. She feels that if the HWG does not set target dates to get certain tasks accomplished, the group will not be able to accomplish what it set out to do.

Ms. Strimling noted that the word “baseline” has a CEQA specific meaning and she requested that HWG members use words like “foundation” or “starting point” so as not to cause any confusion between the colloquial definition and the legal definition.

5. FUTURE AGENDA ITEMS

- The March 6 meeting’s items will be:
 - Draft habitat formula
 - JPA draft discussion
 - Transition plan language
- The March 13 meeting’s items will be:
 - Phasing discussion
 - A continuation of the Habitat formula

6. ADJOURNMENT at 11:49 a.m.

**REGULAR MEETING
FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP (HWG)
and
SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE**

Friday, March 6, 2020 at 10:00 a.m.
910 2nd Avenue, Marina, CA 93933 (Carpenters Hall)

1. CALL TO ORDER

Co-Chair Ian Oglesby called the meeting to order at 10:00 a.m.

The following FORA Board and Administration Committee members were present:

Councilmember Frank O'Connell (City of Marina) – Co-Chair

Mayor Ian N. Oglesby (City of Seaside) – Co-Chair

Melanie Beretti (County of Monterey)

Patrick Breen (MCWD)

Councilmember John Gaglioti (City of Del Rey Oaks)

Councilmember Alan Haffa (City of Monterey)

Layne Long (City of Marina)

Craig Malin (City of Seaside)

Steve Matarazzo (UCSC)

Mayor Pro Tem Gail Morton (City of Marina)

Vicki Nakamura (MPC)

Jeff Oyn (City of Del Rey Oaks)

Anya Spear (CSUMB)

Hans Uslar (City of Monterey)

Members of the Consultant Team included:

Bernadette Clueit (ICF) – via phone

Kendall Flint (RGS)

Aaron Gabbe (ICF)

Erin Harwayne (DDA)

Ellen Martin (EPS) – via phone

David Willoughby (KAG)

FORA Staff:
Joshua Metz – Co-Chair
Harrison Tregenza

2. PUBLIC COMMENT PERIOD

No public comment was received.

3. APPROVAL OF MEETING MINUTES

a. February 21, 2020

MOTION: On motion by Mr. Uslar, seconded by Mr. Gaglioti and carried by the following vote, the Habitat Working Group moved to approve the February 21, 2020 HWG meeting minutes.

MOTION PASSED UNANIMOUSLY

4. BUSINESS ITEMS

a. February 28, 2020 meeting recap

Mr. Metz gave an overview of the last meeting, noting that the HWG discussed providing a formula for the potential allocation of funds which will be discussed in item 4b on today's agenda. Mr. Metz noted that last night, the Seaside City Council gave unanimous approval for their Campus Town Project.

b. Habitat formula review

Ms. Flint started off the item, giving the HWG a background on the formula drafted by the consultants for the HWG consideration. Mr. Gabbe gave a presentation on the habitat formula. He presented an interactive Excel spreadsheet that showed different potential percentage breakdowns. Mr. Gabbe, Ms. Harwayne, and Mr. Willoughby answered questions and responded to comments from the HWG. Discussion followed regarding whether the universities and parks should be included in this model. Mr. Oglesby noted that he'd like the HWG to establish consensus on "who's in and who's out" of the JPA.

Public comment was received on this item.

Mr. Haffa noted that there could be three different options with regard to the formula breakdown: the original option as presented by Mr. Gabbe, an option without State Parks, and an option with all entities included. Mr. Gaglioti and Mr. Malin noted their preference is to vote today on this item and make a decision. Mr. Oglesby asked that the HWG move on to the next item due to time.

c. JPA Draft Agreement review/discussion

Mr. Metz noted that Mr. Willoughby will be giving an update on the JPA draft process. Mr. Willoughby said that BLM and the Monterey Regional Park District asked not be a part of the potential JPA. He noted that if the HWG is going to move down a JPA path, FORA will need to be part of the JPA, and it will no longer be a member after FORA dissolves. He noted that the ad-hoc legal group has made significant process and that they will need guidance from the HWG on certain areas. Those areas needing guidance are as follows:

- Should the JPA be a skeletal framework just so that it can exist in order to receive the \$17 million from FORA or should there be a more fleshed-out JPA that has more capabilities?
- Regarding the allocation of the habitat funds, and the best way to split the funds. The initial impression is that the formula will also apply to the JPA, and the legal group expects consistency between the several relevant documents.
- If a JPA is formed but not everyone wants to join, are those who are left out going to receive any money? These questions depend on when the hypothetical jurisdiction potentially withdraws from the JPA.
- What will the source of operational funds for the JPA be? Will it come from depleting the \$17 million? Will FORA provide unrestricted seed money?
- Does the JPA have the authority to hire employees? Because of PERS liability changes, there's a possibility that members could have liabilities.
- The HWG needs to receive an opinion from the bond counsel at some point in this process.

Mr. Willoughby then answered questions from the HWG regarding these areas with further discussion made.

Public comment on this item was received.

d. Habitat-related 2018 Transition Plan Recommendation(s)

Ms. Flint asked that this item be brought back next week for discussion.

e. Other discussion

None

5. FUTURE AGENDA ITEMS

- Reduced take scenario phasing discussion
- Habitat formula review with breakdown of options
- JPA Draft Agreement review/discussion
- Habitat-related 2018 Transition Plan Recommendation(s)

6. ADJOURNMENT at 11:45 a.m.

**REGULAR MEETING
FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP (HWG)
and
SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE**

Friday, March 13, 2020 at 10:00 a.m.
910 2nd Avenue, Marina, CA 93933 (Carpenters Hall)

1. CALL TO ORDER

Co-Chair Jane Parker called the meeting to order at 10:04 a.m.

The following FORA Board and Administration Committee members were present:

Supervisor Jane Parker (Monterey County) – Co-Chair

Melanie Beretti (County of Monterey)

Bill Collins (BRAC)

Councilmember John Gaglioti (City of Del Rey Oaks)

Councilmember Alan Haffa (City of Monterey)

Nicole Hollingsworth (CSUMB)

Layne Long (City of Marina)

Craig Malin (City of Seaside)

David Martin (MPC)

Steve Matarazzo (UCSC)

Mayor Pro Tem Gail Morton (City of Marina)

Vicki Nakamura (MPC)

Mayor Ian N. Oglesby (City of Seaside)

Dino Pick (City of Del Rey Oaks)

Hans Uslar (City of Monterey)

Members of the Consultant Team included:

Kendall Flint (RGS)

Aaron Gabbe (ICF)

Erin Harwayne (DDA)

Ellen Martin (EPS) – via phone

David Willoughby (KAG)

FORA Staff:
Joshua Metz – Co-Chair
Harrison Tregenza

2. PUBLIC COMMENT PERIOD

Public comment was received.

3. APPROVAL OF MEETING MINUTES

a. February 28, 2020

MOTION: On motion by Mr. Haffa, seconded by Mr. Gaglioti and carried by the following vote, the Habitat Working Group moved to approve the February 28, 2020 HWG meeting minutes.

MOTION PASSED UNANIMOUSLY

4. BUSINESS ITEMS

a. March 6, 2020 meeting recap

Mr. Metz discussed the potential likelihood of future FORA meetings being conducted remotely via Zoom. He noted that most of today's agenda items are reprised from the previous meeting, save for the reduced take scenario phasing discussion that Ms. Harwayne will lead.

b. Reduced take scenario phasing discussion

Mr. Metz introduced the item, noting that Ms. Harwayne will lead the discussion and receive feedback from the HWG and the regulators. Ms. Harwayne introduced the item and gave the HWG a broad overview of the topic. She then answered questions from the HWG and went over her Excel spreadsheet that listed each jurisdiction's responsibility by phase, acre, species, and other criteria. Mr. Gabbe, Ms. Ferranti, Ms. Harwayne, Ms. Bono, and Ms. Henry answered questions from the HWG and spoke on the topic of a CEQA document and phasing. Ms. Harwayne asked if the land-use jurisdictions could give feedback on the model. Mr. Haffa noted that the City of Monterey is okay with it, but that they need to know the cost. Mr. Gaglioti stated that the City of Del Rey Oaks is happy with it because it tees off of what they've previously talked about. Mr. Malin stated that the City of Seaside believes that anything that makes the process more efficient, less costly, and enhances preservation is a good idea. Ms. Parker noted that Monterey County believes it is helpful and that they will see where it leads. Ms. Morton stated the City of Marina concurs with what Mr. Malin had stated.

Public comment was received.

c. Habitat formula review with breakdown of options

Mr. Gabbe started off the item and gave a presentation on additional alternatives for additional CFD funds. He gave an overview on various allocation scenarios and walked the HWG through each. Mr. Gabbe, Ms. Flint, and Mr. Willoughby answered questions from the HWG. Mr. Malin presented his proposed alternative to the HWG. A robust discussion took place between the members of the HWG. Due to time constraints, Ms. Parker recommended that the HWG continue this item at the next meeting.

d. JPA DRAFT Agreement review/discussion

Not discussed.

e. Habitat-related 2018 Transition Plan Recommendation(s)

Not discussed.

5. FUTURE AGENDA ITEMS

- Continued conversation on habitat formula options – first priority
- Habitat-related 2018 Transition Plan Recommendation(s) – second priority
- JPA draft agreement review/discussion – third priority

6. ADJOURNMENT at 12:10 p.m.

**REGULAR MEETING
FORT ORD REUSE AUTHORITY (FORA) HABITAT WORKING GROUP (HWG)
and
SPECIAL MEETING OF THE FORA ADMINISTRATIVE COMMITTEE**

Friday, March 27, 2020 at 10:00 a.m.
~~910 2nd Avenue, Marina, CA 93933 (Carpenters Hall)~~

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) – Co-Chair

Melanie Beretti (County of Monterey)

Patrick Breen (MCWD)

Bill Collins (BRAC)

Councilmember John Gaglioti (City of Del Rey Oaks)

Councilmember Alan Haffa (City of Monterey)

Layne Long (City of Marina)

Craig Malin (City of Seaside)

Steve Matarazzo (UCSC)

Mayor Pro Tem Gail Morton (City of Marina)

Vicki Nakamura (MPC)

Councilmember Frank O’Connell (City of Marina)

Mayor Ian N. Oglesby (City of Seaside)

Dino Pick (City of Del Rey Oaks)

Anya Spear (CSUMB)

Hans Uslar (City of Monterey)

Members of the Consultant Team included:

Kendall Flint (RGS)

Aaron Gabbe (ICF)

Erin Harwayne (DDA)

Ellen Martin (EPS)

David Willoughby (KAG)

FORA Staff:
Joshua Metz – Co-Chair
Harrison Tregenza

2. PUBLIC COMMENT PERIOD

Public comment was received.

3. APPROVAL OF MEETING MINUTES

a. March 6, 2020

MOTION: On motion by Mr. Gaglioti, seconded by Mr. Haffa and carried by the following vote, the Habitat Working Group moved to approve the March 6, 2020 HWG meeting minutes with one correction.

MOTION PASSED UNANIMOUSLY

4. BUSINESS ITEMS

a. March 13, 2020 meeting recap

Mr. Metz recapped the previous meeting for the HWG, noting that the group discussed the habitat formula review in some depth. The group also discussed the Transition Plan, but recognized that the work of the habitat formula was most critical. He also noted that the group tabled the JPA discussion until the appropriate time, which will be informed by the deliberations on the habitat formula. The group also discussed the makeup of the voting body for the HWG.

b. Habitat formula review with breakdown of options

Ms. Flint started off the item noting that the HWG asked the consultant team to go over the CFD allocation options. She noted that Mr. Gabbe will present the four options and that Mr. Malin will have a fifth option to discuss after that. Mr. Gabbe gave a quick review of the four alternatives. He gave a quick breakdown of each, going over the different allocations of CFD funds and how they are distributed to each jurisdiction. Following this, Mr. Malin gave a presentation of his allocation model. Then the HWG members had a robust discussion regarding the various options

MOTION: On motion by Mr. Haffa, seconded by Mr. Gaglioti and carried by the following vote, the Habitat Working Group moved that they recommend Option 5 (the Seaside Proposal) to the FORA Board.

MOTION PASSED MAJORITY

Supervisor Jane Parker	NO
Mayor Ian Oglesby	YES
Mayor Pro-Tem Gail Morton	YES
Councilmember John Gaglioti	YES
Councilmember Alan Haffa	YES

c. Habitat-related 2018 Transition Plan Recommendation(s)
None

d. JPA DRAFT Agreement review/discussion

Ms. Parker noted that those jurisdictions who are interested in forming a JPA set up a time and place to meet and discuss.

e. Other discussion

Ms. Flint noted that the HWG's recommendation will be brought to the FORA Board at the April 9, 2020 meeting. Ms. Parker added that with the habitat recommendation made, the work of the HWG is finished. She thanked all jurisdictions for joining in the discussions these past few months. Josh thanked all members for participating and all work the consultants put in and that he appreciated the opportunity to facilitate this discussion. Members of the HWG thanked Ms. Parker for leading the group.

5. FUTURE AGENDA ITEMS

None

6. ADJOURNMENT at 11:49 a.m.

Memorandum

Date:	March 26, 2020
To:	Fort Ord Reuse Authority Habitat Working Group
Cc:	Josh Metz
From:	Aaron Gabbe, Ph.D. Bernadette Clueit
Subject:	CFD Allocation Alternatives

This memorandum provides a brief overview of the four alternative strategies for allocating Community Facility District (CFD) fees to the local jurisdictions and entities for habitat management purposes, which have previously been presented to the Fort Ord Reuse Authority (FORA) Habitat Working Group (HWG) during HWG meetings on March 6 and March 13, 2020. The alternatives are provided as Attachment A to this memorandum and are summarized below.

The first three alternatives allocate CFD funds based on the acreage controlled by the relevant jurisdiction and differ significantly only in which jurisdictions are included in the distribution of funds.

- **Alternative 1.** CFD funds are allocated to the County and to the Cities only.
- **Alternative 2.** CFD funds are allocated to all jurisdictions.
- **Alternative 3.** CFD funds are allocated to the County, the Cities, the Universities, and the College. State Parks and Regional Parks are excluded.

The fourth alternative differs substantially from the first three, in that funds are allocated only to those jurisdictions which have made contributions to the CFD fees to date.

- **Alternative 4.** CFD funds are allocated to Monterey County, Seaside, and Monterey City as a percentage of total fee contribution to date.

It should be noted that CFD fees collected to date that are set aside for habitat management activities totals \$17,441,927. University of California Santa Cruz (UCSC) has already received disbursement totaling \$840,386 of the available habitat management funds. Therefore, under Alternative 1 and Alternative 4 (where UCSC is not included as a recipient of funds) the total amount available for allocation to the jurisdictions included in these alternatives is \$16,601,541.

Alternative 1 - Allocation based on Acreage
County and Cities Only

		HMA Mgmt Multiplier		DwR Multiplier (same as HMA)		Borderland Multiplier		Interim Mgmt Multiplier			
Total Funds to be allocated		70%		70%		18%		12%			
\$	16,601,541	\$ 11,621,079				\$ 2,988,277		\$ 1,992,185			
Jurisdiction	HMA acres	HMA Monitoring Allocation \$	Development with Reserve (DwR) acres	DwR Allocation \$	Borderland acres	Borderland Allocation \$	Interim Mgmt in Development Parcels acres	Interim Mgmt Allocation \$	Total Allocation \$	Percent	
Monterey County	1,571	\$ 8,760,420	277	\$ 1,544,644	100	\$ 1,989,441	693	\$ 975,872	\$ 13,270,377	80%	
Seaside	0	\$ -	0	\$ -	34	\$ 674,123	389	\$ 547,902	\$ 1,222,026	7%	
Marina	236	\$ 1,316,015	0	\$ -	0	\$ -	0	\$ -	\$ 1,316,015	8%	
Monterey City	0	\$ -	0	\$ -	0	\$ -	32	\$ 45,053	\$ 45,053	0.27%	
Del Rey Oaks	0	\$ -	0	\$ -	16	\$ 324,713	301	\$ 423,358	\$ 748,071	5%	
Total	1,807	\$ 10,076,434	277	\$ 1,544,644	150	\$ 2,988,277	1,415	\$ 1,992,185	\$ 16,601,541	100%	

Assumptions & Notes

- HMA Mgmt Allocation and DwR Allocation are all coming from the same pot of 70% of the money, so they are grouped together in the table.
- Borderland and interim management is 30% cost of baseline HCP management cost, calculations are based on MPC, which is the only jurisdiction we have data we can calculate costs from (baseline is management not including restoration and species monitoring)
- Borderlands acreage calculated from linear feet assuming a 100 ft wide area to be maintained.
- p. 4-1 of the HMP: "In general, landowners are expected to fund management of biological resources on reserve parcels".
- p. 4-3 of the HMP "Development with Reserve Areas: for development parcels that have habitat reserve areas within their boundaries, the management practices must be consistent with maintenance of the reserves".
- p. 4-3 of HMP: " Borderland Development Areas: Management requirements such as fire breaks and limitation to vehicle access are required along the the NRMA interface. Remaining portions of these parcels have no management restrictions"
- p. 4-3 of HMP: "Development lands have no management restrictions placed on them. Sensitive Bio resources within these areas must be identified and may be salvaged for restoration within reserve areas". Assume this cost will be covered by developers.
- Interim management cannot be defined at this time because the required activities are unknown.
- Be advised that \$840,386 of CFD Funds have been previously distributed to USCSC, therefore the total funds to be allocated is reduced by this amount.

Alternative 2 - Allocation by Acreage
All Jurisdictions Included

		HMA Mgmt Multiplier		DwR Multiplier (same as HMA)		Borderland Multiplier		Interim Mgmt Multiplier					
Total Funds to be allocated		70%		70%		18%		12%					
\$	17,441,927	\$ 12,209,349				\$ 3,139,547		\$ 2,093,031					
Jurisdiction	HMA acres	HMA Monitoring Allocation \$	Development with Reserve (DwR) acres	DwR Allocation \$	Borderland acres	Borderland Allocation \$	Interim Mgmt in Development Parcels acres	Interim Mgmt Allocation \$	Total Allocation \$	Funds Already Received \$	Net Allocation \$	Percent	
Monterey County	1,571	\$ 4,925,754	277	\$ 868,513	100	\$ 1,547,714	693	\$ 704,936	\$ 8,046,918	\$ -	\$ 8,046,918	46%	
Seaside	0	\$ -	0	\$ -	34	\$ 524,444	389	\$ 395,786	\$ 920,230	\$ -	\$ 920,230	5%	
Marina	236	\$ 739,961	0	\$ -	0	\$ -	0	\$ -	\$ 739,961	\$ -	\$ 739,961	4%	
Monterey City	0	\$ -	0	\$ -	0	\$ -	32	\$ 32,545	\$ 32,545	\$ -	\$ 32,545	0.19%	
Del Rey Oaks	0	\$ -	0	\$ -	16	\$ 252,615	301	\$ 305,819	\$ 558,435	\$ -	\$ 558,435	3%	
CSUMB	0	\$ -	0	\$ -	6	\$ 92,507	333	\$ 338,668	\$ 431,175	\$ -	\$ 431,175	2%	
University of California	598	\$ 1,874,985	8	\$ 25,083	0	\$ -	0	\$ -	\$ 1,900,068	\$ 840,386	\$ 1,059,682	11%	
Monterey Peninsula College	206	\$ 645,898	0	\$ -	47	\$ 722,267	310	\$ 315,277	\$ 1,683,441	\$ -	\$ 1,683,441	10%	
Monterey Peninsula Regional Parks	19	\$ 59,573	0	\$ -	0	\$ -	0	\$ -	\$ 59,573	\$ -	\$ 59,573	0.34%	
State Parks	837	\$ 2,624,352	142	\$ 445,230	0	\$ -	0	\$ -	\$ 3,069,582	\$ -	\$ 3,069,582	18%	
Total	3,467	\$ 10,870,522	427	\$ 1,338,827	203	\$ 3,139,547	2,058	\$ 2,093,031	\$ 17,441,927	\$ 840,386	\$ 16,601,541	100%	

Assumptions & Notes

- HMA Mgmt Allocation and DwR Allocation are all coming from the same pot of 70% of the money, so they are grouped together in the table.
- Borderland and interim management is 30% cost of baseline HCP management cost, calculations are based on MPC, which is the only jurisdiction we have data we can calculate costs from (baseline is management not including restoration and species monitoring)
- Borderlands acreage calculated from linear feet assuming a 100 ft wide area to be maintained.
- p. 4-1 of the HMP: "In general, landowners are expected to fund management of biological resources on reserve parcels".
- p. 4-3 of the HMP "Development with Reserve Areas: for development parcels that have habitat reserve areas within their boundaries, the management practices must be consistent with maintenance of the reserves".
- p. 4-3 of HMP: " Borderland Development Areas: Management requirements such as fire breaks and limitation to vehicle access are required along the the NRMA interface. Remaining portions of these parcels have no management restrictions"
- p. 4-3 of HMP: "Development lands have no management restrictions placed on them. Sensitive Bio resources within these areas must be identified and may be salvaged for restoration within reserve areas". Assume this cost will be covered by developers.
- Interim management cannot be defined at this time because the required activities are unknown.
- Be advised that \$840,386 of CFD Funds have been previously distributed to UCSC, therefore the total funds to be allocated is reduced by this amount.

Alternative 3 - Allocation by Acreage
State Parks and Regional Parks Excluded

		HMA Mgmt Multiplier		DwR Multiplier (same as HMA)		Borderland Multiplier		Interim Mgmt Multiplier					
Total Funds to be allocated		70%		70%		18%		12%					
\$	17,441,927	\$ 12,209,349				\$ 3,139,547		\$ 2,093,031					
Jurisdiction	HMA acres	HMA Monitoring Allocation \$	Development with Reserve (DwR) acres	DwR Allocation \$	Borderland acres	Borderland Allocation \$	Interim Mgmt in Development Parcels acres	Interim Mgmt Allocation \$	Total Allocation \$	Funds Already Received \$	Net Allocation \$	Percent	
Monterey County	1,571	\$ 6,623,235	277	\$ 1,167,814	100	\$ 1,547,714	693	\$ 704,936	\$ 10,043,699	\$ -	\$ 10,043,699	58%	
Seaside	0	\$ -	0	\$ -	34	\$ 524,444	389	\$ 395,786	\$ 920,230	\$ -	\$ 920,230	5%	
Marina	236	\$ 994,961	0	\$ -	0	\$ -	0	\$ -	\$ 994,961	\$ -	\$ 994,961	6%	
Monterey City	0	\$ -	0	\$ -	0	\$ -	32	\$ 32,545	\$ 32,545	\$ -	\$ 32,545	0.19%	
Del Rey Oaks	0	\$ -	0	\$ -	16	\$ 252,615	301	\$ 305,819	\$ 558,435	\$ -	\$ 558,435	3%	
CSUMB	0	\$ -	0	\$ -	6	\$ 92,507	333	\$ 338,668	\$ 431,175	\$ -	\$ 431,175	2%	
University of California	598	\$ 2,521,129	8	\$ 33,727	0	\$ -	0	\$ -	\$ 2,554,857	\$ 840,386	\$ 1,714,471	15%	
Monterey Peninsula College	206	\$ 868,483	0	\$ -	47	\$ 722,267	310	\$ 315,277	\$ 1,906,026	\$ -	\$ 1,906,026	11%	
Total	2,611	\$ 11,007,807	285	\$ 1,201,542	203	\$ 3,139,547	2,058	\$ 2,093,031	\$ 17,441,927	\$ 840,386	\$ 16,601,541	100%	

Assumptions & Notes

- HMA Mgmt Allocation and DwR Allocation are all coming from the same pot of 70% of the money, so they are grouped together in the table.
- Borderland and interim management is 30% cost of baseline HCP management cost, calculations are based on MPC, which is the only jurisdiction we have data we can calculate costs from (baseline is management not including restoration and species monitoring)
- Borderlands acreage calculated from linear feet assuming a 100 ft wide area to be maintained.
- p. 4-1 of the HMP: "In general, landowners are expected to fund management of biological resources on reserve parcels".
- p. 4-3 of the HMP "Development with Reserve Areas: for development parcels that have habitat reserve areas within their boundaries, the management practices must be consistent with maintenance of the reserves".
- p. 4-3 of HMP: " Borderland Development Areas: Management requirements such as fire breaks and limitation to vehicle access are required along the the NRMA interface. Remaining portions of these parcels have no management restrictions"
- p. 4-3 of HMP: "Development lands have no management restrictions placed on them. Sensitive Bio resources within these areas must be identified and may be salvaged for restoration within reserve areas". Assume this cost will be covered by developers.
- Interim management cannot be defined at this time because the required activities are unknown.
- Be advised that \$840,386 of CFD Funds have been previously distributed to UCSC, therefore the total funds to be allocated is reduced by this amount.

Alternative 4 - Allocation by CFD Contribution

				CFD Funds for Habitat Mgmt	
				0.302	
Total Funds to be allocated					
\$	16,601,541				
Jurisdiction	Contributions to CFD thru 18-19	Contributions to CFD FY 19-20	Total Contribution to Date	Total Allocation	Percent
	\$	\$	\$		
Monterey County	\$ 22,278,699	\$ 2,539,569	\$ 24,818,268	\$ 6,966,317	42%
Seaside	\$ 10,084,195	\$ -	\$ 10,084,195	\$ 2,830,564	17%
Marina	\$ 23,836,552	\$ 405,792	\$ 24,242,344	\$ 6,804,660	41%
Monterey City	\$ -	\$ -	\$ -	\$ -	0%
Del Rey Oaks	\$ -	\$ -	\$ -	\$ -	0%
State Parks	\$ -	\$ -	\$ -	\$ -	0%
University of California	\$ -	\$ -	\$ -	\$ -	0%
Monterey Peninsula College	\$ -	\$ -	\$ -	\$ -	0%
Monterey Peninsula Regional Parks	\$ -	\$ -	\$ -	\$ -	0%
CSUMB	\$ -	\$ -	\$ -	\$ -	0%
Total	\$ 56,199,445	\$ 2,945,361	\$ 59,145,561	\$ 16,601,541	100%

Assumptions & Notes

1. Be advised that \$840,386 of CFD Funds have been previously distributed to UCSC, therefore the total funds to be allocated is reduced by this amount.



Summary of CFD Alternatives

Jurisdiction/Entity	Alternative 1		Alternative 2		Alternative 3		Alternative 4	
	Allocation	Percent	Net Allocation	Percent	Net Allocation	Percent	Allocation	Percent
Monterey County	\$13,270,377	79.9%	\$8,046,918	46.1%	\$10,043,699	57.6%	\$6,966,317	42.0%
Seaside	\$1,222,026	7.4%	\$920,230	5.3%	\$920,230	5.3%	\$2,830,564	17.1%
Marina	\$1,316,015	7.9%	\$739,961	4.2%	\$994,961	5.7%	\$6,804,660	41.0%
Monterey City	\$45,053	0.3%	\$32,545	0.2%	\$32,545	0.2%		
Del Rey Oaks	\$748,071	4.5%	\$558,435	3.2%	\$558,435	3.2%		
CSUMB			\$431,175	2.5%	\$431,175	2.5%		
University of California			\$1,059,682	10.9%	\$1,714,471	14.6%		
Monterey Peninsula College			\$1,683,441	9.7%	\$1,906,026	10.9%		
Monterey Peninsula Regional Parks			\$59,573	0.3%				
State Parks			\$3,069,582	17.6%				
	\$16,601,541	100%	\$16,601,541	100%	\$16,601,541	100%	\$16,601,541	100%

Assumptions & Notes

1. Be advised that \$840,386 of CFD Funds have been previously distributed to UCSC, therefore the total funds to be allocated is reduced by this amount.



April 2, 2020

Josh Metz, Executive Officer
FORA
920 2nd. Avenue
Marina, CA. 93933

Dear Josh:

As requested, this letter will provide background on the "Alternate 5" that was supported by the Habitat Working Group.

What is now known as "Alternate 5" has its origins in the four alternates presented by ICF. Of all the proposed allocations proposed through ICF modeling, the only allocation that reflected actual (as opposed to modeled) numbers was Alternate 4, which established the actual contributions made to date as follows:

Monterey County	\$6,966,317
Marina	\$6,804,660
Seaside	\$2,830,563

Comparing Alternate 1 allocations to Alternate 4 contributions results in the following:

	Actual Contribution (Alt. 4)	Proposed Allocation (Alt. 1)
Monterey County	\$6,966,317	\$13,270,277
Marina	\$6,804,660	\$ 1,316,015
Seaside	\$2,830,563	\$ 1,222,026
Del Rey Oaks	\$0	\$ 748,071
Monterey	\$0	\$ 45,053

The disparities between actual contributions and proposed allocations of Alternate 1 are obvious, and are exacerbated by the land use jurisdiction which has a budget dwarfing all the others receiving a windfall of more than six million dollars under Alternate 1.

To propose an alternate in which there is a better relationship between what each jurisdiction has already paid and what they are allocated, and factoring in that each land-use jurisdiction should get something, the proposed Alternate 1 allocations to Del Rey Oaks and Monterey were each

reduced by 20%, creating a sum of \$634,499 to be funded by Monterey County, Marina and Seaside. The \$634,499 to be split between Monterey and Del Rey Oaks was reduced by the percentage share Monterey County (41.96%), Marina (40.98%) and Seaside (17.06) have paid, to date. These adjustments result in the following comparison between contributions and allocations:

	Actual Contribution (Alt. 4)	Proposed Allocation (Alt. 5)
Monterey County	\$6,966,317	\$6,700,083
Marina	\$6,804,660	\$6,544,643
Seaside	\$2,830,563	\$2,722,319
Del Rey Oaks	\$0	\$ 598,456
Monterey	\$0	\$ 36,042

In sum, "Alternate 5" has the following features:

- **Every land use jurisdiction gets something**
- **Land use jurisdictions that have paid do not suffer huge losses**
- **The land use jurisdiction with the greatest resources, by far, does not receive a multi-million dollar windfall to the detriment of others**

I thank the FORA Board, in advance, for their consideration.

Sincerely,



Craig Malin
City Manager

Cc: Mayor and City Council

MEMORANDUM

Kennedy, Archer & Giffen
A Professional Corporation

DATE: April 3, 2020

TO: FORA Board of Directors

FROM: Authority Counsel's office – David Willoughby

RE: Options for Transferring CFD Funds

Over the course of meeting with the Habitat Working Group, several options regarding how the Community Facilities District (“CFD”) funds that have been collected by FORA and earmarked for habitat management and related expenses might be distributed before FORA’s sunset were identified. Although there are a number of possible variations to each potential approach, the options can be grouped into the following three main categories.

1. Transfer the CFD Funds to a Joint Powers Authority (“JPA”). The CFD funds were collected pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code sections 53311 et seq.). Section 53316.2(d)(1) of that Act allows an existing CFD to enter into a joint exercise of powers agreement with a JPA when necessary to allow an orderly transition of governmental facilities and finances, whether that reorganization occurs pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code sections 56000 et seq.) or other law governing the reorganization of any agency that is a party to the JPA agreement (such as the FORA Act). Section 53316.6 specifically requires the agreement to provide for the allocation and distribution of the proceeds of any special tax levy among the parties to the agreement. Under this approach, FORA would need to initially be a party to the JPA agreement but could withdraw at or before FORA’s dissolution. Because this approach is specifically authorized by the same legislation pursuant to which the CFD funds were collected and because entry into an agreement with and transfer of funds to a JPA clearly fit within the purposes contemplated by the Act, this approach would be the least vulnerable to legal challenge. However, the approach would require the funds to be transferred as a lump sum and is not easily amenable to dividing the CFD funds among multiple recipients, some or all of which might not be members of a JPA formed before FORA’s sunset.

2. Enter into a Joint Community Facilities Agreement (“JCFA”) with each Recipient of CFD Funds. Section 53316.2(d)(1) of the Mello-Roos Act allows an existing CFD to enter into a JCFA under the same circumstances that would authorize entry into a joint exercise of powers agreement. Under this approach, FORA would need to initially be a party to the JCFA but could withdraw at or before FORA’s dissolution. Although this approach is specifically authorized by the same legislation pursuant to which the CFD funds were collected, it is less of a square fit than is approach 1 outlined above. Ordinarily, JCFAs are entered into at the time of an entity formation or before a bond issuance. However, the wording of the statute appears to be broad enough to allow the use of a JCFA in connection with a reorganization (such as the dissolution of FORA). For that reason, this approach should not entail any high risk of litigation.

3. Transfer CFD Funds Pursuant to Another Form of Agreement. A review of the Mello-Roos Act and related regulations has not revealed any express prohibition against transferring CFD funds via another form of agreement entered into prior to FORA's sunset. Accordingly, a general agreement to the effect that FORA is providing each recipient with a share of the CFD funds in exchange for the recipient's commitment to use the funds only for the purposes for which they were collected might suffice. Using such an approach is a bit of a venture into uncharted territory. Although we are unaware of any explicit prohibition against taking such a course of action, we can't be sure that we would land in a safe harbor. However, a general agreement along the lines outlined above could be considerably more simple than a JCFA.

FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEM		
Subject:	Building Removal Bond Distribution Methodology Review - 2nd Vote	
Meeting Date:	April 17, 2020	INFORMATION/ACTION
Agenda Number:	6b	

RECOMMENDATION(S):

- i. Review building removal bond distribution methodology.
- ii. Provide staff direction.

BACKGROUND/DISCUSSION:

At the October 2018 Fort Ord Reuse Authority (“FORA”) Board meeting, the Board directed staff to investigate the legality and feasibility of issuing debt against FORA’s statutory share of property tax revenue provided to FORA by the State Legislature as codified in the State of California Health and Safety Code. In January 2019, FORA released a competitive Request for Qualifications and selected NHA Advisors (“NHA”) to complete the bond feasibility and financial analysis. NHA completed its first milestone, a legal and financial feasibility memorandum regarding FORA’s statutory property tax authority, in April 2019. NHA’s preliminary finding was that FORA would be able to issue bonds in a range of \$25 to \$30 million. In July 2019, the Administrative Committee (“AC”) recommended the Board do the necessary work to prepare a bond package, and in August 2019, the Board approved the Executive Officer (“EO”) to conduct that work.

At the September 18, 2019 FORA Administrative Committee, members reviewed (3) alternatives for allocating building removal bond proceeds including: 1) % of total Fort Ord blight by land use jurisdiction, 2) % tax increment generated by land use jurisdiction, and 3) % of building removal cost by land owner (**Attachment A**). Members also reviewed staff methodology for developing the relevant input metrics, including specific delineation of which parcels would be included in the building removal program. The Administrative Committee recommended Alternative 3: % of building removal cost by land owner, which was incorporated into DRAFT bond documents for Board consideration and action.

At the December 10, 2020 meeting of the Monterey County Board of Supervisors, the Board held a hearing consistent with the requirements of the Marks-Roos Act and unanimously voted to adopt Resolution No. 19-412 after a duly noticed public hearing. Resolution No. 19412 held that FORA’s assistance in financing the remediation effort by the issuance and delivery of the bonds would result in significant public benefits to the County of Monterey.

At the December 13, 2019 FORA Board meeting, the FORA Board approved 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. At the time, the financial analysts estimated that the bond issuance would produce revenue of approximately \$45 million due to the strength of the existing bond market.


On March 5, 2020, Monterey County sent a letter to the FORA Board, requesting a revision to the allocation of previously approved bond proceeds based on refined estimates of County building removal needs. The Administrative Committee considered this request at a March 6, 2020 Special Meeting and recommended Board approval of the County's Request (**Attachment B**).

Prior to the date FORA obtained its judgment of validation, the cities of Marina and Seaside and the Monterey County Regional Fire District entered into agreement to the satisfaction of all parties and approved by the governing bodies of the respective entities (March 3 & March 5) regarding the cities' compensation of Fire District budget impacts from bond issuance (**Attachment C**).

On March 20, the City of Marina submitted a letter to the FORA Board asking to reconsider the legality and optics before modifying Resolution 19-13 approved by unanimous vote on December 13, 2019, at a publicly noticed meeting and thereafter relied upon to secure a judgement in Superior Court (**Attachment D**).

Finally, on March 30, 2020 NHA Advisors provided a memorandum to inform Board bond proceed allocation deliberations. The memo summarized the impact of changing market conditions and bond allocation options. Scenario 1 presented the conditions and allocation consensus as of the December 13, 2019 Board meeting, while the other 3 reflected the allocation approach requested by the County and recommended by the Administrative Committee under different market conditions (**Attachment E**).

FISCAL IMPACT

Reviewed by FORA Controller  _____

Staff time to support the AC 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. September 18, 2019 Administrative Committee Bond proceed allocation considerations – FORA Staff presentation
- B. March 5, 2020 Letter from Monterey County to FORA Board
- C. March 3, 2020 Marina City Council Resolution re: Fire District funding
- D. March 20, 2020 City of Marina Letter to FORA Board re: Bond proceed allocations
- E. March 30, 2020 NHA Advisors Memorandum to FORA

Prepared by 
Joshua Metz

Building Removal Bond: Information/Action

Administrative Committee
September 18, 2019

Peter Said,
Senior Project Manager

- Monterey County Regional Fire District shortfall:
 - County, Marina, and Seaside – suggest a pro-rata share (\$0.5-1M)
- Would like each agency to set their own BR priorities, No JPA
- Would like clarification of insurance requirements
- Re-iterate legality of the statutory pass through
 - Brent Hawkins 2011 opinion letter identifying FORA's tax increment following AB1X26
 - County verification that D.O.F. reviewed county's statutory pass through
 - D.O.F. concurrence of their statutory pass through review

- NHA conducted RFP for underwriters
 - Requested estimate based on current \$3.4M Tax Increment (TI)
 - Requested additional strategies to maximize funding for BR
- Underwriters estimate between **\$38M** and **\$64M**
- NHA recommended **Stifel** as senior manager and **Citi** as co-manager
 - Provided the most confident and creative ways to put the most \$ on the table for BR
 - FORA Staff reviewed and concurred with the recommendation
- Underwriters directed to develop strategy to cover **\$56M** of estimated BR

Bond Proceed Distribution

- **\$56M – covers 100% of estimated building removal**

Agency	Option 1: % of Blight	Option 2: % of Tax Increment Generated	Option 3: Est. BR Cost (% of BR)	Project Areas
Marina	60% (\$34M *)	40% (\$22M)	50% (\$25.0M*)	Marina Park, Arts District, Cypress Knolls
Seaside	32% (18)	31% (17.3)	32% (18)	Surplus II
Monterey County	8% (4.1 ‡)	29% (16.4‡)	4% (2.5)	Ammo Supply Point & Dev. Areas
State Parks	County‡	County‡	3% (1.6)	Waste Treatment Plant
TAMC	Marina*	County‡	6% (3.5)	1 st St. Transit Center
MCWD	Marina*	County‡	3% (1.5)	4 th St. Storage Area
MST	Marina*	County‡	2% (1.0)	1 st Transit Center, Surplus II Storage
FORA	Marina*	County‡	3.0M (*)	E2c.4.2.1 completion
				(* , ‡) = Agency to distribute by agreement

- What does the Admin Committee (AC) recommend?

- Successor Entity Responsibilities:

- Preserve and protect the security of the Bonds and the rights of Bond Owners
- Ensure allocation and payment of Tax Increment Revenues
- Continuing Disclosure
- Approve expenditure of Administrative Expenses
- Direct Trustee as necessary under the Indenture
- Direct investment of Reserve Fund and future redemption of Bonds
- Replace Trustee, if needed
- Amend Trust Agreement, if needed
- [Audit of FORA funds]

- Construction deficit: responsibility of the agency
- Construction surplus: BR bond funds returned to Successor Entity (SE):

Option 1	Option 2	Option 3
SE pays off the bond with surplus funds	SE equally re-allocates surplus funds to other Agencies	SE re-allocates surplus funds 1) equally between projects with over-runs, 2) equally to each agency, 3) pays off bond once all BR are complete

- Which option does the AC recommend?

What is the AC recommendation on the Successor Entity?

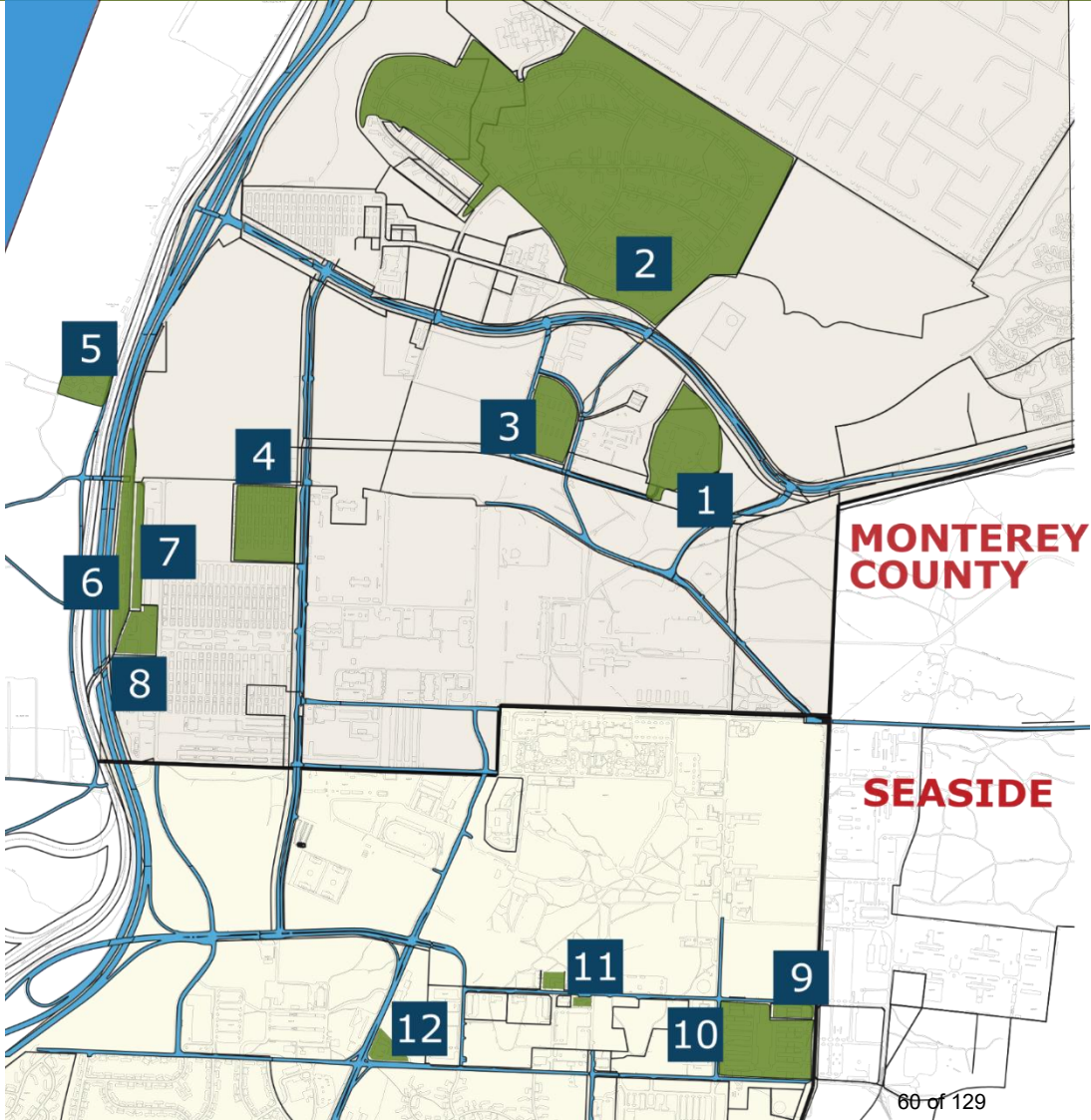
- 1. City of Marina**
- 2. City of Seaside**

- Bond proceeds are limited to a fixed building removal project list
- Building removal required to be completed in (5) years
- Each agency to determine it's own list priority
- Each agency would vet invoices and payments
- Responsible for waste generation & construction
- Any multi-agency coordination would be by agreement

Building Removal Project List

Project Area = boundaries of a building removal project

	Area Name	Owner
1	Stockade	FORA
2	Cypress Knolls	Marina
3	MCWD – 4 th St. Storage	MCWD
4	Marina Park	Marina
5	Water Treatment Plant	State Parks / MCWD
6	TAMC – 1 st St. Transit Center	TAMC
7	Marina Arts District	Marina
8	MST – 1 st St. Transit Center	MST
9	MST – Surplus II Storage	MST
10	Surplus II – Hammerheads	Seaside
11	Church & DGS Bldg.	Seaside
12	Former Fast Food	Seaside
13	Ammo Supply Point	Monterey County



- Each agency is the waste generator for their site *
- Cost of insurance is tied to weight of hazmat generated *
- Each agency provides its own insurance as mitigation:
 - Pollution Legal Liability
 - General Liability
 - “Cradle-to-grave” liability including joint and several liability
 - Contractors performance bond & identifies Agency as additionally insured

**See EPA Hazardous Waste Requirements to further determine Agency Risk*

Priorities

Priority	Marina \$28M	Seaside \$18M	County \$2.5M	State Park \$1.6M	MCWD \$1.5M	TAMC \$3.5M	MST \$1M
1	Marina Park \$5.5M	Surplus II \$17M	Dev Area Wood Bldgs. \$1.5M	Waste Treatment Plant \$1.6M	4 th St. Storage \$1.5M	1 st St. Transit Center \$3.5M	1 st St. Transit Center \$800K
2	Cypress Knolls \$17M	Church +DGS \$600K	Ammo Supply Point \$1.0M				Surplus II Storage \$200K
3	Marina Arts District \$2.5M	Former Fast Food \$300K					
4	Other Bldgs. \$3M						

- Public hearing @ County – recognizing funds to be spent within the county
- County resolution to commit fund intercept assignment to trustee
- Successor Entity resolution to accept bond administration responsibilities

- Staff is requesting recommendations on:
 - *Distribution: 1) % of blight, 2) % of increment generated, 3) \$ of project*
 - *Successor Entity: 1) Marina, or 2) Seaside*
 - *Method to distribute surplus funds*

Questions



MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS
1441 Schilling Place, South 2nd Floor (831)755-4800
Salinas, California 93901-4527 www.co.monterey.ca.us/rma

March 5, 2020

Josh Metz, Executive Officer
Fort Ord Reuse Authority
920 2nd Avenue
Marina, CA 93933

Subject: FORA Bond Proceed Allocation and Inter-Agency Agreement

Dear Mr. Metz:

At its December 13, 2019 meeting, the FORA Board approved an allocation methodology for the bond proceeds that provided 4.5% (estimate \$1.3M - \$2.25M) proceeds to the County, and included a cost estimate of \$750,000 building removal costs for the Ammo Supply Point (E11b.8) and \$1,525,000 for 5 open space parcels (L23.3.2.2, L23.3.3.1, L23.3.3.2, L20.2.1, L20.2.2).

The County Board of Supervisors' Fort Ord Committee members conducted a site visit on October 1, 2019 to locations where County (and Successor Agency) have remaining buildings/structures that may benefit from funding derived if FORA issues a bond. Following up to that, County solicited cost estimates to demolish remaining buildings on County lands in the former Fort Ord (Enclosed). The total cost estimate for demolishing and disposing of County buildings on former Fort Ord lands is approximately \$13 million, which is far in excess of the FORA proposed maximum \$2.25M bond proceeds provided for to the County, which was used for the basis of current allocation ratios.

This new information was reviewed by the Fort Ord Committee at its February 2, 2020 Special Meeting, in which the Committee and staff identified 13 buildings that are high priority to the County for removal for a total estimated cost of about \$3.1 million (less than 25% of the estimated total cost for demolition).


Given these much higher than anticipated costs, more favorable bond climate, and in consideration that taxes generated from County lands will contribute approximately 33% toward payment of the bond debt service on the bonds while receiving only approximately 5% of the proceeds, County re-evaluated the allocation methodology (Enclosed). County's analysis provided shows our allocation using the methodology used by the FORA Board at its December 13, 2019 meeting, and proposed reallocation for consideration. The allocation calculations are based on three bond yield scenarios: \$40 million; \$42 million; and \$45 million. County proposes a formula where the bond proceed allocation is 12.5% of the total bond allocation, and not less than \$5 million, to go towards demolition and revitalization of structures within the unincorporated County area. County anticipates rehabilitating bunkers at the Ammo Supply

Point if there is funding available after demolishing our high priority items, but has not yet determined whether the remaining buildings/structures are to be demolished or renovated. For calculation purposes, the County achieved this increase in its allocation by including a corresponding decrease of 4% each to the Cities of Seaside and Marina, based on percentages of work to funding.

Additionally, County requests that an agreement be developed between the entities proposed to receive bond proceeds (County of Monterey, City of Marina, City of Seaside, TAMC, MCWD, and MST) that addresses post-FORA administration of the bond, collaboration to responsibly utilize the bond proceeds, and legal concerns minimize risk associated with the bond issuance and building removal implementation.

The County hopes that FORA and its relevant member jurisdictions agree to address these issues in a timely manner. I request that you include this correspondence with the agenda packet for the FORA Administrative Committee's meeting scheduled for Friday March 6, 2020 at 12:00 pm. Don't hesitate to contact me or Melanie Beretti (berettim@co.monterey.ca.us; 831-755-5285) if you have any questions.

Sincerely,



Carl P. Holm, AICP
RMA Director

Enclosures:

County Fort Ord Demolition Cost Estimates
County Fort Ord Demolition Location Maps
FORA Bond Proceeds Allocation Proposals

FORT ORD - EAST GARRISON
Demolition Cost Estimates Per Structure

Structure	Square Feet	Project & Construction			*Misc.	35% Contingency	Total	TO BE REMOVED	PONTIAL REMOVE OR REHABILITATE
		Construction	Management						
Theater (Foundation Only)	14,400	\$ 405,311	\$ 84,913	\$ 15,192	\$ 141,859	\$ 647,275	\$ 647,275	N/A	
Shooting Range	7,500	\$ 241,330	\$ 50,559	\$ 19,674	\$ 84,466	\$ 396,028	\$ 396,028	N/A	
Marshal Station	6,600	\$ 54,133	\$ 11,341	\$ 15,544	\$ 18,946	\$ 99,964	\$ 99,964	N/A	
Subtotal		\$ 700,774	\$ 146,812	\$ 50,410	\$ 245,271	\$ 1,143,267	\$ 1,143,267	\$ -	
Ammunition Supply Area									
Warehouse #725	4,992	\$ 360,937	\$ 75,616	\$ 52,538	\$ 126,328	\$ 615,419	\$ -	TBD	
Warehouse #727	4,992	\$ 360,937	\$ 75,616	\$ 52,538	\$ 126,328	\$ 615,419	\$ -	TBD	
Warehouse #730	4,992	\$ 360,937	\$ 75,616	\$ 52,538	\$ 126,328	\$ 615,419	\$ -	TBD	
Warehouse #735	4,992	\$ 360,937	\$ 75,616	\$ 52,538	\$ 126,328	\$ 615,419	\$ -	TBD	
Ancillary Structure #740	1,058	\$ 160,451	\$ 33,615	\$ 53,020	\$ 56,158	\$ 303,243	\$ -	TBD	
Ancillary Structure #741	576	\$ 73,708	\$ 15,442	\$ 50,444	\$ 25,798	\$ 165,392	\$ -	TBD	
Ancillary Structure #742	100	\$ 40,347	\$ 8,453	\$ 50,458	\$ 14,121	\$ 113,379	\$ -	TBD	
Carport Structure #744	3,844	\$ 181,772	\$ 38,081	\$ 50,262	\$ 63,620	\$ 333,735	\$ -	TBD	
Propane Tank & Enclosure #745	625	\$ 50,110	\$ 10,498	\$ 49,778	\$ 17,538	\$ 127,924	\$ -	TBD	
Rocket Repair Structure #746	8,208	\$ 725,427	\$ 151,977	\$ 77,671	\$ 253,899	\$ 1,208,974	\$ 1,208,974	N/A	
Ancillary Structure #747	130	\$ 40,324	\$ 8,448	\$ 50,388	\$ 14,113	\$ 113,273	\$ -	TBD	
Warehouse #750	1,200	\$ 143,042	\$ 29,967	\$ 52,038	\$ 50,065	\$ 275,112	\$ -	TBD	
Electrical Building #752	540	\$ 83,237	\$ 17,438	\$ 50,748	\$ 29,133	\$ 180,556	\$ -	TBD	
Bunker #760	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	TBD	
Bunker #761	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #762	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #763	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #764	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #765	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #766	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #767	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #768	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Bunker #769	2,214	\$ 327,764	\$ 68,667	\$ 52,528	\$ 114,717	\$ 563,676	\$ -	Rehabilitate	
Site Light Poles	Poles/Fixtu	\$ 135,541	\$ 28,396	\$ 20,380	\$ 47,439	\$ 231,755	\$ -	TBD	
Subtotal		\$ 6,355,344	\$ 1,331,445	\$ 1,240,619	\$ 2,224,371	\$ 11,151,779	\$ 1,208,974	\$ -	
Cul-de-Sac off of Barley Cyn									
Latrine	200	\$ 24,751	\$ 5,168	\$ 16,080	\$ 8,663	\$ 54,661	\$ 54,661	N/A	
Ancillary Structure	400	\$ 31,017	\$ 6,498	\$ 16,080	\$ 10,856	\$ 64,451	\$ 64,451	N/A	
Subtotal		\$ 55,768	\$ 11,666	\$ 32,160	\$ 19,519	\$ 119,112	\$ 119,112	\$ -	
Crescent Bluff									
Latrine	200	\$ 24,456	\$ 5,123	\$ 16,080	\$ 8,559	\$ 54,218	\$ 54,218	N/A	
Latrine	200	\$ 24,456	\$ 5,123	\$ 16,080	\$ 8,559	\$ 54,218	\$ 54,218	N/A	
Ancillary Structure	900	\$ 47,398	\$ 9,930	\$ 16,080	\$ 16,589	\$ 89,997	\$ 89,997	N/A	
Structure T659	900	\$ 52,618	\$ 11,023	\$ 16,080	\$ 18,416	\$ 98,138	\$ 98,138	N/A	
Structure T660	1,600	\$ 67,782	\$ 14,200	\$ 16,080	\$ 23,724	\$ 121,787	\$ 121,787	N/A	
Ancillary Structure	400	\$ 33,574	\$ 7,034	\$ 16,080	\$ 11,751	\$ 68,439	\$ 68,439	N/A	
Ancillary Structure	400	\$ 33,574	\$ 7,034	\$ 16,080	\$ 11,751	\$ 68,439	\$ 68,439	N/A	
Subtotal		\$ 283,858	\$ 59,468	\$ 112,560	\$ 99,350	\$ 555,237	\$ 555,237	\$ -	
Grand Total		\$ 7,395,745	\$ 1,549,391	\$ 1,435,749	\$ 2,588,511	\$ 12,969,395	\$ 3,026,590	\$ 9,942,804.84	

* Misc. Includes: Estimates for Environmental Testing & Oversight, Ammunition Plans & Oversight, Permitting, & Biologist & Archeologist Oversight.
Construction Cost Include: Demolition, Capping Utilities and Abatement

Project Cost Estimate Methodology:

Construction quotes were done by Jacob Construction (JOC contractor). Demolition and abatement are worse case, since haz mat reports are not currently available. Quotes are available upon request.

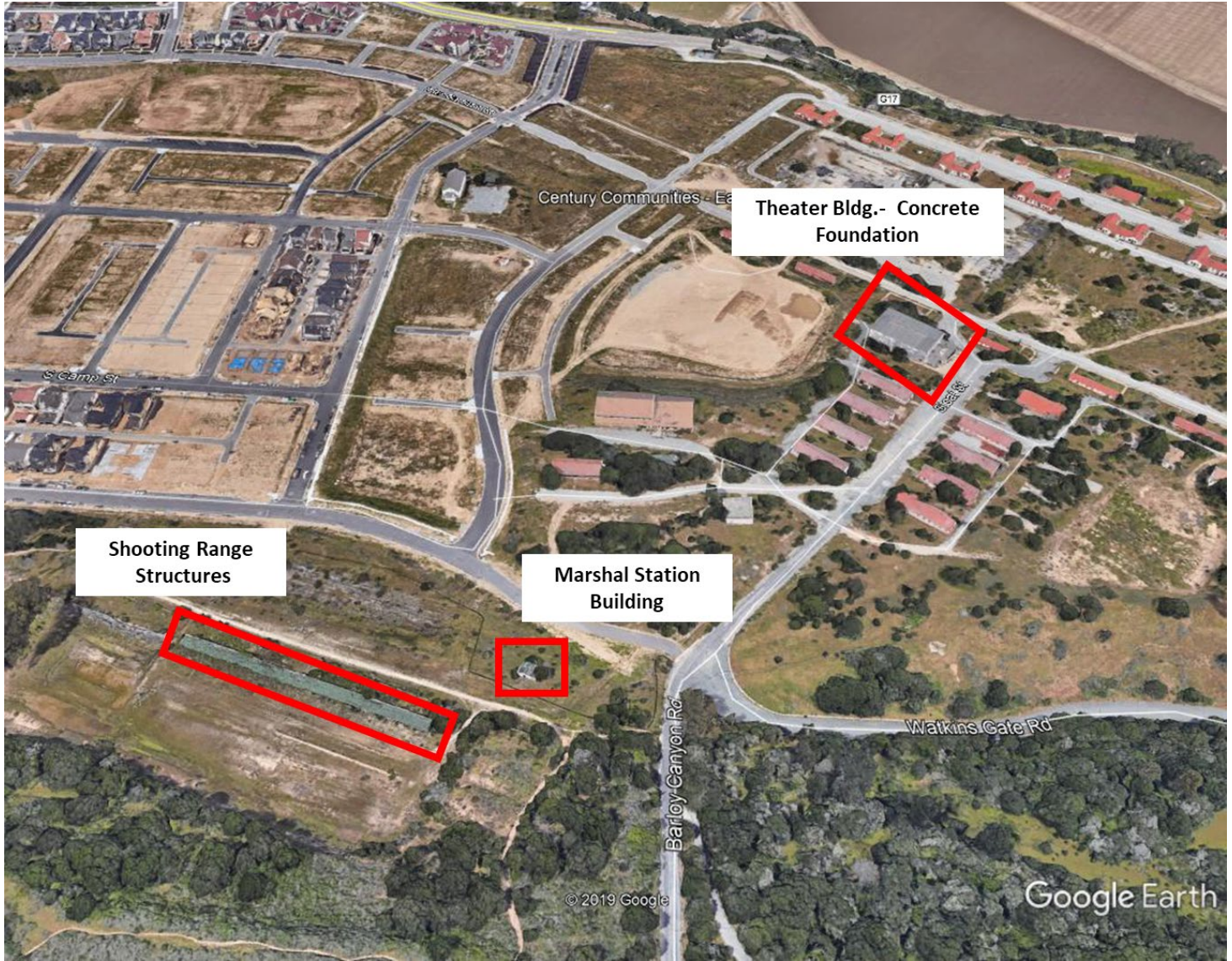
Environmental quotes (testing, oversight & clearance) were done by M3, a local vendor. Available upon request.

Project & Construction Management are based on industry standard - 20% of construction cost

Misc. costs are based on discussions with County Building and FORA staff

35% construction contingency was added to cover unforeseen expenditures.

FORT ORD – East Garrison
Theater Bldg. (Concrete Foundation), Marshal Station, Shooting Range



Structure		Square Feet
Theater Building – Concrete Foundation	-	14,400
Marshal Station - Structure & Foundation	-	6,000
Shooting Range – Structure & Foundation	-	7,500

Fort Ord – East Garrison
 General Location Map
 9 Wooden Structures



Structures

Square Feet

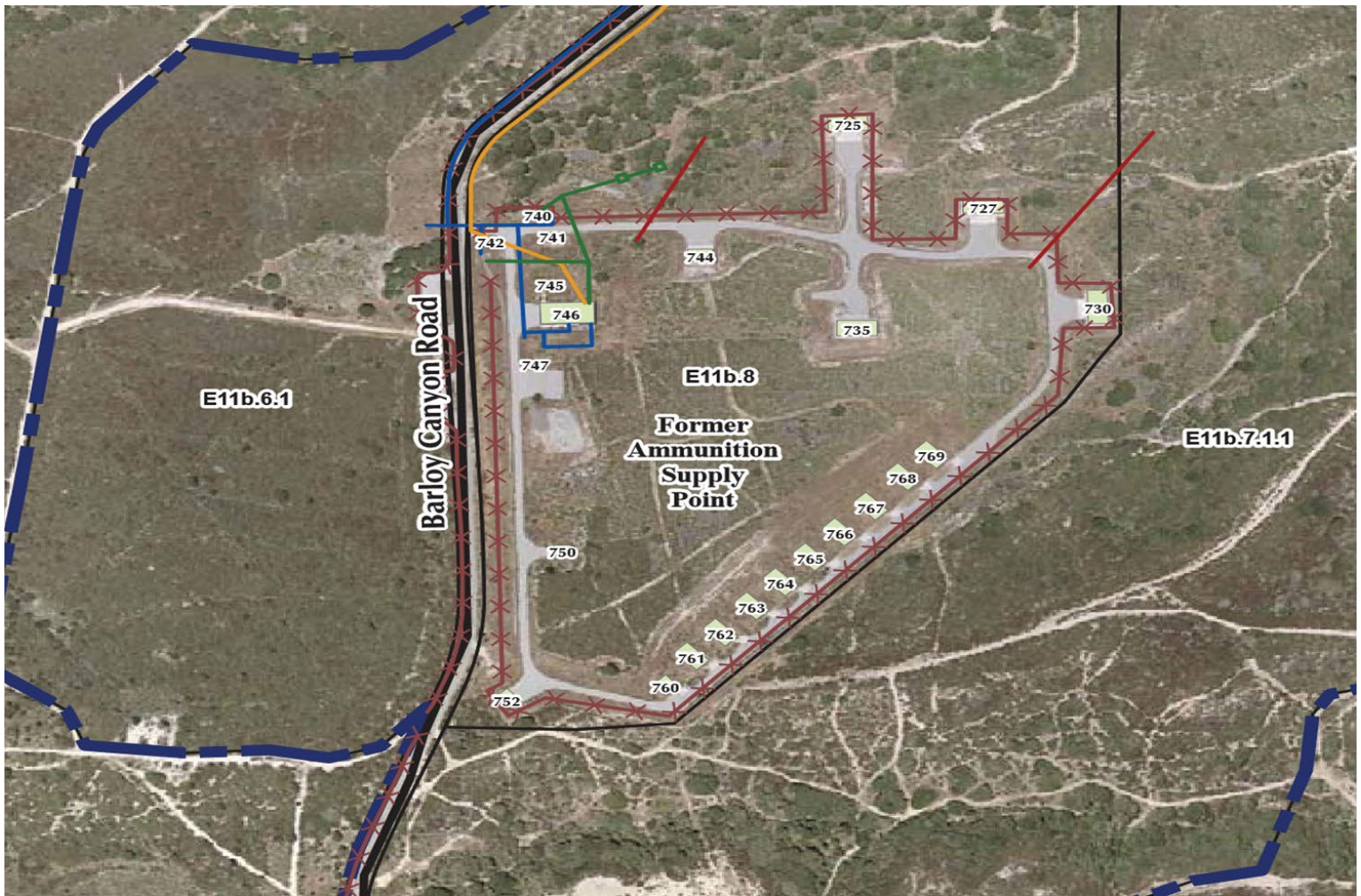
Cul-de-Sac off Barley Canyon

- 1 Ancillary Structure - 400
- 1 Latrine - 200

Crescent Bluff Road

- 2 Latrines - 200 ea
- 1 Ancillary Structure - 900
- 2 Ancillary Structure - 400 ea
- 1 Ancillary Structure (T659) - 900
- 1 Ancillary Structure (T660) - 1,600

Fort Ord Ammunition Supply Point



Structures

Structures	-	Square Feet
4 Warehouse (725, 727, 730, & 735)	-	4,992 ea
1 Ancillary Structure (740)	-	1,058
1 Ancillary Structure (741)	-	576
1 Entrance Structure (742)	-	100
1 Carport Structure (744)	-	3,844
1 Propane Tank & Enclosure (745)	-	625
1 Rocket Repair Lab (746)	-	8,208
1 Ancillary Structure (747)	-	130
1 Warehouse (750)	-	1,200
1 Electrical Building (752)	-	540
10 Bunkers (760-769)	-	2,214 ea

BOND PROCEEDS ALLOCATION

Jurisdiction	Original Allocation %*	Proposed Allocation %
Marina	50.00%	46.00%
Seaside	32.25%	28.25%
County	4.50%	12.50%
TAMC	6.25%	6.25%
MCWD	5.25%	5.25%
MST	1.75%	1.75%
	100%	100%

ORIGINAL ALLOCATIONS

Bond Yield	\$	40,000,000	\$	42,000,000	\$	45,000,000
Marina	\$	20,000,000	\$	21,000,000	\$	22,500,000
Seaside	\$	12,900,000	\$	13,545,000	\$	14,512,500
County	\$	1,800,000	\$	1,890,000	\$	2,025,000
TMC	\$	2,500,000	\$	2,625,000	\$	2,812,500
MCWD	\$	2,100,000	\$	2,205,000	\$	2,362,500
MST	\$	700,000	\$	735,000	\$	787,500

PROPOSED ALLOCATIONS

Bond Yield	\$	40,000,000	\$	42,000,000	\$	45,000,000
Marina	\$	18,400,000	\$	19,320,000	\$	20,700,000
Seaside	\$	11,300,000	\$	11,865,000	\$	12,712,500
County**	\$	5,000,000	\$	5,250,000	\$	5,625,000
TMC	\$	2,500,000	\$	2,625,000	\$	2,812,500
MCWD	\$	2,100,000	\$	2,205,000	\$	2,362,500
MST	\$	700,000	\$	735,000	\$	787,500

* December13 FORA Board

** County requests not less than \$5M should it be less than \$40M proceeds.

RESOLUTION NO. 2020-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CITY MANAGER TO EXECUTE A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MARINA, THE CITY OF SEASIDE, AND THE MONTEREY COUNTY REGIONAL FIRE DISTRICT WHICH WILL REIMBURSE MONTEREY COUNTY REGIONAL FIRE DISTRICT FOR PROPERTY TAX REVENUES THAT WILL BE REDISTRIBUTED IF FORA ISSUES A BLIGHT REMOVAL BOND PRIOR TO THE SUNSET OF FORA ON JUNE 30, 2020 AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

WHEREAS, FORA is scheduled to sunset on June 30, 2020, and prior to its dissolution, the FORA Board of Directors intends to issue bonds under the Marks-Roos Act to raise up to the amount of \$55 million in net Bond proceeds, to be repaid over a 20-year terms to be expended towards remediation of the remaining blighted property on former Fort Ord; and

WHEREAS, on January 28, 2020 FORA filed a Complaint for Validation in the Monterey County Superior Court seeking judicial validation of the Bonds; and

WHEREAS, the issuance of Bond debt by FORA prior to its dissolution will impact the redistribution of property tax revenues that would have otherwise been received by taxing entities on former Fort Ord and FORA is dissolved; and

WHEREAS, the issuance of bonds will result in the Monterey County Fire District receiving less in property taxes under the County-District Agreement and from residual distribution of property taxes; and

WHEREAS, the City of Marina and Seaside are expected to receive significant benefits from the issuance of the Bonds including funding necessary to remove the remaining blight at the former Fort Ord; and

WHEREAS, the City Marina and Seaside have determined that it is in each of their best interests to mitigate the impacts of the issuance of the Bonds on the Monterey County Fire District by entering into an agreement; and

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Marina that does hereby:

1. Authorize the City Manager to execute a reimbursement agreement between the City of Marina, the City of Seaside, and the Monterey County Regional fire District,
2. Authorize the City Manager and City Attorney to revise the dollar amounts listed for reimbursement depending on the dollar amount of the FORA blight removal bond,
3. Authorize the Finance Director to make necessary accounting and budgetary entries.

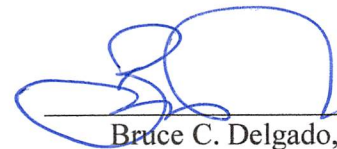
PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 3rd day of March 2020, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, O'Connell, Morton, Delgado

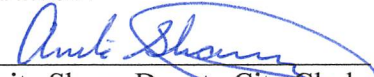
NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: Urrutia

ABSENT: COUNCIL MEMBERS: None


Bruce C. Delgado, Mayor

ATTEST:


Anita Sharp, Deputy City Clerk

**REIMBURSEMENT AGREEMENT
BETWEEN THE
CITY OF MARINA, THE CITY OF SEASIDE, AND THE
MONTEREY COUNTY REGIONAL FIRE DISTRICT**

THIS AGREEMENT is made and entered into on March 4, 2020 (the "Reference Date") by and between the **CITY OF MARINA**, a California charter city (hereinafter referred to as "Marina") the **CITY OF SEASIDE**, a California general law city (hereinafter referred to as "Seaside"), and the **MONTEREY COUNTY REGIONAL FIRE DISTRICT**, a California fire protection district formed under California Health & Safety Code §13800 *et seq.* (hereinafter referred to as the "District"). Marina, Seaside and the District are sometimes individually referred to as "Party" and collectively as the "Parties" in this Agreement.

Recitals

- A. The Fort Ord Reuse Authority (hereinafter referred to as "FORA"), a public corporation of the State of California, was formed to plan, finance and manage the transition of the former Fort Ord from military to civilian use. FORA is authorized by law to issue bonds to fund base-wide improvements (Govt. Code §67679(d)).
- B. FORA is scheduled by statute to dissolve on June 30, 2020, and prior to its dissolution, the FORA Board of Directors intends to issue bonds under the Marks-Roos Act (hereinafter referred to as the "Bonds") to raise up to the amount of \$55 million in net Bond proceeds, to be repaid over a 20-year term (FYs ending 2021-2040) to be expended towards remediation of the remaining blighted property on former Fort Ord and payment of related costs. The Bonds are to be secured by a pledge of, and are to be repaid with, tax increment funds allocated to FORA. After FORA's dissolution by law these funds will continue to be paid to the accounts of FORA as needed to pay debt obligations incurred by FORA prior to its dissolution.
- C. On December 13, 2019, the FORA Board of Directors adopted Resolution 19-13 authorizing issuance and sale of the Bonds and a judicial validation proceeding relating to the issuance of the Bonds and estimating the allocable share of Bond proceeds to Marina and to Seaside to be 50% and 32.25% respectively.
- D. On January 28, 2020, FORA filed a Complaint for Validation in the Monterey County Superior Court seeking judicial validation of the Bonds (the "Validation Action").
- E. The issuance of Bond debt by FORA prior to its dissolution will impact the redistribution of property tax revenues that would have otherwise been received by taxing entities on former Fort Ord after FORA is dissolved.
- F. Marina, Seaside and the County of Monterey (hereinafter referred to as the "County") are FORA member entities and taxing entities on former Fort Ord.

G. Under an agreement with the County, the District is entitled to a percentage of the County's share of property tax revenue generated by the County's East Garrison development project ("County-District Agreement").

H. Issuance of the bonds will result in the District receiving less in property taxes under the County-District Agreement and from residual distributions of property taxes than the District anticipated. Projections of property tax revenues over the expected term of the bonds show that the District may receive \$4,941,101 less in property tax revenues as a result of the issuance of the bonds.

I. Marina and Seaside are expected to receive significant benefits from the issuance of the Bonds including funding necessary to remove the remaining blight at the former Fort Ord. Marina and Seaside have determined that it is in each of their best interests to mitigate the impacts of the issuance of the Bonds on the District by entering into this Agreement, providing financial mitigation payments to the District.

J. The financial mitigation payments made by Marina and Seaside pursuant to this Agreement can be paid from any funding source, including but not limited to property tax revenues, consistent with applicable law.

K. This Agreement does not affect or alter the terms of the County-District Agreement.

Terms and Conditions

In consideration of the mutual promises contained herein, Marina, Seaside and the District agree to the following terms and conditions:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

2. **Marina and Seaside to Reimburse the District.** The Parties acknowledge and agree that the issuance of the Bonds by FORA will result in a loss of tax revenue which would otherwise be received by the District and both Marina and Seaside agree that because of the benefit each receives from the operations of the District, including the District providing mutual aid to Marina and to Seaside, the benefits that Marina and Seaside will receive from the issuance of the Bonds, and the financial impact that the issuance of the Bonds will have on the District, each should pay its fair share to reimburse the District for property tax revenue that but for issuance of the Bonds would be received by the District under the terms of the County-District Agreement and as part of residual property tax distributions. In the event the Bonds are issued by FORA but in an amount or for a term other than as described in the Recitals, this Agreement will be amended in writing as provided herein. In the event the Bonds are not issued by FORA on or before June 30, 2020, this Agreement shall be null and void.

3. **Reimbursement Payment.** Marina and Seaside shall each pay to the District the total amount of \$2,470,550.50 payable in nineteen annual installments in accordance with the Payment Schedule attached hereto as Exhibit A and by this reference made a part hereof. Payment in any fiscal year shall be subject to Article XIII B of the California Constitution (the "Gann Appropriations Limit") which limits the amount of the proceeds of taxes cities can expend each fiscal year. Notwithstanding the Gann Appropriations Limit, Marina and Seaside shall remain liable to the District for any unpaid portions of annual installments, consistent with the Payment Schedule and Section 4 of this Agreement.

4. **Timing of Annual Payment; Delinquency.**

a. Payment shall be due no later than June 1st of each year. Marina or Seaside may prepay all or any portion of the amount then due without a prepayment penalty and each shall be independently responsible to meet their respective annual payment obligations. Liability for failure to make any payment shall not be joint.

b. If a Party does not pay its obligation as set forth in Agreement Section 3 on or before the June 1st of each year interest shall accrue on the unpaid amount at the legal rate of 7% per year from the date each installment is due. If either Marina or Seaside does not pay its respective obligation when due, upon request of the District the delinquent Party will execute a promissory note in favor of the District acknowledging in full current amount of the debt with interest at the legal of 7% per annum and execute and agree to the entry in the Monterey County Superior Court of a confession of judgment for that amount.

5. **District Concurrence in Bond Issuance.** In reliance on the reimbursement payments by Marina and Seaside to be made pursuant to this Agreement, the District agrees not to challenge the Validation Action. Upon the approval of this Agreement by the Parties' respective legislative bodies and its execution, the District concurs in the issuance of the Bonds and agrees not to oppose or otherwise impede, challenge, protest, object to or take any action affecting or in opposition to any matters in connection with or related to the issuance of the Bonds by FORA, the expenditure of the Bond proceeds or any other actions related to the Bonds taken by FORA, Marina, or Seaside..

6. **No Legal Relationship.** The Parties disclaim any partnership, joint venture, fiduciary or agency status or relationship between them. Except as otherwise set forth in this Agreement, no Party has the authority to make any representation or warranty or incur any obligation or liability on behalf of another Party, nor shall any Party make any representation to any third party inconsistent with this paragraph.

7. **Term.** The term of this Agreement shall begin on the date the Bonds are issued for sale to investors (the "Effective Date"). Marina and Seaside's obligation to reimburse the District for tax revenue shall not extend past June 30, 2040 or the maturity date and final payoff of the FORA Bonds and shall terminate automatically upon payment of the final annual installment

payment as described in Section 3.

8. **Attorney's Fees.** In the event of any litigation, claim or proceedings relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the non-prevailing party reasonable expenses, attorney's fees and costs.

9. **Severability.** In the event any part of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such part shall be deemed severed from the remainder of the Agreement and the remaining provisions shall continue in full force without being impaired or invalidated in any way.

10. **Assignment.** No Party may assign this Agreement, or any part hereof, without written consent and prior approval of all other Parties and any assignment without said consent shall be void and unenforceable. The covenants and agreements of this Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assignees.

11. **Amendment.** No amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives for all the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.

12. **Governing Law and Venue.** This Agreement shall be deemed an Agreement under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. All Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Monterey County, California.

13. **No Liability of Officials/Employees.** No elected or appointed official, officer, agent, employee, consultant or counsel of Marina or Seaside shall be personally liable to another Party hereto or to any successor in interest in the event of any default or breach by Marina or Seaside or for any amount that may become due to the District or its successors or on any obligations under the terms of this Agreement.

14. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.

15. **Waiver.** The waiver by any Party of any right granted to it hereunder shall not be deemed a waiver of any other right or of a subsequent right obtained by reason on the matter previously waived.

16. **Notices.** Any notice which any Party may desire to give to another Party or Parties under this Agreement must be in writing and may be given either by (i) personal service with return receipt or affidavit of delivery, (ii) delivery by a reputable document delivery service such as, but not limited to, FedEx, that provides a receipt showing date and time of delivery, or (iii) by mailing in the United States Mail, certified mail, postage prepaid, return receipt requested,

addressed to the address of the Party as set forth below or at any other address as that Party may later designate by written notice provided in accordance with this Section. Notice shall be effective upon delivery to the address specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To Marina: City of Marina
Attn: City Manager
211 Hillcrest Avenue
Marina, CA 93933

To Seaside: City of Seaside
Attn: City Manager
440 Harcourt Avenue
Seaside, CA 93955

To District: Monterey County Regional Fire District
Attn: Fire Chief
19900 Portola Drive
Salinas, CA 93908

17. **Authority.** Each Party to this Agreement represents and warrants to the other Parties that it is authorized to execute, deliver and perform this Agreement and the terms and conditions hereof are valid and binding obligations of the party making this representation.

18. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

19. **Binding on Successors.** This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

20. **Construction/Headings.** The Parties waive the application of any rule of law relating to the construction of this Agreement that provides in effect that ambiguous or conflicting terms or provisions should be construed against the party who prepared this Agreement or any earlier draft thereof. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

21. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The signature page of this Agreement or any Amendment may be executed by way of a manual or authorized signature. Delivery of an executed counterpart of a signature page to this Agreement or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this Agreement or any Amendment.

22. **Effective Date.** The Effective Date of this Agreement shall be the date the Bonds are issued for sale to investors.

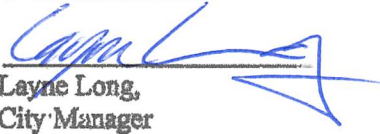
23. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and supersedes any prior written or oral understandings and agreements regarding the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, or written, between the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

24. **Further Assurances.** The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objective set forth in this Agreement.

25. **Remedies.** The Parties retain all available remedies in law and equity to enforce the terms of this Agreement.

IN WITNESS WHEREOF, Marina, Seaside and the District by their duly authorized representatives, have executed this Agreement on the date(s) set forth below. The latter date shall be the Reference Date.

CITY OF MARINA

By: 
Layne Long,
City Manager

Date: 3/5 2020

Approved as to form:

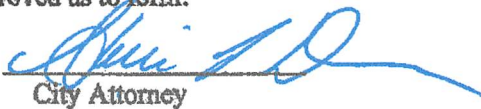
By: 
City Attorney

CITY OF SEASIDE

By: 
Craig Malin
City Manager

Date: 3/6 2020

Approved as to form:

By: 
City Attorney

MONTEREY COUNTY REGIONAL FIRE DISTRICT

By: 
Michael B. Urgutides
Fire Chief

Date: March 4th 2020

Approved as to form:

By: 
William D. Ross,
District Counsel

EXHIBIT A

PAYMENT SCHEDULE

For FY Ending	Payment Due from from Marina	Payment Due from Seaside
2021	\$125,498.00	\$125,498.00
2022	\$146,269.50	\$146,269.50
2023	\$155,862.00	\$155,862.00
2024	\$155,755.00	\$155,755.00
2025	\$155,801.00	\$155,801.00
2026	\$155,827.00	\$155,827.00
2027	\$155,863.50	\$155,863.50
2028	\$155,896.50	\$155,896.50
2029	\$155,729.00	\$155,729.00
2030	\$155,778.50	\$155,778.50
2031	\$155,838.50	\$155,838.50
2032	\$155,852.50	\$155,852.50
2033	\$155,811.00	\$155,811.00
2034	\$155,890.00	\$155,890.00
2035	\$ 65,817.00	\$ 65,817.00
2036	\$ 65,688.00	\$ 65,688.00
2037	\$ 65,798.00	\$ 65,798.00
2038	\$ 65,820.00	\$ 65,820.00
2039	\$ 65,755.50	\$ 65,755.50
2040	\$ -0-	\$ -0-
Total	\$2,470,550.50	\$2,470,550.50



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

March 20, 2020

By email to board@fora.org

Fort Ord Reuse Authority
Board of Directors
c/o Clerk of the Board
920 2nd Avenue Suite A
Marina, California 93933

Re: Consideration by the Board of Directors at its Meeting of March 27, 2020,
for Modification of Resolution 19-13 re Identification of Benefited Parcels and
Allocation of Percentages of the Net Bond Proceeds.

Dear Chair Parker and Members of the Board:

The City of Marina asks the FORA Board to consider the legality and optics before modifying Resolution 19-13 approved by unanimous vote on December 13, 2019, at a publicly noticed meeting and thereafter relied upon to secure a judgment in the Superior Court.

The resolution authorized the issuance and sale of bonds for up to \$55million for funds to remediate blight on precisely identified properties on former Fort Ord. The FORA Board unanimously passed Resolution 19-13 including Exhibit A which identified with specificity the parcels of land within its scope and allocation of the bond revenues by percentages to each jurisdiction. The terms set forth in Exhibit A were integral to the motion and approved Resolution, which states:

3. Bond proceeds are intended for costs of Building Removal, which include the cost of waste characterization, abatement, building demolition, building removal, building repair, waste disposal, and remediation of buildings and building sites located at certain parcels of property within the boundaries of the former Fort Ord, as well as, without limitation, costs of planning, engineering, management, and risk management including insurance premiums, legal fees and litigation costs associated with the Building Removal, and the associated administrative services required to remove blighted buildings from those parcels of property identified on the attached Exhibit A within the boundaries of the former Fort Ord.

The effective date of the Resolution, December 13, 2019, is also specifically provided in its terms:

10. This Resolution shall take effect from and after the dates of its passage and adoption.

In the same Resolution the Board authorized the commencement of a judicial validation action to preemptively address any challenges. The Complaint for Validation filed in Monterey County Superior Court on January 28, 2020, specifically referenced Resolution 19-13 and provided for a protest period which extended through March 9, 2020. This Complaint was served on all known interested parties and by publication for broadest notice and opportunity to be heard. Nothing in the validation complaint provided notice that Resolution 19-13 was subject to modification.

March 20, 2020
Fort Ord Reuse Authority
Board of Directors
Page 2

No challenges or objections were filed and the Court rendered judgment summarily at an ex parte hearing on March 12, 2020.

Now, after the judicial decision, the Board is asked to alter the terms of the enacted Resolution 19-13 to (a) add additional land parcels; and (b) change the allocation of bond proceeds between recipients. Marina finds no support for this procedurally.

Engaging in actions that modify the terms for use of the bonds proceeds after securing a Superior Court judgment is an optic that FORA should avoid.

We remind you that the identified parcels and allocation of bond proceeds were vetted for months at the Administrative Committee and in other noticed, public FORA meetings. What was presented to the FORA Board on December 13, 2019, was unanimously accepted.

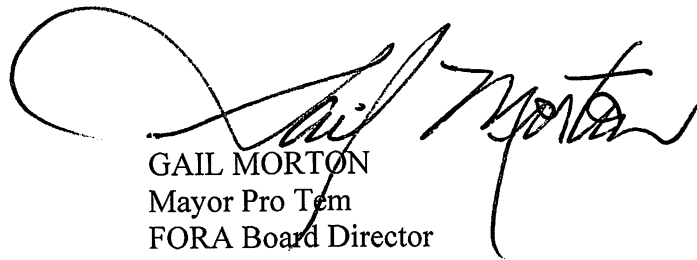
Please also consider that by a unanimous vote on March 3, 2020, Marina City Council obligated \$2,470,550.50 of its general fund revenues to the Monterey County Regional Fire District to reimburse it for the financial detriment caused by the issuance of FORA bonds. The City of Seaside and the City of Marina each agreed to pay 50% of projected losses to enable the validation action to conclude without an objection being filed by the fire district. This was done in reliance upon FORA Resolution 19-13 and Marina being awarded 50% of the bond proceeds to meet its burden of blight removal on identified parcels of land. Our reliance on the terms of the FORA Resolution 19-13 is evidenced in the executed agreement terms, a copy of which is attached hereto.

Having enacted a Resolution on December 13, 2019 and thereafter securing a court judgment predicated upon it, due process and public trust dictates changes in the terms for bond issuance at this late date are inappropriate.

Very truly yours,



BRUCE DELGADO
Mayor
City of Marina



GAIL MORTON
Mayor Pro Tem
FORA Board Director
City of Marina

BD&GM:rwr
Enc.

cc: FORA Executive Director (josh@fora.org)
FORA Legal Counsel (jgiffen@kaglaw.net)
Council Members
City Manager
Asst. City Manager
Karen Tiedemann, Esq.

**REIMBURSEMENT AGREEMENT
BETWEEN THE
CITY OF MARINA, THE CITY OF SEASIDE, AND THE
MONTEREY COUNTY REGIONAL FIRE DISTRICT**

THIS AGREEMENT is made and entered into on March 4, 2020 (the "Reference Date") by and between the **CITY OF MARINA**, a California charter city (hereinafter referred to as "Marina") the **CITY OF SEASIDE**, a California general law city (hereinafter referred to as "Seaside"), and the **MONTEREY COUNTY REGIONAL FIRE DISTRICT**, a California fire protection district formed under California Health & Safety Code §13800 *et seq.* (hereinafter referred to as the "District"). Marina, Seaside and the District are sometimes individually referred to as "Party" and collectively as the "Parties" in this Agreement.

Recitals

A. The Fort Ord Reuse Authority (hereinafter referred to as "FORA"), a public corporation of the State of California, was formed to plan, finance and manage the transition of the former Fort Ord from military to civilian use. FORA is authorized by law to issue bonds to fund base-wide improvements (Govt. Code §67679(d)).

B. FORA is scheduled by statute to dissolve on June 30, 2020, and prior to its dissolution, the FORA Board of Directors intends to issue bonds under the Marks-Roos Act (hereinafter referred to as the "Bonds") to raise up to the amount of \$55 million in net Bond proceeds, to be repaid over a 20-year term (FYs ending 2021-2040) to be expended towards remediation of the remaining blighted property on former Fort Ord and payment of related costs. The Bonds are to be secured by a pledge of, and are to be repaid with, tax increment funds allocated to FORA. After FORA's dissolution by law these funds will continue to be paid to the accounts of FORA as needed to pay debt obligations incurred by FORA prior to its dissolution.

C. On December 13, 2019, the FORA Board of Directors adopted Resolution 19-13 authorizing issuance and sale of the Bonds and a judicial validation proceeding relating to the issuance of the Bonds and estimating the allocable share of Bond proceeds to Marina and to Seaside to be 50% and 32.25% respectively.

D. On January 28, 2020, FORA filed a Complaint for Validation in the Monterey County Superior Court seeking judicial validation of the Bonds (the "Validation Action").

E. The issuance of Bond debt by FORA prior to its dissolution will impact the redistribution of property tax revenues that would have otherwise been received by taxing entities on former Fort Ord after FORA is dissolved.

F. Marina, Seaside and the County of Monterey (hereinafter referred to as the "County") are FORA member entities and taxing entities on former Fort Ord.

G. Under an agreement with the County, the District is entitled to a percentage of the County's share of property tax revenue generated by the County's East Garrison development project ("County-District Agreement").

H. Issuance of the bonds will result in the District receiving less in property taxes under the County-District Agreement and from residual distributions of property taxes than the District anticipated. Projections of property tax revenues over the expected term of the bonds show that the District may receive \$4,941,101 less in property tax revenues as a result of the issuance of the bonds.

I. Marina and Seaside are expected to receive significant benefits from the issuance of the Bonds including funding necessary to remove the remaining blight at the former Fort Ord. Marina and Seaside have determined that it is in each of their best interests to mitigate the impacts of the issuance of the Bonds on the District by entering into this Agreement, providing financial mitigation payments to the District.

J. The financial mitigation payments made by Marina and Seaside pursuant to this Agreement can be paid from any funding source, including but not limited to property tax revenues, consistent with applicable law.

K. This Agreement does not affect or alter the terms of the County-District Agreement.

Terms and Conditions

In consideration of the mutual promises contained herein, Marina, Seaside and the District agree to the following terms and conditions:

1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

2. Marina and Seaside to Reimburse the District. The Parties acknowledge and agree that the issuance of the Bonds by FORA will result in a loss of tax revenue which would otherwise be received by the District and both Marina and Seaside agree that because of the benefit each receives from the operations of the District, including the District providing mutual aide to Marina and to Seaside, the benefits that Marina and Seaside will receive from the issuance of the Bonds, and the financial impact that the issuance of the Bonds will have on the District, each should pay its fair share to reimburse the District for property tax revenue that but for issuance of the Bonds would be received by the District under the terms of the County-District Agreement and as part of residual property tax distributions. In the event the Bonds are issued by FORA but in an amount or for a term other than as described in the Recitals, this Agreement will be amended in writing as provided herein. In the event the Bonds are not issued by FORA on or before June 30, 2020, this Agreement shall be null and void.

3. **Reimbursement Payment.** Marina and Seaside shall each pay to the District the total amount of \$2,470,550.50 payable in nineteen annual installments in accordance with the Payment Schedule attached hereto as Exhibit A and by this reference made a part hereof. Payment in any fiscal year shall be subject to Article XIII B of the California Constitution (the "Gann Appropriations Limit") which limits the amount of the proceeds of taxes cities can expend each fiscal year. Notwithstanding the Gann Appropriations Limit, Marina and Seaside shall remain liable to the District for any unpaid portions of annual installments, consistent with the Payment Schedule and Section 4 of this Agreement.

4. **Timing of Annual Payment; Delinquency.**

a. Payment shall be due no later than June 1st of each year. Marina or Seaside may prepay all or any portion of the amount then due without a prepayment penalty and each shall be independently responsible to meet their respective annual payment obligations. Liability for failure to make any payment shall not be joint.

b. If a Party does not pay its obligation as set forth in Agreement Section 3 on or before the June 1st of each year interest shall accrue on the unpaid amount at the legal rate of 7% per year from the date each installment is due. If either Marina or Seaside does not pay its respective obligation when due, upon request of the District the delinquent Party will execute a promissory note in favor of the District acknowledging in full current amount of the debt with interest at the legal of 7% per annum and execute and agree to the entry in the Monterey County Superior Court of a confession of judgment for that amount.

5. **District Concurrence in Bond Issuance.** In reliance on the reimbursement payments by Marina and Seaside to be made pursuant to this Agreement, the District agrees not to challenge the Validation Action. Upon the approval of this Agreement by the Parties' respective legislative bodies and its execution, the District concurs in the issuance of the Bonds and agrees not to oppose or otherwise impede, challenge, protest, object to or take any action affecting or in opposition to any matters in connection with or related to the issuance of the Bonds by FORA, the expenditure of the Bond proceeds or any other actions related to the Bonds taken by FORA, Marina, or Seaside..

6. **No Legal Relationship.** The Parties disclaim any partnership, joint venture, fiduciary or agency status or relationship between them. Except as otherwise set forth in this Agreement, no Party has the authority to make any representation or warranty or incur any obligation or liability on behalf of another Party, nor shall any Party make any representation to any third party inconsistent with this paragraph.

7. **Term.** The term of this Agreement shall begin on the date the Bonds are issued for sale to investors (the "Effective Date"). Marina and Seaside's obligation to reimburse the District for tax revenue shall not extend past June 30, 2040 or the maturity date and final payoff of the FORA Bonds and shall terminate automatically upon payment of the final annual installment

payment as described in Section 3.

8. **Attorney's Fees.** In the event of any litigation, claim or proceedings relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the non-prevailing party reasonable expenses, attorney's fees and costs.
9. **Severability.** In the event any part of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such part shall be deemed severed from the remainder of the Agreement and the remaining provisions shall continue in full force without being impaired or invalidated in any way.
10. **Assignment.** No Party may assign this Agreement, or any part hereof, without written consent and prior approval of all other Parties and any assignment without said consent shall be void and unenforceable. The covenants and agreements of this Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assignees.
11. **Amendment.** No amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives for all the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
12. **Governing Law and Venue.** This Agreement shall be deemed an Agreement under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. All Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Monterey County, California.
13. **No Liability of Officials/Employees.** No elected or appointed official, officer, agent, employee, consultant or counsel of Marina or Seaside shall be personally liable to another Party hereto or to any successor in interest in the event of any default or breach by Marina or Seaside or for any amount that may become due to the District or its successors or on any obligations under the terms of this Agreement.
14. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
15. **Waiver.** The waiver by any Party of any right granted to it hereunder shall not be deemed a waiver of any other right or of a subsequent right obtained by reason on the matter previously waived.
16. **Notices.** Any notice which any Party may desire to give to another Party or Parties under this Agreement must be in writing and may be given either by (i) personal service with return receipt or affidavit of delivery, (ii) delivery by a reputable document delivery service such as, but not limited to, FedEx, that provides a receipt showing date and time of delivery, or (iii) by mailing in the United States Mail, certified mail, postage prepaid, return receipt requested,

addressed to the address of the Party as set forth below or at any other address as that Party may later designate by written notice provided in accordance with this Section. Notice shall be effective upon delivery to the address specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

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Attn: City Manager
211 Hillcrest Avenue
Marina, CA 93933

To Seaside: City of Seaside
Attn: City Manager
440 Harcourt Avenue
Seaside, CA 93955

To District: Monterey County Regional Fire District
Attn: Fire Chief
19900 Portola Drive
Salinas, CA 93908

17. **Authority.** Each Party to this Agreement represents and warrants to the other Parties that it is authorized to execute, deliver and perform this Agreement and the terms and conditions hereof are valid and binding obligations of the party making this representation.

18. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

19. **Binding on Successors.** This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

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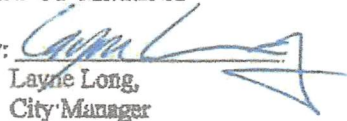
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24. Further Assurances. The Parties shall cooperate, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objective set forth in this Agreement.

25. Remedies. The Parties retain all available remedies in law and equity to enforce the terms of this Agreement.

IN WITNESS WHEREOF, Marina, Seaside and the District by their duly authorized representatives, have executed this Agreement on the date(s) set forth below. The latter date shall be the Reference Date.

CITY OF MARINA

By: 
Laynie Long,
City Manager

Date: 3/5 2020

Approved as to form:

By: 
for the City Attorney

CITY OF SEASIDE


By: 
Craig Mahin
City Manager

Date: 3/6 2020

Approved as to form:

By: 
City Attorney

MONTEREY COUNTY REGIONAL FIRE DISTRICT

By: 
Michael B. Urquides
Fire Chief

Date: March 4th 2020

Approved as to form:

By: 
William D. Ross,
District Counsel

EXHIBIT A

PAYMENT SCHEDULE

For FY Ending	Payment Due from from Marina	Payment Due from Seaside
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2028	\$155,896.50	\$155,896.50
2029	\$155,729.00	\$155,729.00
2030	\$155,778.50	\$155,778.50
2031	\$155,838.50	\$155,838.50
2032	\$155,852.50	\$155,852.50
2033	\$155,811.00	\$155,811.00
2034	\$155,890.00	\$155,890.00
2035	\$ 65,817.00	\$ 65,817.00
2036	\$ 65,688.00	\$ 65,688.00
2037	\$ 65,798.00	\$ 65,798.00
2038	\$ 65,820.00	\$ 65,820.00
2039	\$ 65,755.50	\$ 65,755.50
2040	\$ -0-	\$ -0-
Total	\$2,470,550.50	\$2,470,550.50

MEMORANDUM

Date: March 30, 2020

To: Josh Metz, Executive Officer, Fort Ord Reuse Authority

From: Mark Northcross and Christian Sprunger, NHA Advisors LLC

RE: FORA Building Removal Financing – Allocations of Bond Proceeds

Background

At the December 13, 2019 meeting, the Fort Ord Reuse Authority (“FORA”) executive board approved allocations of bond proceeds from a building removal financing. Cities of Marina and Seaside, Monterey County, Transportation Agency of Monterey County (“TAMC”), Monterey County Water District (“MCWD”), and Monterey Salinas Transit (“MST”) all were earmarked to receive a portion of the bond proceeds. In February 2020, Monterey County proposed revisions to those bond proceeds allocations that adjusted down the shares received by the Cities of Marina and Seaside and adjusted up the share received by Monterey County. There was no impact to the shares allocable to TAMC, MCWD, and MST in the February 2020 proposed adjustments.

In December 2019, market conditions were characterized by strong investor demand for traditional and speculative type financing structures, enabling FORA’s financing team to propose a financing that was estimated to raise \$50 million by combining a \$40 million traditional “vanilla” financing with a speculative \$10 million escrow bond. As explained to the Board in prior meetings, the escrow term bond proceeds would only be released to use for building removal if there was growth in FORA project area assessed valuation beyond current levels. If such growth did not occur, these bonds would be called no later than three years after bond issuance.

The market contraction that has occurred in the last few weeks was largely due to uncertainty surrounding the impacts of COVID-19 on the financial markets and a resulting flight to quality (i.e. cash) on the part of traditional bond investors. Investors are much more risk averse than they were in December 2019. As a result, the speculative escrow bond has been removed from the financing plan because we are not confident at present that a speculative escrow bond could be sold.

Interest rates in the bond market have also increased significantly since last December. As a result, we believe that the “vanilla” series of bonds would only yield about \$30 million for building removal, as opposed to the \$40 million assumed then.

The following analysis identifies the impacts to each agency from Monterey County’s proposed adjustments to the December 2019 bond proceeds allocations. Scenarios 1 and 2 identify the impact on the total dollar amounts available to each agency while holding the total bond proceeds raised constant (i.e. quantify the impact of the adjustment in allocation percentages). Scenarios 3 and 4 provide low and

high estimates for the amount of bond proceeds available to finance building removal based on current market conditions and where market conditions are estimated to recover by the time FORA sells bonds in May 2020.

Analysis

Our analysis below evaluates the four following scenarios for amount of bond proceeds available to fund building removal and the allocations of those proceeds:

- Scenario 1 shows the allocation of bond proceeds by jurisdiction under the allocation plan approved by the Board in December 2019, assuming the interest rates in place at that time, and assuming an extra \$10 million in bond proceeds from an escrow term bond.
- Scenario 2 shows the same bond proceeds assumptions as Scenario 1, but uses the revised allocations requested by the County.
- Scenario 3 shows the allocation of bond proceeds by jurisdiction under current market conditions, and without any proceeds from an escrow term bond, using the revised allocation requested by the County.
- Scenario 4 shows the allocation of bond proceeds by jurisdiction if the bond market recovers to where it was last December, but without any proceeds from an escrow term bond, again using the revised allocation requested by the County.

As discussed earlier, we use three different assumptions regarding net bond proceeds. Those assumptions are summarized as follows:

- \$50 million under December 2019 market conditions, which includes \$10 million from an escrow term bond
- \$40 million if the bond market returns to December 2019 levels by May 2020, but no escrow term bond can be sold.
- \$30 million under current bond market conditions, with no escrow term bond.

Monterey County’s proposed amendments to the bond proceeds allocation percentages approved by the FORA Board in December 2019 would reduce Marina and Seaside’s share of the bond proceeds while increasing Monterey County’s share.

Scenario 1: \$50M Bond Proceeds Based on December 2019 Market Conditions and Approved Allocations

Jurisdiction	Allocation	Share (\$)
City of Marina	50.00%	\$25,000,000
City of Seaside	32.25%	\$16,125,000
Monterey County	4.50%	\$2,250,000
TAMC	6.25%	\$3,125,000
MCWD	5.25%	\$2,625,000
MST	1.75%	\$875,000
Total	100.00%	\$50,000,000

Scenario 2: \$50M Bond Proceeds Based on Based December 2019 Market Conditions and Reflecting Marina County's Proposed Adjustments

Jurisdiction	Allocation	Share (\$)
City of Marina	46.00%	\$23,000,000
City of Seaside	28.25%	\$14,125,000
Monterey County	12.50%	\$6,250,000
TAMC	6.25%	\$3,125,000
MCWD	5.25%	\$2,625,000
MST	1.75%	\$875,000
Total	100.00%	\$50,000,000

Scenario 3: \$30M Bond Proceeds Raised Based on April 2020 Bond Market Conditions

Jurisdiction	Allocation	Share (\$)
City of Marina	46.00%	\$13,800,000
City of Seaside	28.25%	\$8,475,000
Monterey County	12.50%	\$3,750,000
TAMC	6.25%	\$1,875,000
MCWD	5.25%	\$1,575,000
MST	1.75%	\$525,000
Total	100.00%	\$30,000,000

Scenario 4: \$40M Bond Proceeds Raised Based on Projected May 2020 Bond Market Conditions

Jurisdiction	Allocation	Share (\$)
City of Marina	46.00%	\$18,400,000
City of Seaside	28.25%	\$11,300,000
Monterey County	12.50%	\$5,000,000
TAMC	6.25%	\$2,500,000
MCWD	5.25%	\$2,100,000
MST	1.75%	\$700,000
Total	100.00%	\$40,000,000

Next Steps

FORA’s financing team is continuing to monitor the bond markets and is continually evaluating the impact of market movements on the amount of bond proceeds available from a financing. The market has continued to improve, and the financing team is optimistic that when FORA sells bonds in May 2020, it will have returned to December 2019 levels. However, the near-term impact of COVID-19 on the US economy and bond markets is still being determined.

NHA Advisors, LLC is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board (“MSRB”). As such, NHA Advisors, LLC has a Fiduciary duty to the public agency and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the public agency with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to the public agency’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to the public agency; and
- d) undertake a reasonable investigation to determine that NHA Advisors, LLC is not forming any recommendation on materially inaccurate or incomplete information; NHA Advisors, LLC must have a reasonable basis for:
 - i. any advice provided to or on behalf of the public agency;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the public agency, any other party involved in the municipal securities transaction or municipal financial product, or investors in the public agency securities; and
 - iii. any information provided to the public agency or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty

NHA Advisors, LLC must deal honestly and with the utmost good faith with the public agency and act in the public agency’s best interests without regard to the financial or other interests of NHA Advisors, LLC. NHA Advisors, LLC will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). NHA Advisors, LLC will not engage in municipal advisory activities with the public agency as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the public agency’s best interests.

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	2020 Transition Plan	
Meeting Date:	April 17, 2020	INFORMATION/ACTION
Agenda Number:	6c	

RECOMMENDATION(S):

Approve 2020 Transition Plan.

BACKGROUND/DISCUSSION:

The Board approved its 2018 Transition Plan at its December 19, 2018 Special Meeting. The document reflected the results of a collaborative effort involving all the member agencies. Upon recent review however, staff identified a number of sections in the Plan that should be reconsidered and/or modified to more closely reflect the direction the Board is taking as it moves toward closure of the agency. This also more closely aligns with LAFCO's oversight for an orderly dissolution.

Section	2018 Text	Recommendation
1.1 Base-wide Facilities	The Board hereby finds and determines that this Transition Plan assigns all assets and liabilities relating to FORA's policies, programs and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA. The Board further finds that new implementing agreements negotiated with the landholding jurisdictions (or, in the absence of such an implementing agreement with a respective jurisdiction, the other provisions of this Transition Plan) will establish a fair and equitable assignment of assets and liabilities, and provides a schedule of obligations pursuant to Government Code section 67700.	<i>Proposed revision:</i> The Board hereby finds and determines that this Transition Plan assigns all assets and liabilities relating to FORA's policies, programs and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA.
1.3 Revenue Sharing and Financial Contribution	The Board hereby finds and determines that the Implementation Agreements with the Cities of Marina, Seaside, Monterey, and Del Rey Oaks and the County of Monterey require that each entity pay its fair and equitable share of the cost of the FORA Program (in accordance with the formulas expressed therein and subject to Constitutional or other limitations imposed by applicable law on such jurisdiction's funding obligations).	<i>There is no FORA Program to fund post June 30, 2020. Recommend this section be removed.</i>
1.5 Funding of	The Board hereby finds and determines that regional, integrated base-wide habitat protection	<i>The Board has no authority to mandate fees for other</i>

<p>Habitat Protection</p>	<p>is best funded by the CFD Special Taxes or substantially similar base-wide replacement funding mechanisms. The Board has identified and set aside approximately 30.2% of collected CFD Special Taxes to be applied toward base-wide habitat management and finds that any replacement funding mechanism should be designed to generate similar levels of revenue for such purposes.</p>	<p><i>agencies. Recommend this section be removed.</i></p>
<p>2.1.3 Litigation Reserve Funds</p>	<p>Although not irrevocably committed to use for litigation or indemnification purposes and available to meet FORA's other needs, FORA holds funds identified for indemnification of LAFCO in the current approximate aggregate amount of \$300,000. Those funds are intended to cover the cost of any litigation or indemnification obligation now or still pending immediately before FORA's dissolution. In the event that as of immediately prior to FORA's dissolution no such litigation or indemnity obligation is pending, the unexpended balance of such reserves shall be applied to capital improvement program projects in accordance with the Final 2020 Capital Improvement Program and/or distributed in accordance with Transition Plan Implementing Agreements. If as of immediately prior to FORA's dissolution any litigation or indemnity obligation is pending against FORA, the unexpended balance of such reserves shall be distributed to the County of Monterey, as escrow holder, in accordance with Section 4.2 hereinbelow and managed in accordance with Section 4.3 hereinbelow.</p>	<p><i>Proposed changes based on Board Action to allocate \$500,000 to LAFCO:</i></p> <p>Although not irrevocably committed to use for litigation or indemnification purposes, FORA has transmitted funds identified for indemnification of LAFCO in the aggregate amount of \$500,000. Terms and conditions for these funds are provided for in the FORA-LAFCO Indemnification Agreement executed December 18, 2019.</p>
<p>2.1.4 Habitat Funds</p>	<p>It is estimated based on the current rate of collections and earnings that by June 30, 2020 FORA will hold approximately \$21,000,000 in funds dedicated to base-wide habitat management. All such funds accumulated before FORA's dissolution shall be transferred in the following order of priority. If before FORA's dissolution a Habitat Conservation Plan Cooperative joint powers authority (the "HCP Cooperative") has been established, all of the habitat management 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 base-wide Habitat Conservation Plan for Fort Ord being administered by the HCP Cooperative. If no HCP Cooperative is then in existence, but a joint powers authority has been</p>	<p><i>Proposed change based on Board action:</i></p> <p>Habitat Funds: It is estimated based on the current rate of collections and earnings that by June 30, 2020 FORA will hold approximately \$16,601,542 in funds dedicated to base-wide habitat management. FORA will transfer the remaining funds to local agencies to use specifically for habitat management as follows:</p>

	<p>formed for the management of Habitat Management Areas within the former Fort Ord, then a portion of the habitat management funds held by FORA immediately prior to FORA's dissolution shall be transferred to the joint powers authority for use in connection with the management of Habitat Management Areas within the former Fort Ord and the remainder in a program for incidental take permits for future development. If no HCP Cooperative or other joint powers authority for the regional management of Habitat Management Areas within the former Fort Ord is in existence prior to September 2019, then FORA shall prepare a program addressing habitat management areas (HMA) on the one hand and incidental take permits for future development on the other and distribute funds according to that program.</p>	<ul style="list-style-type: none"> • 13,270,377 (80%) to Monterey County • \$1,222,026 (7%) to the City of Seaside • 1,316,015 (8%) to the City of Marina • \$45,053 to the City of Monterey (.27%) • \$748,071 (5%) to the City of Del Rey Oaks
<p>2.1.5 Capital Improvement Funds</p>	<p>Except for those CFD Special Taxes specifically identified for the habitat conservation plan, all CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall first be directed to completing in progress construction projects as identified in FORA's final year CIP. Any CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall next be directed to completing other projects as identified in FORA's final year CIP. These capital improvement funds shall be transferred to the jurisdiction assigned responsibility for completing construction of the respective project, which shall be the jurisdiction in which the majority of the project is located if that jurisdiction has an executed Transition Plan Implementing Agreement. If there is no Transition Plan Implementing Agreement, those funds shall be redistributed to those jurisdictions with Transition Plan Implementing Agreements in proportion to the priorities of each project in the final year CIP unless provided otherwise in a Transition Plan Implementing Agreement.</p>	<p><i>Proposed changes:</i></p> <p>Except for those CFD Special Taxes specifically identified for the habitat conservation, all CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall first be directed to completing in progress construction projects as identified in FORA's final year CIP. These capital improvement funds shall be transferred to the jurisdiction assigned responsibility for completing construction of the respective project, which shall be the jurisdiction in which the majority of the project is located, provided there is a fully executed memorandum of agreement regarding the project between the jurisdiction and FORA.</p>
<p>2.1.9 Real Property</p>	<p>FORA is obligated to cause certain former Fort Ord property to be transferred to the underlying land use jurisdictions in accordance with the federal "Pryor Amendment" and as authorized by Section 67678(a) of the FORA Act.</p>	<p><i>Proposed changes:</i></p> <p>FORA is obligated to cause certain former Fort Ord property to be transferred to</p>

	<p>Additionally, FORA is entitled to receive certain easements to enable implementation of the Reuse Plan. See item 127 in Exhibit A attached hereto and incorporated by this reference. As of the anticipated date of dissolution of FORA, not all real property interests will have transferred. Upon FORA's dissolution and the repeal of the FORA Act as of January 2021, the principal local public agent for acquisition, disposition and sale of real property transferred from the Army will need to be re-established through state legislation and/or federal designation and assignment of contractual rights. In particular, the landfill parcel currently located within the unincorporated portion of the County of Monterey but within the sphere of influence of the City of Marina will not transfer until sometime after 2022. Currently, the County is obligated to take the landfill parcel. See item 17 in Exhibit A attached hereto and incorporated by this reference. FORA staff shall seek all necessary legislation and approvals from the state and federal governments to enable the landfill parcel to be directly transferred to the County of Monterey or its designee. Necessary legislation and approvals from the state and federal governments for direct transfer of the landfill parcel may take a substantial amount of time to receive. The County is therefore requested to identify any designee recipient of the landfill parcel at least twelve (12) months prior to FORA dissolution in order to seek and receive such approvals and/or legislation for any designee recipient. If the County fails to timely specify a designee to receive the landfill parcel, the Army shall transfer the landfill parcel directly to the County of Monterey.</p> <p>Additionally, there are parcels within the City of Seaside which will not transfer prior to 2020 due to a change in the State of California cleanup requirements for residential use. FORA staff is directed to work with the Army and the City of Seaside to bring resolution to potential transfer issues prior to June 30, 2020. In the event that no resolution(s) are reached, FORA shall seek all necessary legislation and approvals from the state and federal governments to enable the Seaside parcels to be directly transferred to the City of Seaside or its designee.</p>	<p>the underlying land use jurisdictions in accordance with the federal "Pryor Amendment" and as authorized by Section 67678(a) of the FORA Act. FORA has nominated the City of Seaside as its Successor to the Local Redevelopment Authority and as such, once recognized by the Army, will assume this role.</p>
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<p>2.2.6 Transportation and Transit</p>	<p>The Board finds that as of 2018, there are 19 transportation and transit projects identified in the capital improvement program. These projects are listed in in Exhibit A attached hereto and incorporated by this reference. The City of Marina, County of Monterey, Transportation Agency of Monterey County ("TAMC") and Monterey Salinas Transit ("MST") are the identified lead agencies for 13 of 19 projects. Of those 13, FORA has reimbursement agreements in place with lead agencies City of Marina and County of Monterey. The Board identifies those Agreements (Documents 114 and 115) to be addressed in the new Transition Plan Implementing Agreements as to how revenue generation and revenue sharing will occur. Those Reimbursement Agreements shall terminate on June 30, 2020, unless otherwise addressed in the Transition Plan Implementing Agreements. The new Transition Implementing Agreements should also address contributions or mechanisms to lead agencies TAMC and MST to replace revenues generated by the expiring CFD Special Tax for their lead agency projects. With respect to the projects for which FORA is the lead agency and which no jurisdiction has addressed in its Transition Plan Implementing Agreement, FORA working in conjunction with TAMC shall prepare a regional traffic modeling analysis showing the inclusion of the FORA lead agency on-site roads as compared to the removal of the FORA lead agency roads on the remaining Fort Ord roads. In particular, off-site, regional and on-site Fort Ord local roads within or adjacent to the City of Marina, City of Seaside, City of Del Rey Oaks, and County of Monterey shall be analyzed to ascertain the impact on the Ord Community, including without limitation, California State University Monterey Bay ("CSUMB"), University of California Monterey Bay Science and Technology ("UC MBEST"), Monterey Peninsula College ("MPC"), the Veteran's Cemetery, the Army and the National Monument, and the regional network, so as to inform the last year CIP. The schedule for implementing transportation and transit projects shall be determined by the lead agency in consultation with the jurisdictions who are collecting revenue for the project, but nothing in this Transition Plan changes the authority or the discretion of a lead agency to determine</p>	<p><i>Recommend that this section be removed.</i></p>
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	<p>whether, how or when to fund and construct any particular road or transit project. All future projects will be subject to compliance with all applicable law as it exists at the time of project approval and implementation. Any required project-specific CEQA review or compliance shall be the responsibility of the designated lead agency.</p>	
<p>Section 3</p>		<p><i>Recommend deletion as no additional insurance policies were put in place.</i></p>
<p>4.1 Transition Plan Implementing Agreements</p>	<p>In order to continue to foster regional cooperation and completion of the FORA program, the Board requests that each affected entity and/or land holding member jurisdiction enter into a Transition Plan Implementing Agreement addressing how the respective entity or jurisdiction will generate revenues to meet its obligations as assigned in this Transition Plan or as agreed upon in the Transition Plan Implementing Agreements and include revenue sharing provisions between those that will generate revenues and those implementing CIP projects, and such other matters as may be required to implement this Transition Plan, together with a schedule of regular meetings to assess and update habitat, transportation, transit and water augmentation needs in Fort Ord. Notwithstanding that this Transition Plan requests that each member jurisdiction establish, adopt or participate in one or more replacement funding mechanism(s) and revenue sharing agreements that address all parts of FORA's final year CIP, this Transition Plan does not specify any specific funding mechanism. The Board strongly encourages all underlying jurisdictions with future prospective development to form Community Facilities Districts (or adopt substantially similar replacement funding mechanisms) to replace the revenues which would have been raised by the CFD Special Taxes. Additionally, the Board encourages member jurisdictions to include in documents about future projects language which will obligate future development projects to pay a CFD Special Tax (or substantially equivalent replacement fees).</p>	<p><i>The Board has no mechanism to enforce proposed policies</i> <i>Proposed changes:</i></p> <p>In order to clarify roles and responsibilities post-FORA, the Board requests that each affected entity and/or land holding member jurisdiction enter into a Transition Plan Implementing Agreement.</p>

FISCAL IMPACT:

None.

COORDINATION:

Authority Counsel, Administrative Committee, Habitat Working Group

ATTACHMENTS:

A. Draft 2020 Transition Plan

Prepared by Kendall Flint, RGS and Approved by:


Joshua Metz

FORT ORD REUSE AUTHORITY RESOLUTION NO. 20-xx

A RESOLUTION OF THE GOVERNING BODY OF THE FORT ORD REUSE AUTHORITY
Approving a Transition Plan for Submission to the Monterey County Local Agency Formation Commission

THIS RESOLUTION is adopted with reference to the following facts and circumstances:

- A. In 1991, the Secretary of Defense announced the proposed downsizing of the United States Army Fort Ord Military Reservation ("Fort Ord") under the Base Realignment and Closure Act. The relocation by the United States Army (the "Army") of the 7th Infantry Division - Light resulted in the loss to the communities and populace of the Monterey Peninsula and adjoining greater Monterey Bay region of the significant economic, social, and cultural contributions that had been associated with the military presence.
- B. Over the years in which Fort Ord was an active military base, the Army entered into contracts with regional entities to address water and wastewater needs of the reservation. On or about 1981, the Army and Monterey Regional Water Pollution Control Agency ("MRWPCA") entered into Contract No. DACA 05-81-C-0021 wherein the Army participated in the construction of the Monterey Regional Wastewater Treatment Plant and such agreement was amended several times, ultimately resulting in Contract No. DAKF 03-83-C0527 wherein MRWPCA agreed to provide sanitary sewage service to the Army. A subsequent agreement was entered into between the Army, Marina Coast Water District ("MCWD"), the Fort Ord Reuse Authority ("FORA") and MRWPCA regarding wastewater treatment. That agreement (referenced as Document 136 in Exhibit A attached hereto and incorporated by this reference) provided for up to 3.30 million gallons per day of wastewater to be accepted and treated by MRWPCA.
- C. On or about September 21, 1993, the Army entered into Contract No. A-6404 with the Monterey County Water Resources Agency (MCWRA) for annexation of the former Fort Ord lands into MCWRA Zone 2 and 2A. That Agreement (referenced as Document 93 in Exhibit A attached hereto and incorporated by this reference) is the basis for the Army's pumping limitation of 6,600 acre-feet per year ("AFY") of water from the Salinas Valley Groundwater Basin and of that, no more than 5,200 AFY from the 180 and 400-foot aquifers therein. On or about October 23, 2001, the Army quit claimed its water and wastewater infrastructure to the Fort Ord Reuse Authority and issued two easements to FORA in DACA 05-0-00-57 and DACA 05-9-00-58. The easements to FORA required, among other obligations, assumption of the obligation to provide water required by the Installation-Wide Habitat Management Plan, the Army's obligation to cooperate and coordinate with parcel recipients, MCWRA, FORA and others to ensure all owners of property at the former Fort Ord will continue to be provided an equitable supply of water at equitable rates and to cooperate and coordinate with MCWRA, MRWPCA, FORA, property recipients and others to ensure Non-Army Responsibility Mitigations required by the records of decision dated December 23, 1993 and June 8, 1997 are met and that it will meet all requirements of the Army Agreement with MCWRA approved on September 21, 1993. On October 26, 2001, FORA in turn quitclaimed water and wastewater infrastructure and assigned said easements to MCWD requiring compliance with all underlying requirements. (See Document 128)
- D. After the announcement but prior to the implementation of the base downsizing/closure, political leaders within the affected region formed the Fort Ord Community Task Force (the

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“Task Force”) in order to develop recommendations for moving forward with a recovery effort. These recommendations were embodied in a 760-page June 1992 Strategy Report prepared by the Task Force (the “Strategy Report”). The Strategy Report may be accessed via Exhibit B – Reference Documents attached hereto and incorporated by this reference.

- E. Predicated upon the Strategy Report, in October 1992 the Fort Ord Reuse Group (“FORG”) was organized by local governments and potential property recipients to initiate recovery planning regarding the impending downsizing/closure of Fort Ord. After preparing an initial plan and subsequently refining it, the revised plan was considered and adopted by FORG in 1993. Those early planning efforts recognized the significant costs associated with the implementation of any plan to convert Fort Ord into civilian use and reinforced the validity of the regional and base-wide approaches that were inherent in the conclusions reached by the Task Force in its Strategy Report.
- F. FORA was established in 1994 by state legislation (Government Code sections 67650 and following, the “FORA Act”) and when the member jurisdictions adopted resolutions favoring the establishment of the authority in accordance with Government Code section 67656. The FORA Act was amended in 2012. The FORA Act, as amended, may be accessed via Exhibit B – Reference Documents attached hereto and incorporated by this reference. The Legislature found that the reuse of Fort Ord is a matter of statewide importance and declared in Government Code section 67657(c) that FORA’s powers and duties prevail over those of any other local entity, including any city, county, or joint powers authority. Government Code section 67658 identifies FORA’s purpose as planning for, financing, and managing the transition of the property known as Fort Ord from military to civilian use. In Government Code section 67651, the Legislature declared the following goals to be the policy of the State of California: (1) To facilitate the transfer and reuse of the real and other property of the former Fort Ord with all practical speed; (2) minimize the economic disruption caused by the base’s closure, (3) provide for reuse and development of the base in ways that enhance the economy and quality of life of the Monterey Bay community, and (4) maintain and protect the unique environmental resources of the area.
- G. In order to carry out the directives of the FORA Act, FORA hired staff and entered into a contract with the California Public Employees’ Retirement System (“CalPERS”) to provide for retirement benefits for FORA employees. The contract with CalPERS as amended to date is referenced as items 1, 2 and 3 in Exhibit A attached hereto and incorporated by this reference.
- H. Pursuant to the requirements of Government Code section 67675, FORA certified a Final Environmental Impact Report and adopted a Fort Ord Reuse Plan (the “Reuse Plan”) on June 13, 1997 in Resolution 97-06. The Reuse Plan, its attendant environmental report, and Resolution 97-06 are available on the FORA website at www.fora.org or may be accessed via Exhibit B - Reference Documents attached hereto and incorporated by this reference.
- I. As part of that approval, FORA’s Board of Directors (the “Board”) certified the Environmental Impact Report and adopted a Statement of Overriding Considerations after making the following findings:
 - The Reuse Plan will provide for an improved and diversified retail and industrial economy and market that will generate employment and create financial stability;

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- The Reuse Plan will provide moderate and upscale housing which will provide more affluent residents to the Cities of Seaside and Marina, thereby creating a housing stock with higher income families in these communities with larger disposable incomes;
- The Reuse Plan will provide additional tourist support facilities in Seaside and Marina, thereby contributing additional employment opportunities;
- The Reuse Plan will encourage and prioritize the development of projects that are regional in scale, thereby creating additional destination points on the Monterey Peninsula, and thereby enhancing the local economy;
- The Reuse Plan provides for the creation of various additional recreational facilities and open space that will enhance the quality of life for not only the residents of Seaside and Marina but all of the residents of the Peninsula;
- The Reuse Plan will attract and assist in retaining a pool of professional workers for the Peninsula;
- The Reuse Plan will assist in ensuring that the overall economic recovery of the Peninsula benefits the Cities of Del Rey Oaks, Monterey, Seaside, Marina, and the unincorporated areas of the County of Monterey in the vicinity of Fort Ord;
- The Reuse Plan will provide for additional and needed senior housing opportunities;
- The Reuse Plan will assist the communities of Seaside and Marina in the transition of their respective community images from dependent, military base extensions with transient military personnel to vital, independent, and self-actuated communities populated with permanent residents with long-term interests in the well-being of their respective communities; and
- The Reuse Plan will encourage development that will enhance the continued viability of California State University at Monterey Bay and the open space areas retained by the federal government through the Bureau of Land Management and conveyed to the California Department of Parks and Recreation.

J. FORA has committed and is obligated by the FORA Act, the Reuse Plan, and/or the California Environmental Quality Act (“CEQA”) to implement a program addressing policies, programs and mitigation measures of the Reuse Plan, including a capital improvement program and finance program addressing basewide facilities.

K. In the Reuse Plan, FORA identified revenues generated from sales and leases of real property within the former Fort Ord, FORA’s share of taxes on real property located within the former Fort Ord, and base-wide assessments or development fees, as the primary property-related sources of funding with which to implement the basewide facilities outlined in the Capital Improvement Program (“CIP”).

L. As is more fully described below, in connection with funding implementation of the Reuse Plan, FORA entered into multiple agreements with local, state, and federal entities, established a public financing mechanism, and prepared a CIP. The final CIP is available on the FORA website at www.fora.org.

M. As part of funding implementation of the Reuse Plan, FORA established in 2001 a Community Facilities District (“CFD”), through which special taxes on properties to be developed are collected. These special taxes (the “CFD Special Taxes”) are due and payable with respect to each parcel on issuance of a building permit relating to the property.

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The CFD Special Taxes are subject to annual adjustment, but when FORA ceases to exist the CFD Special Taxes may no longer be collected. A variety of replacement funding mechanisms are available, including but not limited to the potential for each of the underlying land use jurisdictions to create its own Community Facilities District through which special taxes on future development may be collected. Collecting taxes or fees on developments that have already been entitled will require each jurisdiction to obtain agreements from each developer of an entitled project to pay development fees that the developer would not otherwise be obligated to pay. Those fees are estimated to be \$72 million for entitled projects, if all entitled developments are fully completed.

N. FORA entered into a Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands (the "EDC MOA"), which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder. The EDC MOA and its attendant amendments are referenced as items 127, 129 through 134 in Exhibit A attached hereto and incorporated by this reference. The EDC MOA provided the vehicle for the Army to transfer property to FORA without monetary consideration. The land transfer was conditioned on a requirement that any proceeds from the subsequent sale or leasing of the transferred real property must be applied to the economic development of the former Fort Ord. The real property transferred pursuant to the EDC MOA may be referred to herein as the "EDC Property." Sections 5.03 and 5.04 of the EDC MOA require a fair process to ensure an equitable supply of water is provided to grantees of former Fort Ord property and that all grantees enjoy an equitable utilization of the existing sewage treatment capacity.

O. In 2001, agreements were entered into between FORA on the one hand and the County of Monterey and each city receiving or anticipated to receive a portion of the EDC Property on the other hand. These agreements, as they may have been amended to date and irrespective of whether they may be so captioned, may collectively be referred to herein as the "Implementation Agreements." ~~These agreements will be superceded by Transition Plan Implementing Agreements signed in 2020.~~

P. The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") applies to the closure of Fort Ord. The Army is obligated under CERCLA and other applicable federal and state law to remediate certain conditions at the former Fort Ord, including but not limited to by the removal of munitions and explosives. It was anticipated that an extensive amount of time would be needed for the Army to complete its cleanup of the former Fort Ord, based in part upon the contingent nature of Department of Defense funding and due to competing priorities for the use of available funds. Accordingly, in order for FORA to be able to receive the EDC Property early and facilitate an orderly and timely remediation of former Fort Ord lands, the Army and FORA entered into an early transfer agreement (referenced as item 43 and as amended in 53 and 54 in Exhibit A attached hereto and incorporated by this reference). Through a series of subsequent agreements between the Army, FORA, the U.S. Environmental Protection Agency, and the California Department of Toxic Substance Control remediation of munitions and explosives on the former Fort Ord proceeded. These agreements are referenced generally in Exhibit A as environmental services and more specifically at items 34, 43, 44, 45, 48 and 46 in Exhibit A attached hereto and incorporated by this reference. Although substantial progress has been made in the base cleanup, the remediation

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obligations will not be completed and all property transfers will not have occurred before the currently anticipated dissolution of FORA.

- Q. Government Code section 67700(a) requires that FORA dissolve when eighty percent (80%) of the base has been developed or reused in a manner consistent with the Reuse Plan or on June 30, 2020, whichever first occurs. Government Code section 67700(b)(2) mandates as follows:

The board shall approve and submit a transition plan to the Monterey County Local Agency Formation Commission on or before December 30, 2018, or 18 months before the anticipated inoperability of this title pursuant to subdivision (a), whichever occurs first. **The transition plan shall assign assets and liabilities, designate responsible successor agencies, and provide a schedule of remaining obligations.** The transition plan shall be approved only by a majority vote of the board. (Emphasis added)

- R. Government Code section 67700(b)(1) provides as follows:

The Monterey County Local Agency Formation Commission shall provide for the orderly dissolution of the authority including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred. (Emphasis added)

BASED ON THE FOREGOING RECITALS AND FINDINGS AND DETERMINATIONS MADE HEREIN, the Board hereby approves the following Transition Plan for submission to the Monterey County Local Agency Formation Commission ("LAFCO") on or before December 30, 2018:

Section 1 Findings and Determinations:

1.1 Base-wide Facilities:

The Board hereby finds and determines that this Transition Plan assigns all assets and liabilities relating to FORA's policies, programs and mitigation measures of the Reuse Plan to the extent they survive the dissolution of FORA.

1.2 California Environmental Quality Act:

The Board hereby finds and determines that in adopting this Transition Plan as required by Government Code section 67700 FORA is addressing the allocation of FORA's assets, liabilities and obligations in advance of FORA's ultimate dissolution without (a) amending any contemplated or approved land uses within the former Fort Ord, (b) abandoning or altering any mitigations that were required as a part of the adoption of the Reuse Plan, (c) changing the Reuse Plan itself, or (d) avoiding the satisfaction and fulfillment of any of FORA's other commitments, pledges, or promises (all of which may be collectively referred to herein as the "FORA Program"). CEQA only applies to government activities that may cause a direct or a reasonably foreseeable indirect physical change in the environment. Public Resources Code section 21065. CEQA Guidelines, Section 15378(b) also provide that certain activities are not CEQA "Projects" including (4) The creation of government funding mechanism or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant

~~Deleted: The Board further finds that new implementing agreements negotiated with the landholding jurisdictions (or, in the absence of such an implementing agreement with a respective jurisdiction, the other provisions of this Transition Plan) will establish a fair and equitable assignment of assets and liabilities, and provides a schedule of obligations pursuant to Government Code section 67700.~~

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physical impact on the environment; and (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

This Transition Plan does not authorize any particular development, and does not itself change any of the land use requirements applicable to projects within the geographic area of the former Fort Ord. It is not a "project" and no environmental impact report or other CEQA document is required.

To the contrary and to the extent not already so contained in their general plans, this Transition Plan calls for the Cities of Marina, Seaside, Monterey and Del Rey Oaks and the County of Monterey to follow the Reuse Plan policies and programs. After FORA's ultimate dissolution, any changes to the policies and programs of the Reuse Plan or any part thereof will be made by the respective land use jurisdiction(s) only after full compliance with all applicable laws, including but not limited to CEQA.

1.3. Reuse Plan and Master Resolution:

To the extent the policies and programs of the Reuse Plan and Master Resolution survive the dissolution of FORA, all assets and liabilities relating to those policies and programs are assigned to the underlying land use jurisdiction. FORA will record the Master Resolution in its entirety not less than one (1) month prior to the anticipated dissolution of FORA. Recording the Master Resolution is not intended to create any liabilities or obligations that do not already exist but instead is intended to preserve a permanent record of the policies contained in the Master Resolution. The Master Resolution may be accessed via Exhibit B - Reference Documents attached thereto and incorporated by this reference.

1.4. Environmental Services Cooperative Agreement:

The Board hereby finds and determines that the long term stewardship obligations and related monitoring identified by the Army for its munitions removal activities are crucial to the future success of the recovery program. The Board further finds that following the dissolution of FORA the current full time staffing of the Environmental Services Cooperative Agreement ("ESCA") should be considered for retention through the anticipated termination of the ESCA in 2028 by the agreed upon successor to FORA. That successor is identified in the ESCA contract documents the City of Seaside.

1.5. Water and Wastewater:

The Board hereby finds and determines that it has made water allocations in accordance with its obligation under the EDC MOA to ensure a fair and equitable water supply to all property recipients and imposed those requirements in the Implementation Agreements. In light of the possibility of a water supply shortage that reduces the overall amount of water available for the Ord Community, MCWD staff has committed by letter dated October 29, 2018 to work with the jurisdictions to develop a plan to reduce each entity's water allocation in an equitable manner, consistent with the 1993 Army-MCWRA Agreement and the Economic Development Conveyance Agreement obligation to provide a fair and equitable water supply to all property recipients of former Fort Ord lands.

~~Deleted: and any successor(s) to FORA~~

~~Deleted: 1.3 Revenue Sharing and Financial Contribution:~~

~~The Board hereby finds and determines that the Implementation Agreements with the Cities of Marina, Seaside, Monterey, and Del Rey Oaks and the County of Monterey require that each entity to pay its fair and equitable share of the cost of the FORA Program (in accordance with the formulas expressed therein and subject to Constitutional or other limitations imposed by applicable law on such jurisdiction's funding obligations).~~

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~~The FORA Master Resolution includes a jobs/housing balance policy requiring provision of a minimum of twenty percent (20%) affordable housing on former Fort Ord lands and a target of ten percent (10%) workforce housing. The Board further finds and determines that the policies contained in the Master Resolution should be continued and enforced following FORA's dissolution. In particular, the Board finds that the prevailing wage policy established in 1996 to promote equitability and fairness to all workers on the former Fort Ord should be sustained in the completion of the former Fort Ord recovery program. The Cities of Marina, Seaside, Monterey and Del Rey Oaks and the County of Monterey are encouraged to take the necessary legal steps to adopt the Master Resolution policies by December 30, 2019; however, if they have not by then done so, staff is directed to record~~

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~~Deleted: 1.5 Funding of Habitat Protection:~~

~~The Board hereby finds and determines that regional, integrated base-wide habitat protection is best funded by the CFD Special Taxes or substantially similar base-wide replacement funding mechanisms. The Board has identified and set aside approximately 30.2% of collected CFD Special Taxes to be applied toward base-wide habitat management and finds that any replacement funding mechanism should be designed to generate similar levels of revenue for such purposes.~~

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~~Deleted: 1.7 Transportation and Transit:~~

~~The Board hereby finds and determines that implementation of the on-site Fort Ord transportation network and transit policies and programs are essential~~

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Section 2 Assignment of Assets, Liabilities, and Obligations:

2.1 Assets and Disposition Thereof:

FORA's principal assets are comprised of the following:

2.1.1 Section 115 Trust: In April 2018, the Board authorized the establishment of a Section 115 trust and funded the trust with \$5,700,000 (which is currently earning returns at an average annualized rate in excess of 2%). Funds held in the trust may be used only for retirement purposes. At or before FORA's dissolution, all funds held in the trust will be applied to the satisfaction or reduction of the unfunded pension liability under the CalPERS contract. To the extent that funds held in the trust are insufficient to fully satisfy the unfunded pension liability under the CalPERS contract, FORA's reserve funds and/or other funds available to FORA shall be applied so as to fully satisfy the unfunded pension liability under the CalPERS contract (and thereby assure that FORA's member jurisdictions and are not exposed to liability for any unfunded pension liability relating to the CalPERS contract following FORA's dissolution).

2.1.2 Retirement Reserve Funds: Although not irrevocably committed to use for retirement purposes and available to meet FORA's other needs, FORA holds funds identified for retirement reserves in the current approximate aggregate amount of \$1,000,000. Those funds shall be reviewed in 2020, allocations shall be made, and the funds shall be applied or distributed at or before FORA's dissolution in accordance with the approved FORA budget for that year.

2.1.3 Litigation Reserve Funds: Although not irrevocably committed to use for litigation or indemnification purposes, FORA has transmitted funds identified for indemnification of LAFCO in the aggregate amount of \$500,000. Terms and conditions for these funds are provided for in the FORA-LAFCO Indemnification Agreement executed December 18, 2019,

2.1.4 Habitat Funds: It is estimated based on the current rate of collections and earnings that by June 30, 2020 FORA will hold approximately \$16,601,542 in funds dedicated to base-wide habitat management. FORA will transfer the remaining funds to local agencies to use specifically for habitat management as follows:

- 13,270,377 (80%) to Monterey County
- \$1,222,026 (7%) to the City of Seaside
- 1,316,015 8% to the City of Marina
- \$45,053 to the City of Monterey (.27%)
- \$748,071 to the City of Del Rey Oaks (5%)

2.1.5 Capital Improvement Funds: Except for those CFD Special Taxes specifically identified for the habitat conservation plan, all CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall first be directed to completing in progress construction projects (such as South Boundary Road) as identified in FORA's final year CIP. Any CFD Special Taxes collected and remaining unexpended immediately prior to FORA's dissolution shall next be directed to completing other projects as identified in FORA's final year CIP. These capital improvement funds shall be transferred to the jurisdiction assigned responsibility for completing construction of the respective project, which shall be the jurisdiction in which the majority of the project is located if that jurisdiction

Deleted: any successor(s) to FORA

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Deleted: Although not irrevocably committed to use for litigation or indemnification purposes and available to meet FORA's other needs, FORA holds funds identified for indemnification of LAFCO in the current approximate aggregate amount of \$300,000. Those funds are intended to cover the cost of any litigation or indemnification obligation now or still pending immediately before FORA's dissolution. In the event that as of immediately prior to FORA's dissolution no such litigation or indemnity obligation is pending, the unexpended balance of such reserves shall be applied to capital improvement program projects in accordance with the Final 2020 Capital Improvement Program and/or distributed in accordance with Transition Plan Implementing Agreements. If as of immediately prior to FORA's dissolution any litigation or indemnity obligation is pending against FORA, the unexpended balance of such reserves shall be distributed to the County of Monterey, as escrow holder, in accordance with Section 4.2 hereinbelow and managed in accordance with Section 4.3 hereinbelow. ¶

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Deleted: All such funds accumulated before FORA's dissolution shall be transferred in the following order of priority. If before FORA's dissolution a Habitat Conservation Plan Cooperative joint powers authority (the "HCP Cooperative") has been established, all of the habitat management 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 base-wide Habitat Conservation Plan for Fort Ord being administered by the HCP Cooperative. If no HCP Cooperative is then in existence, but a joint powers authority has been formed for the management of Habitat Management Areas within the former Fort Ord, then a portion of the habitat management funds held by FORA immediately prior to FORA's dissolution shall be transferred to the joint powers authority for use in connection with the management of Habitat Management Areas within the former Fort Ord and the remainder in a program for incidental take permits for future development. If no HCP Cooperative or other joint powers authority for the regional management of Habitat Management Areas within the former Fort Ord is in existence prior to September 2019, then FORA shall prepare a program addressing habitat management areas (HMA) on the [2]

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has an executed Transition Plan Implementing Agreement and fully executed Memorandum of Understanding between FORA and the agency regarding the project.

2.1.6 Other Funds: Except as otherwise specifically identified in this Transition Plan, all funds in FORA's other accounts, petty cash, un-deposited checks, and other cash equivalents held by FORA immediately prior to FORA's dissolution shall be applied and distributed according to Section 2.1.5 for funds generated by the CFD Special Taxes, land sales revenues and/or property tax revenues. Except as otherwise specifically provided herein, funds related to the general administration of FORA, such as insurance refunds or other general fund revenues remaining unexpended or unallocated immediately prior to FORA's dissolution, shall be used first to address any unfunded administrative liabilities and only after the full satisfaction of such administrative liabilities shall any remaining balance of such funds be applied and distributed according to Section 2.1.5.

2.1.7 ESCA Reimbursement: An estimated approximately \$6,800,000 in potential reimbursement is available for work conducted under the ESCA. All rights under the ESCA are assigned to Seaside effective as of FORA's dissolution, provided, however, that the assignment shall be subject to approval by the Army and the state and federal regulators (collectively "the regulators"). In the event that the assignment is not approved by the Army or the regulators, then whichever jurisdiction(s) is/are acceptable to the Army and the regulators and acceptable to the Army-approved jurisdiction shall become the successor(s) to FORA for the purposes of the ESCA and all rights under the ESCA shall be deemed assigned to such jurisdiction(s). The ESCA requires that such successor jurisdiction be either the County of Monterey, City of Marina or a joint powers agency.

2.1.8 Miscellaneous Personal Property: Any of FORA's office furniture and equipment, supplies, and other personal property remaining as of FORA's dissolution shall be transferred to the County of Monterey in trust for prompt sale or disposition in accordance with any applicable rules or requirements for the transfer of surplus property by a California public entity. Any proceeds from such transfer, remaining after reimbursement to the County for its administrative costs, shall first be directed to any shortfall in funds available to satisfy liabilities or obligations unrelated to projects described in FORA's final year CIP. After the full satisfaction of all such liabilities and obligations any remaining proceeds shall next be directed toward projects described in FORA's final year CIP as outlined in Paragraph 2.1.5 hereinabove.

2.1.9 Real Property: FORA is obligated to cause certain former Fort Ord property to be transferred to the underlying land use jurisdictions in accordance with the federal "Pryor Amendment" and as authorized by Section 67678(a) of the FORA Act. FORA has nominated the City of Seaside as its Successor to the Local Redevelopment Authority and as such, once recognized by the Army, will assume this role.

2.1.10 Insurance Policies: FORA is insured under those policies of insurance referenced in Exhibit A attached hereto and incorporated by this reference. Except to the extent specifically provided to the contrary in this Transition Plan or by the terms of the insurance policy itself, FORA shall not keep any of such policies of insurance in force beyond the date of their expiration.

With respect to the Pollution Legal Liability ("PLL") policy (Item 30 in Exhibit A), FORA currently holds approximately \$267,000 in a separately identified account for the PLL insurance self-insured retention (SIR). These funds shall be utilized to defray the

~~Deleted: . If there is no Transition Plan Implementing Agreement, these funds shall be redistributed to those jurisdictions with Transition Plan Implementing Agreements in proportion to the priorities of each project in the final year CIP unless provided otherwise in a Transition Plan Implementing Agreement. ¶~~

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~~Deleted: which shall be deemed the successor to FORA for the purposes of the ESCA;~~

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~~Deleted: FORA is obligated to cause certain former Fort Ord property to be transferred to the underlying land use jurisdictions in accordance with the federal "Pryor Amendment" and as authorized by Section 67678(a) of the FORA Act. Additionally, FORA is entitled to receive certain easements to enable implementation of the Reuse Plan. See item 127 in Exhibit A attached hereto and incorporated by this reference. As of the anticipated date of dissolution of FORA, not all real property interests will have transferred. Upon FORA's dissolution and the repeal of the FORA Act as of January 2021, the principal local public agent for acquisition, disposition and sale of real property transferred from the Army will need to be re-established through state legislation and/or federal designation and assignment of contractual rights. In particular, the landfill parcel currently located within the unincorporated portion of the County of Monterey but within the sphere of influence of the City of Marina will not transfer until sometime after 2022. Currently, the County is obligated to take the landfill parcel. See item 17 in Exhibit A attached hereto and incorporated by this reference. FORA staff shall seek all necessary legislation and approvals from the state and federal governments to enable the landfill parcel to be directly transferred to the County of Monterey or its designee. Necessary legislation and approvals from the state and federal governments for direct transfer of the landfill parcel may take a substantial amount of time to receive. The County is therefore requested to identify any designee recipient of the landfill parcel at least twelve (12) months prior to FORA dissolution in order to seek and receive such approvals and/or legislation for any designee recipient. If the County fails to timely specify a designee to receive the landfill parcel, the Army shall transfer the landfill parcel directly to the County of Monterey. ¶~~

~~¶ Additionally, there are parcels within the City of Seaside which will not transfer prior to 2020 due to a change in the State of California clean up requirements for residential use. FORA staff is directed to work with the Army and the City of Seaside to bring resolution to potential transfer issues prior to June 30, 2020. In the event that no resolution(s) are reached, FORA shall seek all ... [3]~~

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administrative costs for the successor to FORA as the First Named Insured and to defray the costs in the event of a claim requiring application of a self-insured retention amount. The County agreed to negotiate to become FORA's successor as a First Named Insured (Monterey County Board Order December 2, 2014) and to take on the First Named Insured obligations and receive the FORA self-insured retention (SIR) fund. In the event, the County does not wish to become the First Named Insured, the PLL policy, Endorsement 15 provides for a FORA designated successor. Any successor that becomes the First Named Insured shall be entitled to receive the \$267,000 SIR funds. In the event, the SIR is not utilized for any claims made, the amount in the fund shall be returned, after any administrative deduction for contract management by the successor, to the named insureds in proportion to the amounts of their insurance coverages

2.2 Liabilities and Obligations and Assignment Thereof:

FORA's principal liabilities and obligations include the following:

2.2.1 Unfunded Pension Liability under CalPERS Contract: Based on the latest available communication from CalPERS, FORA's unfunded terminated agency liability is anticipated to range from \$7,793,230 to \$9,333,172.¹ FORA staff shall take such action as is necessary to cause CalPERS to issue an actuarial analysis of FORA's unfunded terminated agency liability not less than six (6) months prior to the anticipated dissolution of FORA. By this Transition Plan FORA commits that if there is a shortfall between the amount of the actuarial analysis and the amounts in the Section 115 Trust to retire all the liability, FORA shall expend and encumber such additional funds as are necessary to fully discharge this liability, including without limitation by applying monies on hand in the FORA accounts and/or encumbering future property tax revenues, to the extent legally permissible, pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of its recognized debts have been retired. The County shall be entitled to recover its reasonable costs of administering and distributing said property tax revenues. CalPERS is able to enter into a payment plan not to exceed five (5) years to satisfy such liability.

2.2.2 Habitat Funds: See Section 2.1.4 hereinabove.

2.2.3 Capital Improvement Funds: See discussion in Section 2.1.5 hereinabove.

2.2.4 ESCA Reimbursement: See Section 2.1.7 hereinabove.

2.2.5 Building Removal: In the absence of a consolidated building removal program and/or legislative solution to the issue of blight, any building removal not required under the CIP shall be addressed, after FORA's dissolution, if at all, by the jurisdictions in which the remaining abandoned buildings are located after compliance with all applicable laws.

2.2.6 Water/Wastewater: This Transition Plan hereby assigns to MCWD, effective as of the dissolution of FORA, FORA's rights of enforcement under the Implementation Agreements, to the extent they survive post-dissolution, regarding water allocations. In the event that any jurisdiction's approved developments exceed the jurisdiction's approved water allocation, MCWD may decline to issue any further water connection permits until the offending jurisdiction brings its water allocation into compliance or MCWD develops or obtains access to an augmented water supply sufficient to cover any excess. In the event

¹ Note, these amounts do not include approximately \$1.16M in payments not yet posted to the CalPERS numbers and will be refined upon receiving the CalPERS final actuarial analysis.

~~Deleted: To the extent that jurisdictions wish to jointly address regional blight, revenue sharing may be addressed in Transition Plan Implementing Agreements but no jurisdiction shall be compelled to participate in such revenue sharing without its consent.~~

~~Deleted: 2.2.6 Transportation and Transit: The Board finds that as of 2018, there are 19 transportation and transit projects identified in the capital improvement program. These projects are listed in Document 120 in Exhibit A attached hereto and incorporated by this reference. The City of Marina, County of Monterey, Transportation Agency of Monterey County (TAMC) and Monterey Salinas Transit (MST) are the identified lead agencies for 13 of 19 projects. Of those 13, FORA has reimbursement agreements in place with lead agencies City of Marina and County of Monterey. The Board identifies these Agreements (Documents 114 and 115) to be addressed in the new Transition Plan Implementing Agreements as to how revenue generation and revenue sharing will occur. Those Reimbursement Agreements shall terminate on June 30, 2020, unless otherwise addressed in the Transition Plan Implementing Agreements. The new Transition Implementing Agreements should also address contributions or mechanisms to lead agencies TAMC and MST to replace revenues generated by the expiring CFD Special Tax for their lead agency projects. With respect to the projects for which FORA is the lead agency and which no jurisdiction has addressed in its Transition Plan Implementing Agreement, FORA working in conjunction with TAMC shall prepare a regional traffic modeling analysis showing the inclusion of the FORA lead agency on-site roads as compared to the removal of the FORA lead agency roads on the remaining Fort Ord roads. In particular, off-site, regional and on-site Fort Ord local roads within or adjacent to the City of Marina, City of Seaside, City of Del Rey Oaks, and County of Monterey shall be analyzed to ascertain the impact on the Ord Community, including without limitation, California State University Monterey Bay ("CSUMB"), University of California Monterey Bay Science and Technology ("UC MBEST"), Monterey Peninsula College ("MPC"), the Veteran's Cemetery, the Army and the National Monument, and the regional network, so as to inform the last year CIP. The schedule for implementing transportation and transit projects shall be determined by the lead agency in consultation with the jurisdictions who are collecting revenue for the project, but nothing in this Transition Plan changes the authority or the discretion of a lead agency to determine whether, how or when to fund and construct any particular road or transit project. All future projects will be subject to compliance with all applicable law as it exists at the time of project approval and implementation. Any required project~~

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of a ground water shortage, any resulting reductions in the amount of water supplies shall be applied fairly and equitably across all jurisdictions. MCWD and the jurisdictions shall work together as to how to apply a fair and equitable reduction of water supply amongst the underlying land holding jurisdictions. Nothing in this assignment creates any new obligation to utilize groundwater to meet the water service needs of the jurisdictions, but neither does this assignment reduce or eliminate any water service obligation already established by federal or state law or contract. FORA's 2018-19 CIP projects that \$17,098,686 will remain to be funded for base-wide water augmentation improvements after June 30, 2020. In its October 29, 2018 letter MCWD has confirmed its commitment to working with the jurisdictions on water supply needs in a fair and equitable manner. Except as set forth in the preceding sentence or in a Transition Plan Implementing Agreement, jurisdictions may alter their relative water allocations, as identified in the Implementation Agreements² only by written agreement with other jurisdictions. To the extent possible, the jurisdictions may also agree among themselves as to what fair and equitable reduction in water allocation would be applied in the instance of a mandated water shortage in a written agreement and with concurrence of MCWD. As part of the MCWD ongoing commitment to work with the jurisdictions they are requested to honor any alternate water allocations as agreed between two or more jurisdictions as though the new agreed upon allocation had been set forth in the Implementation Agreements.

2.2.8. Late Discovered Items: To the extent that any contractual obligation is discovered during the LAFCO review and/or implementation of this Transition Plan or a Transition Plan Implementing Agreement, those contractual obligations shall be assigned as follows: If the obligation is related to the use of real property, it shall be assigned to the underlying land use jurisdiction unless otherwise provided in a Transition Plan Implementing Agreement approved by FORA. If the liability or obligation is unrelated to the use of real property, either FORA or LAFCO shall notify the appropriate insuring entity or the County, and/or shall expend and encumber such additional funds as are necessary to fully discharge any liability, including without limitation by applying monies on hand in the FORA accounts and/or encumbering future property tax revenues pursuant to Health and Safety Code section 33492.71. The County shall continue to accrue such property tax revenues in FORA's account until all of its recognized debts have been retired.

Section 3 Transition Plan Implementation:

3.1 Transition Plan Implementing Agreements:

In order to clarify roles and responsibilities post-FORA, the Board requests that each affected entity and/or land holding member jurisdiction enter into a Transition Plan Implementing Agreement.

3.2 Escrow:

In the event that as of immediately prior to FORA's dissolution, there are litigation or indemnity obligations pending, the unexpended balance of the litigation reserves set forth in Section 2.1.3 shall fund an escrow account for the LAFCO Indemnification Agreement for the purpose of paying outstanding legal costs, court judgments, settlements, or other litigation costs that are not covered by insurance and are unable to be paid by FORA due to its dissolution. The initial escrow account

² In the event that the water allocations are found to be unenforceable or terminate upon the expiration of FORA, water services shall be in accordance with existing federal and state laws and contracts.

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~~Deleted: 2.2.8 Other Contracts and Agreements:~~
Attached as Exhibit A to this Transition Plan are references to a compilation of contracts and other documents and/or commitments relevant to the FORA Program and the dissolution of FORA. Some of these contracts, documents or commitments may be completed, revised, replaced, or superseded prior to the dissolution of FORA and additional contracts, documents or commitments may be entered into before FORA dissolves. FORA staff shall endeavor to keep Exhibit A current and shall provide quarterly updates to the Board regarding any changes. FORA's outstanding obligations reflected on Exhibit A are hereby assigned as set forth in Exhibit A.

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~~Deleted: Section 3 Insurance:~~

~~3.1 Transition Plan Insurance:~~

FORA staff is directed to explore the availability and cost of a policy of insurance providing coverage for litigation that may arise against FORA, FORA's member jurisdictions, and/or LAFCO in connection with this Transition Plan, the assignments made pursuant hereto, the dissolution of FORA, or the designation of one or more entities as successor(s) to FORA and to report the results of such investigation to the Board no later than March 2019. The Board reserves the right to obtain such an insurance policy if it provides appropriate coverage and is not cost prohibitive in the judgment of the Board.

~~3.2 Tail Coverage:~~

FORA staff is directed to explore the availability and cost of an endorsement, rider, or policy of general liability insurance extending the reporting period and coverage of such insurance for the benefit of FORA's member jurisdictions and any successor(s) to FORA and to report the results of such investigation to the Board no later than March 2019. The Board reserves the right to obtain such an insurance policy if it provides appropriate coverage and is not cost prohibitive in the judgment of the Board.

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~~Deleted:~~ In order to continue to foster regional cooperation and completion of the FORA program, the Board requests that each affected entity and/or land holding member jurisdiction enter into a Transition Plan Implementing Agreement addressing how the respective entity or jurisdiction will generate revenues to meet its obligations as assigned in this Transition Plan or as agreed upon in the Transition Plan Implementing Agreements and include revenue sharing provisions between those that will generate revenues and those implementing CIP projects, and such other [S]

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holder shall be the County of Monterey, who shall be entitled to reimbursement for reasonable administrative costs of such administration. The escrow account shall be managed by a panel of not less than five (5) representatives, one from each land holding jurisdiction, and all approved by a majority of the member jurisdictions. The escrow account shall be maintained for three (3) years, after which any remaining money in the account shall be used to pay for a CIP project expense, including but not limited to habitat management, as determined by the panel.

3.3 Litigation Management:

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In the absence of either (a) FORA approved Transition Plan Implementing Agreements entered into with each of the land holding jurisdictions identifying a successor or successors in interest to FORA relative to post FORA litigation or (b) an agreement entered into by all of the land holding jurisdictions that post FORA litigation may be managed by any one or more, but less than all, of the land holding jurisdictions, any post FORA litigation shall be managed by any land use jurisdiction that is an identified real party(ies) in interest for such pending litigation.

3.4 LAFCO Review:

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If LAFCO finds that this Transition Plan does not provide adequate guidance to LAFCO regarding assignment of FORA's assets and liabilities, designation of responsible successor agencies, or identification of remaining obligations in keeping with the requirements of Government Code section 67700, the Board requests that LAFCO return the Transition Plan with LAFCO's identified deficiencies at the earliest possible time (to enable possible further consideration and action by the Board).

4.5 Reserved Right of Modification:

The Board hereby reserves its right to augment, clarify or modify this Transition Plan as law, facts, circumstances, or agreements may require.

NOW THEREFORE, THE BOARD HEREBY RESOLVES AS FOLLOWS:

1. As outlined above, this Resolution and its provisions constitute the Transition Plan required by Government Code section 67700(b); and shall be updated by December 30, 2019; and
2. The Board hereby makes all assignments in accordance with Government Code section 67700(b);
3. The Board hereby finds that as adopted herein, the Transition Plan is not a project subject to CEQA; and
4. The Board directs the Executive Officer to submit this Transition Plan to LAFCO and execute all LAFCO required documents and pay all LAFCO required processing fees; and
5. The Board further directs staff to provide regular monthly progress reports on the implementation of this Transition Plan, including without limitation, bringing forth future implementing actions, status of Transition Plan Implementing Agreements, any LAFCO information or requests, and any subsequent information that might affect this Transition Plan.

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Upon motion by Board member ---- seconded by Board member ---- the foregoing Resolution was passed on this ____ day of April, 2020, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

ATTEST:

Chair FORA Board

Joshua Metz, Clerk

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GLOSSARY

“Army” means the United States Army.

“Board” means the governing board of the Fort Ord Reuse Authority, as specified in Government Code section 67660.

“CalPERS” means the California Public Employees’ Retirement System.

“CEQA” means the California Environmental Quality Act, as amended to date (Public Resources Code section 21000 and following).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, commonly known as Superfund, as amended to date (42 U.S. Code Chapter 103 and following).

“CFD” means a Community Facilities District within the former Fort Ord formed pursuant to the Mello-Roos Community Facilities Act of 1982, as amended to date (Government Code section 53321 and following).

“CFD Special Taxes” means the special taxes collected through the Community Facilities District on properties to be developed within the former Fort Ord.

“CIP” means a Capital Improvement Program adopted by the Fort Ord Reuse Authority.

“EDC MOA” means the Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands, which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder.

“EDC Property” means the real property transferred pursuant to the Memorandum of Agreement for the No-Cost Economic Development Conveyance of former Fort Ord Lands, which was recorded on June 23, 2000 at Series No. 2000040124 in the Official Records of the Monterey County Recorder.

“ESCA” means the Environmental Services Cooperative Agreement entered into between the United States Army and the Fort Ord Reuse Authority, as amended to date.

“FORA Act” means, collectively, SB 899 and AB 1600 adopted in 1994 and amended in 2012, as codified at (i) Government Code Title 7.85, Chapters 1 through 7, commencing with Section 67650, and (ii) selected provisions of the California Redevelopment Law, including Health and Safety Code Sections 33492 *et seq.* and 33492.70 *et seq.*

“FORA” means the Fort Ord Reuse Authority.

“FORA Program” has the meaning given in Section 1.2.

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“FORG” means the Fort Ord Reuse Group organized by local governments and potential property recipients to initiate recovery planning regarding the impending downsizing/closure of the former Fort Ord.

“Fort Ord,” including references to the territory or area of Fort Ord or the former Fort Ord, means the geographical area described in the document entitled “Description of the Fort Ord Military Reservation Including Portion of the Monterey City Lands Tract No. 1, the Saucito, Laguna Seca, El Chamisal, El Toro and Noche Buena Ranchos, the James Bardin Partition of 1880 and Townships 14 South, Ranges 1 and 2 East and Townships 15 South, Ranges 2 and 3 East, M.D.B. and M. Monterey County, California,” prepared by Bestor Engineers, Inc., and delivered to the Sacramento District Corps of Engineers on April 11, 1994 or the military base formerly located on such land, as the context requires.

“HCP Cooperative” means a joint powers authority contemplated to be established to administer a habitat conservation program at the former Fort Ord.

“Implementation Agreements” means agreements entered into beginning in 2001 between the Fort Ord Reuse Authority on the one hand and the County of Monterey and each city receiving or anticipated to receive a portion of the EDC Property on the other hand, as such agreements may have been amended to date.

“LAFCO” means the Monterey County Local Agency Formation Commission.

“Local Redevelopment Authority” means any authority or instrumentality established by State or local government and recognized by the Secretary of Defense through its Office of Economic Adjustment (OEA) as the entity responsible for developing the reuse plan or for directing implementation of the reuse plan.

“Master Resolution” means the collection of administrative rules and regulations adopted by FORA under the Authority Act, as amended.

“MCWD” means the Marina Coast Water District.

“MCWRA” means the Monterey County Water Resources Agency.

“MRWPCA” means the Monterey Regional Water Pollution Control Agency.

“Reuse Plan” means the Fort Ord Base Reuse Plan and its accompanying environmental impact report adopted and certified by the FORA Board in June 1997 to guide the reuse of the former Fort Ord, all as amended from time to time.

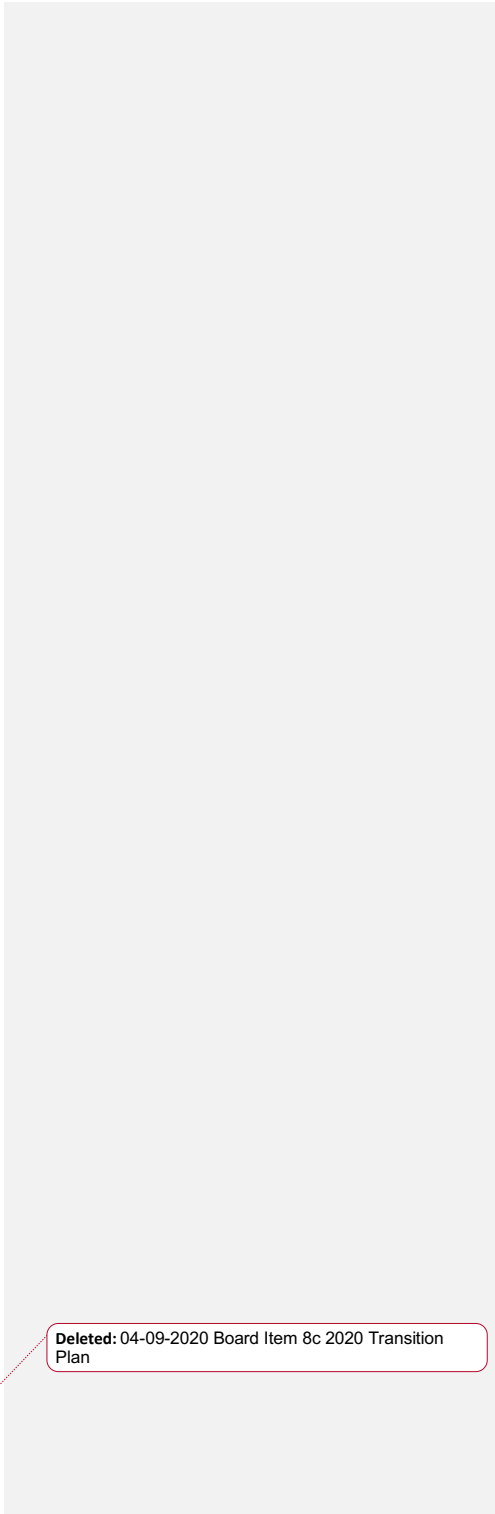
“Strategy Report” means the June 1992 report prepared by the Fort Ord Community Task Force in order to develop recommendations for moving forward with a recovery effort relating to the closure of the former Fort Ord.

“Task Force” means the Fort Ord Community Task Force formed in order to develop recommendations for moving forward with a recovery effort relating to the closure of the former Fort Ord.

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“Transition Plan Implementing Agreements” means the agreements contemplated to be entered into with the land use jurisdictions to implement the provisions of the Transition Plan.



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FORT ORD REUSE AUTHORITY BOARD REPORT		
BUSINESS ITEMS		
Subject:	Mechanics of Habitat Funds Distribution	
Meeting Date:	April 17, 2020	ACTION
Agenda Number:	6d	

RECOMMENDATION:

- i. Receive report on mechanics of habitat funds distributions.
- ii. Approve mechanism

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority (“FORA”) Board is directing staff to distribute Habitat Set-aside Funds collected under the FORA Community Facilities District (“CFD”) to land use jurisdictions based on relative acres of land needing management. Authority Counsel provided a Memorandum at the April 9 meeting describing three potential legal mechanism for conveying these funds (**Attachment A**). The three options include:

1. Transfer the CFD Funds to a Joint Powers Authority (“JPA”).
2. Enter into a Joint Community Facilities Agreement (“JCFA”) with each Recipient of CFD Funds (**Attachment B**).
3. Transfer CFD Funds Pursuant to Another Form of Agreement.

The attached memorandum describes these options in more detail. The attached DRAFT Joint Facilities Agreement is provided as a starting point for finalizing terms of such an agreement. The Board is asked to direct which option staff and Counsel should pursue.

FISCAL IMPACT:

Reviewed by FORA Controller 

COORDINATION:

Authority Counsel.

ATTACHMENTS:

- A. KAGLAW CFD Funds Transferring Options Memo, April 3, 2020
- B. DRAFT Joint Community Facilities Agreement, April 8, 2020

Prepared by & Approved by 
 Joshua Metz

MEMORANDUM

Kennedy, Archer & Giffen
A Professional Corporation

DATE: April 3, 2020

TO: FORA Board of Directors

FROM: Authority Counsel's office – David Willoughby

RE: Options for Transferring CFD Funds

Over the course of meeting with the Habitat Working Group, several options regarding how the Community Facilities District (“CFD”) funds that have been collected by FORA and earmarked for habitat management and related expenses might be distributed before FORA’s sunset were identified. Although there are a number of possible variations to each potential approach, the options can be grouped into the following three main categories.

1. Transfer the CFD Funds to a Joint Powers Authority (“JPA”). The CFD funds were collected pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code sections 53311 et seq.). Section 53316.2(d)(1) of that Act allows an existing CFD to enter into a joint exercise of powers agreement with a JPA when necessary to allow an orderly transition of governmental facilities and finances, whether that reorganization occurs pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code sections 56000 et seq.) or other law governing the reorganization of any agency that is a party to the JPA agreement (such as the FORA Act). Section 53316.6 specifically requires the agreement to provide for the allocation and distribution of the proceeds of any special tax levy among the parties to the agreement. Under this approach, FORA would need to initially be a party to the JPA agreement but could withdraw at or before FORA’s dissolution. Because this approach is specifically authorized by the same legislation pursuant to which the CFD funds were collected and because entry into an agreement with and transfer of funds to a JPA clearly fit within the purposes contemplated by the Act, this approach would be the least vulnerable to legal challenge. However, the approach would require the funds to be transferred as a lump sum and is not easily amenable to dividing the CFD funds among multiple recipients, some or all of which might not be members of a JPA formed before FORA’s sunset.

2. Enter into a Joint Community Facilities Agreement (“JCFA”) with each Recipient of CFD Funds. Section 53316.2(d)(1) of the Mello-Roos Act allows an existing CFD to enter into a JCFA under the same circumstances that would authorize entry into a joint exercise of powers agreement. Under this approach, FORA would need to initially be a party to the JCFA but could withdraw at or before FORA’s dissolution. Although this approach is specifically authorized by the same legislation pursuant to which the CFD funds were collected, it is less of a square fit than is approach 1 outlined above. Ordinarily, JCFA’s are entered into at the time of an entity formation or before a bond issuance. However, the wording of the statute appears to be broad enough to allow the use of a JCFA in connection with a reorganization (such as the dissolution of FORA). For that reason, this approach should not entail any high risk of litigation.

3. Transfer CFD Funds Pursuant to Another Form of Agreement. A review of the Mello-Roos Act and related regulations has not revealed any express prohibition against transferring CFD funds via another form of agreement entered into prior to FORA's sunset. Accordingly, a general agreement to the effect that FORA is providing each recipient with a share of the CFD funds in exchange for the recipient's commitment to use the funds only for the purposes for which they were collected might suffice. Using such an approach is a bit of a venture into uncharted territory. Although we are unaware of any explicit prohibition against taking such a course of action, we can't be sure that we would land in a safe harbor. However, a general agreement along the lines outlined above could be considerably more simple than a JCFA.

JOINT COMMUNITY FACILITIES AGREEMENT

This Joint Community Facilities Agreement (this “**Agreement**”) is made by and between the Fort Ord Reuse Authority (“**FORA**”) and the [*select City/County*] of _____, California (the “**Participating Agency**”) with reference to the following facts and objectives.

A. In 2002, FORA established the Fort Ord Reuse Authority Basewide Community Facilities District (the “**CFD**”), pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 *et seq.*), as amended (the “**Act**”) for the purpose of collecting special taxes under the Act to finance, among other things, the construction of certain roadway improvements, transit improvements, water and storm drain improvements, other public facilities, and for costs related to habitat management within the CFD or otherwise incident to or required by reason of the development of property within or adjacent to the CFD, all as more particularly described in that Notice of Special Tax Lien recorded on May 22, 2002 as Document No. 2002048932 in the office of the County Recorder of the County of Monterey, California. FORA subsequently earmarked a portion of the special taxes so collected to finance the services described in Exhibit A attached hereto and incorporated herein by this reference (the “**Habitat-Related Services**”), resulting in accumulated funds having an approximate aggregate current unexpended balance of \$ _____ (the “**Habitat Funds**”).

B. FORA is scheduled to terminate on June 30, 2020 (“**FORA’s Termination Date**”) in accordance with the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.*), as amended. This Agreement is necessary to provide for the orderly transition of governmental finances in connection with the termination of FORA. Prior to FORA’s Termination Date, FORA plans to allocate, divide, and distribute to each of the Participating Agency and certain other public entities having habitat management responsibilities within the former Fort Ord and which enter into a joint community facilities agreement with FORA a portion of the then unexpended Habitat Funds in accordance with the formula set forth in Exhibit B attached hereto and incorporated herein by this reference. The Participating Agency’s allocated portion of such unexpended Habitat Funds may be referred to herein as the “**Allocated Funds**.”

C. The parties hereto expect that the Participating Agency will provide some of the Habitat-Related Services, particularly those that pertain to real property within the Participating Agency’s territorial limits (the “**Covered Services**”).

D. FORA and the Participating Agency now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the use of that portion of the Habitat Funds allocated to the Participating Agency for its use in connection with the provision of the Covered Services, all as more particularly set forth below.

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:

Section 1. Delivery and Segregation of Allocated Funds. Prior to FORA's Termination Date, FORA shall deliver the Allocated Funds to the Participating Agency. The Allocated Funds, together with any earnings thereon, shall be held by the Participating Agency in an account separate and apart from any other account maintained by the Participating Agency (the "**Allocated Funds Account**"). Funds in the Allocated Funds Account shall be used exclusively for payment of the costs of the Covered Services. Other than by providing the Allocated Funds, FORA shall have no obligation to pay for any of the costs of the Covered Services. It will be the responsibility of the Participating Agency to pay, or arrange for the payment of, any costs of the Covered Services in excess of the funds available in the Allocated Funds Account.

Section 2. Mitigation Monitoring and Reporting. Following FORA's Termination Date, the Participating Agency shall be solely responsible for carrying out any mitigation monitoring and reporting or other similar requirements associated with the Covered Services.

Section 3. Limited Obligations. All obligations of FORA under and pursuant to this Agreement shall be limited to the amounts it provides for deposit into the Allocated Funds Account. No member of FORA's board of directors or any officer, employee, representative, or agent of FORA shall in any event be personally liable hereunder.

Section 4. Term. The term of this Agreement shall begin on the full signing of this Agreement by the parties and continue until FORA's Termination Date; provided, however, that the Participating Agency's obligations hereunder shall remain in full force and effect until the exhaustion of all amounts in the Allocated Funds Account by proper expenditure thereof by the Participating Agency to pay the costs of the Covered Services. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

Section 5. Agreement of Public Benefit. By their respective approvals of this Agreement, FORA and the Participating Agency have each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in assuring the provision of financing for a portion of the costs of the Covered Services in furtherance of the purposes of the Act.

Section 6. Partial Invalidity. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto

Section 8. Third-Party Beneficiaries. In order to provide a mechanism for enforcement of the Participating Agency's obligations under this Agreement after FORA's

Termination Date, the County of Monterey and the Cities of Del Rey Oaks, Marina, Monterey and Seaside [*strike name corresponding to the Participating Agency*] are each hereby made an intended third-party beneficiary of this Agreement.

Section 9. Amendment. This Agreement may be amended at any time but only in writing signed by each party hereto.

Section 10. Cooperation. Each of the parties agrees to use reasonable and good faith efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with any and all other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement including signing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to carry out the intent and purpose of this Agreement.

Section 11. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement.

Section 12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in such State.

Section 13. Interpretation. This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

Section 14. Execution in Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. Faxed, photocopied or e-mailed signatures shall be deemed originals for all purposes. This Agreement shall be effective as to each party when that party has executed and delivered a counterpart hereof.

Section 15. Authority. Each party represents and warrants to the other that it is authorized to execute, deliver and perform this Agreement, and the terms and conditions hereof are valid and binding obligations of the party making this representation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written beneath their respective signatures below.

FORT ORD REUSE AUTHORITY

_____ **OF** _____

By: _____
Josh Metz, Executive Officer

By: _____
_____, _____

Dated: _____, 2020

Dated: _____, 2020

ATTEST:

ATTEST:

Clerk of the Board

Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Authority Counsel

[City Attorney/County Counsel]

EXHIBIT A

DESCRIPTION OF THE HABITAT-RELATED SERVICES

Habitat Management within or in the vicinity of the CFD, or otherwise incident to or required by reason of development of the property within and adjacent to the CFD.

For the purposes of this Agreement, “**Habitat Management**” includes, without limitation, all work and activities to study and review environmental impacts and mitigation measures, as well as legal and overhead costs pertaining thereto.

EXHIBIT B

FORMULA FOR ALLOCATION OF UNEXPENDED HABITAT FUNDS

FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEMS

Subject:	Federal Wildlife Agency Notification	
Meeting Date:	April 17, 2020	ACTION
Agenda Number:	6e	

RECOMMENDATION:

Authorize Executive Officer to transmit letter to United States Fish & Wildlife Service (“USFWS”) regarding current habitat conservation directions.

BACKGROUND/DISCUSSION:

On March 31, the USFWS contacted the FORA Executive Officer with a request for formal notification about the new habitat conservation directions being pursued by FORA and its member agencies. FORA Staff and consultants drafted the attached letter describing:

- a) Drivers of HCP related policy changes.
- b) Deliberations/considerations of the Habitat Working Group (“HWG”).
- c) HWG Recommendations to FORA Board including:
 - a. Lack of collective interest in forming a habitat related Join Powers Authority (“JPA”) Prior to FORA June 30, 2020 sunset.
 - b. Distribution of CFD Habitat Set-aside funds to individual land use jurisdictions according to projected habitat management needs (based on total acres to be managed under the Habitat Management Plan (“HMP”).
- d) Board actions to continue pursuing EIR Certification.

The letter includes a request for USFWS input on potential paths forward under Federal Endangered Species Act and National Environmental Policy Act regulations, with focus on the implications of:

1. officially withdrawing its ITP application and whether it could be amended by a different applicant at a later date.
2. not completing the EIS at this time and whether NEPA compliance could be continued by a different applicant at a later date; and
3. whether there are other options available that could support potential future permitting efforts.

COORDINATION:

Authority Counsel. Denise Duffy & Associates. ICF International.

ATTACHMENTS:

- A. DRAFT Federal Wildlife Agency Notification Letter

Prepared & Approved by


Joshua Metz

April 17, 2020

Leilani Takano
Assistant Field Supervisor, North Coast Division
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

Subject: Status of the Draft Fort Ord Multi-Species Habitat Conservation Plan

Dear Ms. Takano,

The purpose of this letter is to inform you of the status of the Draft Fort Ord Multi-Species Habitat Conservation Plan (Draft HCP), which was prepared by the Fort Ord Reuse Authority (FORA) in support of its Incidental Take Permit (ITP) application submitted to the U.S. Fish and Wildlife Service (USFWS), and request input from the USFWS on the path forward under Federal Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA) regulations.

As you are aware, a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was prepared for the Draft HCP in accordance with NEPA and California Environmental Quality Act (CEQA) and circulated for public review from November 1, 2019 to December 16, 2019. Several critical issues were identified prior to, during, and after the public review period that are affecting the successful completion of this important, regional habitat conservation project. Specifically, concerns have been raised regarding:

- the high cost and feasibility of funding the habitat management requirements as identified in the Draft HCP;
- the feasibility of being able to complete the HCP and NEPA/CEQA process before FORA's sunset date of June 30, 2020;
- California Department of Fish and Wildlife's uncertainty as to the Bureau of Land Management's future role in providing mitigation lands (without the use of Federal lands as mitigation, impacts to state listed species may not be fully mitigated under the California Endangered Species Act (CESA), leaving the Permittees uncertain of potential additional mitigation requirements); and
- ITP implementation and requirements related to the formation and structure of a Joint Powers Authority (JPA) and, stay-ahead provision.

As a result, the FORA Board of Directors (Board) formed the Habitat Working Group (HWG), an ad-hoc committee to meet beginning January 10, 2020 to: identify possible options for jurisdictions and local entities to revise the HCP to address concerns listed above or to comply with habitat management requirements under the Habitat Management Plan (HMP) in lieu of adopting an HCP. The HWG held 11 meetings from January 10 to March 27 before sending recommendations to the Board.

To address these concerns and support discussions, FORA and its consultants prepared and provided materials to the HWG, including but not limited to: questions for the regulatory agencies; potential reduced and/or phased take approaches to address Permittee concerns while meeting regulatory agency requirements; a draft JPA agreement and overview of potential JPA structuring options; funding models under various development scenarios; a cost model for implementation of the HMP; a legal opinion on options related to the completion of the CEQA process; and an alternatives analysis of the allocation of the Community Facilities District (CFD) funds collected by FORA for the purpose of funding habitat management activities.

During its 11 meetings and culminating in its last meeting on March 27, 2020, the HWG determined that:

1. The Draft HCP as currently drafted does not reflect recent development projections, and as such, should no longer be proposed as a component of the Federal and State ITP applications.
2. If the Permittees desired to move forward with an ITP application at the Federal and/or State level, either individually or in some combination of the jurisdictions, the HCP should be revised to reflect a reduced and/or phased development approach, and not full build-out of the former Fort Ord as currently drafted. A reduced and/or phased development approach is anticipated to reduce total costs of implementing an HCP which may result in a feasible, realistic funding scenario.
3. The jurisdictions are not interested in forming a JPA at this time and also do not think it would be feasible to do so before FORA's sunset in three months, particularly in light of the global pandemic we are all experiencing.
4. The jurisdictions would like the CFD fees to be individually allocated to the jurisdictions to carry out habitat management requirements under the HMP. The HWG recommended an allocation formula and discussed various types of agreements that could be used to transfer the funds. The Board has since discussed and taken initial steps to approve an allocation formula for the CFD funds.
5. The HWG discussed that the jurisdictions could receive these funds and then still form a JPA and continue collective habitat management discussions and permitting options later, if the jurisdictions desired to do so.
6. The jurisdictions are aware that they are required to implement the HMP and intend to do so with their allocated funds.
7. The HWG felt that the objective of the HWG Committee (to continue discussions and determine path forward) had been accomplished and as a result, there will be no more HWG meetings.

Concurrent with the HWG meetings, the Board, as CEQA Lead Agency, considered options to complete the EIR process. The HWG and Board discussed the potential that the Final EIR could be used to support future permitting efforts. On March 12, 2020, the Board voted to complete the EIR. Because the Draft HCP as currently proposed is no longer supported and in order to reduce the risk of litigation, the Board is considering not approving the proposed project (i.e., the Draft HCP). Currently, FORA and its

consultants are working to respond to comments and complete the Final EIR for consideration by the Board in June 2020.

In light of the changed circumstances, FORA is requesting input from the USFWS to determine options for the path forward under ESA and NEPA regulations. FORA, as a regional agency and the ITP applicant, would appreciate a comprehensive understanding of the implications of:

1. officially withdrawing its ITP application and whether it could be amended by a different applicant at a later date;
2. not completing the EIS at this time and whether NEPA compliance could be continued by a different applicant at a later date; and
3. whether there are other options available that could support potential future permitting efforts.

For over 22 years, FORA, as a regional agency, has invested significant time and funding to support a base-wide, holistic approach to habitat management on the former Fort Ord. FORA appreciates the time and effort the USFWS has also put into this regional habitat planning effort. FORA and the USFWS have a vested interest in providing the greatest outcome from this effort that could benefit the jurisdictions upon FORA's sunset.

I look forward to discussing the path forward with you. Please do not hesitate to contact me at (831) 883-3672 or josh@fora.org to set up a meeting.

Sincerely,

Joshua Metz
Executive Officer
Fort Ord Reuse Authority

cc: